

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, May 21, 2009
9:00 a.m. - 1:00 p.m.
Jury Conference Room (B 148)
Marion County Courthouse
100 High Street NE
Salem, Oregon 97301

AGENDA

1. **Action Item:** Approval of the Minutes of PDSC's April 16, 2009 Meeting (*Attachment 1*) Shaun McCrea
2. Discussion of PDSC's Previously Approved Funding Priorities and Review of Draft RFPs (*Attachment 2*) Shaun McCrea
3. Presentation regarding proposal to create Veteran's Resource Center (*Attachment 3*) Jess Barton and Associates
4. Presentation regarding Proposed PDSC Funding Priorities (*Attachment 4*) Angel Lopez
5. **Action Item:** Amendments to Qualification Standards (*Attachment 5*) Paul Levy
6. Draft PDSC Drug Court Guidelines (*Attachment 6*) Ingrid Swenson
7. OPDS Monthly Report (*Attachment 7*) OPDS Staff

Please note: Box lunches will be provided for Commission members at 12:00 p.m.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Weeks at (503) 378-3349.

Next meeting: The next meeting of the commission is scheduled for June 18, 2009 from 9am to 1pm at The Inn at the Mountain, Bend, Oregon.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, April 16, 2009
9:00 a.m. - 1:00 p.m.
Aldrich Kilbride & Tatone LLC
680 Hawthorne Ave., SE, Suite #140
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens
Hon. Elizabeth Welch
Chief Justice Paul De Muniz

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Amy Jackson

(Meeting was called to order at 9:03 a.m.)

Agenda Item No. 1 Approval of the Minutes of PDSC's March 12, 2009 Meeting

MOTION: Shaun McCrea moved to approve the minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Agenda Item No. 2 Commission Discussion of Service Delivery Plan for Clackamas County

Ingrid Swenson summarized the testimony presented to the commission at the March meeting in Clackamas county and noted that she and Kathryn Aylward had met with Judge Deanne Darling and Mary Cohen, the administrator of Independent Defenders, Inc. (IDI), to discuss some of the issues that had been raised about the juvenile consortium, including a proposal to limit the attorneys who would be appointed to represent children to those who had provided the best quality representation. Judge Darling also recommended that PDSC consider contracting with a group of lawyers who specialize in handling termination of parental rights cases. Another proposal made at the meeting was that consortium staff appear at the shelter hearing if counsel cannot and make initial contact with the client since delay in initial contact is seen as a significant problem. Judge Darling also suggested that the commission consider amending its contracts with providers to clarify the requirement of timely contact with clients.

With respect to Clackamas Indigent Defense Consortium (CIDC), Chair Ellis said that although it may be working well at the present time, in three or four years there might be

difficulties since CIDC does not seem to be evolving. They were not bringing in new members. Intervention by PDSC may not be necessary now but might be needed in the future.

Commissioner Ozanne agreed and said that the structure of the board was particularly concerning. He said it might be appropriate for PDSC to become more proactive about board structure in defense organizations. The commission could direct that board members have staggered terms and that some portion of the board be comprised of newer members. Chair Ellis said that the most successful boards have been those whose members were appointed by external sources.

Commissioner Potter suggested beginning with small steps such as bringing in outside board members as Tom Crabtree's office had done.

Commissioner Welch asked if PDSC should include a requirement about the composition of boards in its contracts and Chair Ellis noted that encouragement to use best practices had been the Commission's approach in the past and that he is not certain that a contract provision is necessary at this time.

Commissioner Ozanne said that CIDC could be asked to create a model that could be used by other consortia.

Chair Ellis said that a third area of concern is CIDC's apparent inability to deal with underperforming attorneys. Commissioner Ozanne said that the failure to deal with this issue is usually an indication that the provider's quality assurance process needs to be reexamined.

Commissioner Potter asked if the RFP requested information about a provider's board. Kathryn Aylward responded that only the RFP for new contractors does.

Chair Ellis noted the absence of any representative from Clackamas County at this and other commission meetings and said that it may reflect the self-contained nature of the Clackamas County system. A transcript of last month's meeting and this meeting are to be sent to all consortium members and to Presiding Judge Steven Maurer. Judge Welch observed that the district attorney had not participated in the March meeting either.

Ingrid Swenson and Kathryn Aylward said that CIDC has an active mentoring program for new criminal defense attorneys and that a new lawyer had recently joined the consortium after completing the mentoring program.

With respect to IDI, Commissioner Ozanne noted that members of that group had also been absent from PDSC meetings. Their small board is also concerning. With regard to quality of representation issues, it may be time to amend the qualification standards to require that lawyers actually follow performance guidelines, not just acknowledge awareness of them. The standards should be what the commission expects contractors to do. Commissioner Welch said that quality issues in juvenile cases are of particular concern in the rural areas of the state where lawyers may need to travel long distances to meet with child clients.

Chief Justice Paul De Muniz discussed the budget for the Judicial Department (OJD). He said that he had created a judicial council approximately a year ago that has been active in advising him about possible budget reduction options. The department has had to submit a number of options to the Legislative Fiscal Office. His relationship with legislative leadership has been very positive. OJD has identified some possible new revenue sources. These proposals are now being drafted. The Chief Justice described some of the specific cuts that would need to be made if the department's budget were cut by 10%. Drug courts would continue to be funded with a 10% cut, however.

Ingrid Swenson and Kathryn Aylward summarized the PDSC budget hearings before the Public Safety Subcommittee of the Joint Ways and Means Committee. The Chief Justice reported that Senator Margaret Carter had pointed to a PDSC spreadsheet as model. During the budget hearings, some committee members had noted with appreciation the work of the commission and its structural review process. During the budget hearing on the district attorney's budget, the Oregon District Attorneys Association representative had pointed to the need for adequate funding for the court, the district attorneys and public defense.

Agenda Item No. 3 Review of Proposed Amendments to Qualification Standards

Paul Levy summarized the proposed changes to the qualification standards, some of which are "housekeeping" changes, others more substantive, and described the proposed amendments. Commissioner Ozanne questioned the change of "must" to "may" with respect to the requirement that death penalty lawyers be prescreened by the peer panel. He recommended that it be made clear that OPDS will be reviewing attorney's statements of qualification and that PDSC consider amending the qualification standards as a means of improving representation in civil commitment cases. Ingrid Swenson noted that PDSC will be reviewing delivery of services in this area in the near future. Paul Levy said that the civil commitment standards had been updated in 2005. Commissioner Ozanne suggested that the attorney certification form include an acknowledgment of the obligation of the attorney to abide by performance standards.

Agenda Item No. 4 Defense Representation in Drug Courts

Ingrid Swenson summarized the testimony and other information provided at previous PDSC meetings regarding drug courts and the recommendations that had been made by the four public defense providers for standards that should be considered by PDSC. Chair Ellis said that the requirement in Umatilla County that a defendant plead guilty to all counts as a condition for being admitted to drug court was particularly concerning. Commissioner Ozanne said that standards in this area of practice could provide attorneys with the same kind of protection provided in early disposition programs by the adoption of PDSC standards for those programs. There is also a need to remind lawyers of their obligations in this new environment. Chair Ellis said that the court has an obligation not to permit unconscionable pleas. Commissioners noted that since the client is the one who determines whether or not to participate in a drug court program, it might not be appropriate for court appointed counsel to refuse to assist a client who wants to participate in a program that does not conform to PDSC standards. Judge Welch said that district attorneys can control whether cases are processed through these courts and can walk away if they are not satisfied with the court's structure and processes. It was agreed that PDSC standards would be of value to an attorney advocating for a properly structured drug court. Standards would provide the defense attorney with more leverage in the design and operation of the court. Staff will prepare draft standards for review by the commission and others.

Agenda Item No. 5 Commission Discussion of Service Delivery Plan for Post Conviction Relief Cases

Ingrid Swenson summarized the testimony and other information provided to the commission at previous meetings regarding the quality of representation in post conviction relief cases.

Chair Ellis said that it appeared that the less satisfactory approach to PCR representation was to have a large number of providers who handled only a few cases. The better model would be to move in the direction of concentrating the work in a few hands and in future biennia converting that model into an FTE system.

Kathryn Aylward said that there are currently four attorneys who handle PCR cases exclusively and then other providers whose contracts include PCR but who don't handle cases as regularly. PCR is currently the most specialized area of practice.

Chair Ellis noted that the Department of Justice has a very specialized unit and that PDSC should try to follow this same model in its contracts.

Commissioner Ozanne suggested that PDSC, possibly as a minority report, consider taking the position that it can't provide meaningful representation in this area so that state PCR should be abandoned. Peter Gartlan said that there is a statutory right to counsel in PCR cases and that if the federal courts found that the evidentiary record created in state court was fundamentally inadequate (because done without the assistance of counsel) the federal court could proceed in habeas and that is what the Department of Justice would like to avoid.

Commissioner Lazenby said that when the legislature fails to fund a function, there is no obligation to provide it.

Paul Levy and Commissioner McCrea both noted that it is really the lack of investigation that is the problem in state PCR.

Kathryn Aylward said that the PCR caseload has fallen dramatically. Ten attorneys could probably handle it. With providers who handle PCR cases exclusively the most effective intervention is probably for CBS staff to discuss performance standards in connection with renewal of their contracts and make it known that compliance with the new standards will be required. Staff can also talk about the frequency with which contractors have used investigators in the past and encourage appropriate use of this resource.

Commissioner Ozanne said that the staff report should articulate what the standards require and that the best solution would be an FTE office to help create a new culture. The report should indicate in strong language that other approaches have been inadequate and that no alternative solution is appropriate.

Agenda Item No. 6

OPDS Monthly Report

Peter Gartlan reported on recent developments in the Appellate Division. Kathryn Aylward has improved the database and made life easier for the secretaries and attorneys. A petition for certiorari has been filed in the United States Supreme Court in the division's Bowen v. Oregon case, which challenges Oregon's non-unanimous jury system. He described legislative and rule changes being sought by the Court of Appeals to streamline the appellate system and lower costs to the Judicial Department. Commissioner Ozanne expressed concern about the proposal that would permit the court to sit in panels of two on submitted cases.

Greg Hazarabedian described some of the legislative proposals under consideration that would affect the demand for public defense services.

Commissioners and staff discussed the PDSC meeting schedule and decided to move the May meeting from May 14 to May 21. The August meeting was also moved, from August 13 to August 6.

MOTION: John Potter moved to adjourn the meeting; Shaun McCrea second the motion; hearing no objection, the motion carried: **VOTE 7-0.**

The meeting was adjourned at 12:00.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, April 16, 2009
9:00 a.m. - 1:00 p.m.
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680 Hawthorne Ave., SE, Suite #140
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(Meeting was called to order at 9:03 a.m.)

Agenda Item No. 1 Approval of the Minutes of PDSC's March 12, 2009 Meeting

1:01 Chair Ellis Okay. We'll call the meeting of the Public Defense Services Commission to order. I want to welcome everyone who is here. The first item is the minutes of the March 12 meeting. Are there any additions or corrections to those minutes? If not, I would entertain a motion to approve.

MOTION: Shaun McCrea moved to approve the minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

The next item is the first discussion of the Clackamas Delivery Plan since our meeting in Oregon City. Ingrid, do you want to start with that?

Agenda Item No. 2 Commission Discussion of Service Delivery Plan for Clackamas County

1:53 I. Swenson Yes. Good morning, Mr. Chair, and members. You will recall that we have two providers in Clackamas County. It is a busy court and Mari Miller, the trial court administrator who testified, had told us that she thought their judges had the highest number of cases per judge in the state. Later she informed me that they have 4,281 cases per judge filed in the county as opposed to a statewide average of 3,527 cases per judge. That means a sizeable caseload, obviously, for our two providers as well. In the juvenile area, the Independent Defenders Inc., or IDI, is our provider there. There are 11 attorneys. We informed you that the juvenile

caseload is declining. Mike Clancy and Gay Canaday both testified. They were both original members of the consortium and described the organization and its structure. They have four board members, all but one of whom are members of the consortium. All of their lawyers are very experienced except for a couple who have been brought in recently. Both Mr. Clancy and Mr. Cohen had been training or mentoring new lawyers in their law firms. They described the benefits that they saw of their organization, the principle one being that most of these lawyers have other areas of expertise. One of them is an expert in social security law and that is a benefit to clients and to other members. They thought there was an advantage to being lawyers with other kinds of practices. They described their method of dealing with performance issues. Essentially they said it was a progressive sanction type of approach. They talk to someone and if things don't improve then they take further action. We have not been made aware of any circumstance under which they had to remove anybody from the consortium at this point.

You heard from CASA Director Barbara Johnson. Her comments were that caseloads are high for these lawyers and she understands that. That is one of the circumstances under which they work. She said she saw less zealous advocacy for children than for parents. She sees lawyers not meeting with their clients very often until just prior to the court hearing and they are not necessarily prepared to proceed until they have spent time at the courthouse meeting with these clients. She suggested that CASAs be appointed in all cases and lawyers only selectively as recommended by the CASAs to the courts.

Judge Darling testified that she is the principal juvenile court judge there. She raised some issues as well. She talked about attorney availability, which is partly related to the structure of their system and the fact that the juvenile court is located outside of the downtown area and people have to travel there. These people have practices that require them to be downtown on a regular basis too. She said that they were very experienced lawyers. She was also concerned about client contact and felt that they needed to do a better job of outreach to their clients and not just send a letter and wait for a response, but to actually seek to have these clients make contact. She did not recommend a public defender office approach for juvenile representation. She said she appreciates the fact that these lawyers have other areas of expertise and finds it very beneficial to their clients. She suggested that you consider creating a regional termination of parental rights center with lawyers who specialize in termination cases. She thought that that would relieve some of the pressure on her lawyers, to have a panel of experts. There was some discussion among Commission members about the fact that there is probably not a huge demand for that outside of the county.

Let me update you. After the commission meeting Kathryn and I met with Marty Cohen, who is the administrator of that consortium, and with Judge Darling, to see if we could work out some of the things that appeared to be ongoing issues there. We discussed the appointment of counsel for children and one of ideas that was discussed by the judge and the consortium representative was maybe identifying those lawyers who do very good work on behalf of children and limiting appointment to them rather than extending it to everybody in the consortium. We discussed possible specialization, particularly in representing older children who are aging out of the system. Currently, nobody appears to have the appropriate level of expertise in terms of identifying services for these kids as they become adults.

As you recall from many of our structural reviews, it is often a real challenge to get lawyers to the initial hearing in a dependency case. They have very little notice - well about 24 hours notice, and often less than that - and the lawyers have other obligations. It has been a problem in Clackamas County and they have not been able to resolve that. It seems that if you could resolve that you could also deal with the problem of people not meeting their clients until the initial court hearing. They would have met and obtained contact information and so forth at the initial hearing. One suggestion that came out of that meeting was if the lawyers can't be there then maybe a consortium employee, a representative, a staff person, could be there and

at least meet the clients, obtain the information, let them know who their lawyer is going to be and initiate that discussion.

Judge Darling also recommended that you consider whether we should amend our contract requirements or look at other methods of enforcing the requirements that are already there regarding contact with clients. It continues to be a major concern for her.

The adult consortium, CIDC, the Clackamas Indigent Defense Consortium, has 27 members, most of whom have been part of the consortium for a long time. They do have a mechanism for bringing in new attorneys and we have known about that for some time. They have a mentoring program which is well established. Interestingly, all of the people who go through that program do not become members of the consortium. They put far more people through the training program than have actually participated in the consortium. Mr. Gray, Ron Gray the administrator, felt that they had been adding new people as they needed them. The total picture, though, is essentially people who have been there 25 years. There are only five who have been there 15 or fewer years. The balance is really on the side of people who have been there a long, long time. Witnesses, including Judge Maurer, the presiding judge, and Ron, identified some of the benefits of the consortium approach in Clackamas County, including, again, the variety of skills that lawyers bring to their work. They appear to be able to recruit new members and it may just be that they don't want to replace any of their existing members at this point. The number of alumni who are judges makes for stronger oversight of the defense function. That is something that Judge Maurer indicated and there is a fairly strong administrator there, as you know. He has participated in statewide groups to work on issues of quality and performance management and so forth. The consortium is developing an individual attorney evaluation system, but it is not in place yet and is still under development.

I guess some of the negatives that were identified are that even though Ron is a relatively strong administrator, there are attorneys who are identified by judges in surveys and in our interviews as problematic. You are probably going to run into that anywhere no matter how good an administrator you have and how good a performance measurement system. You are just not going to be able to find a place where everybody does great work. There are still lawyers who are identified as problems.

The board there is comprised of all consortium members and you had a discussion, Mr. Chair, with Mr. Gray about the composition of his board. From his comments it sounded like the board had had an internal debate about whether to add outside members and had decided against doing that even though it is known to be a best practice for boards. There was a discussion between Chair Ellis and Judge Maurer about the relative advantages of a public defender office and a consortium in recruiting and training new attorneys and about recruiting a new administrator. Judge Maurer is a pretty strong advocate for the system they have in place.

12:59 Chair Ellis

I thought that was a very interesting meeting we had there. I will start our discussion with an observation that I think what is there is probably working pretty well right now, but I would calendar it for three years out, four years out, as a system that doesn't seem to be evolving, is kind of fixed in place. I didn't get a favorable impression, as your report indicates, of their ability to recruit and train new lawyers. I came away with kind of the opposite impression. This is a group that has been together for a long, long time. I have no reason to doubt their competence even though I am sure it varies some. Ron himself has been a player of real significance for 25 years, but I see it all kind of aging and I don't see it renewing itself.

14:12 P. Ozanne

Mr. Chair, if I may say, that was my impression too. I wondered about the structure of the board. That sort of leapt out with five permanent and four non-permanent members.

14:25 Chair Ellis

It is a very closed system.

- 14:29 P. Ozanne
It seemed to me, and we have worked a lot on the structure of boards, that there needs to be some mechanism for boards in general that promotes balance, maybe even membership based on years of experience. On the face of it I would probably create a minority of permanent members or minority of older members if we want to get more robust participation by new people. That might crack what looks to me in a lot of places like a closed system run by people, understandably, who have been there a long time.
- 15:09 Chair Ellis
I thought there were some unusual observations. One is that the DA's office seems to have a fair number of younger, less experienced lawyers. It is probably, in some sense, not an even match right now. The young DAs go up against the savvy, streetwise, been there for 25 years, defense lawyers. Maybe that is all working. I detected a certain element of defensiveness by the presiding judge. There was a little bit of tone of, "Who are you coming in here talking to us about how we do things?" My sense was with no outside board members it is a little cliquish. It is a little bit of a closed system with an administrator who has been there for 25 years. Ron has indicated, in prior years, an interest in a judgeship. I don't know if that is still on his agenda, but whatever is on his agenda he is not going to be there forever, and maybe it is not a good thing that he be there forever even if he could be. I sense some element and I will use a loaded word, of atrophy, some hardening of the arteries. Now does that cause me to say that we ought to aggressively intervene? I am not there. I didn't hear that bad work was being done. I do hear a system that is not renewing itself and that is going to come to a point where if something doesn't happen within the community to cause the renewing, we are going to have to intervene but I am not there yet. I don't know how others reacted.
- 17:07 P. Ozanne
I think I am there on the structure of the board. I would probably want staff to come up with more thought than I have given to it. I think it is time to propose to them a different balance.
- 17:29 Chair Ellis
Including outside board members, which they don't have any of and have no intent of having any of.
- 17:32 P. Ozanne
I think it is time to be more proactive with board structure with these folks. Just in general around the state, but this cries out for a restructuring. That would be my view.
- 17:52 Chair Ellis
Other thoughts or reactions on that?
- 17:53 J. Potter
I agree with Peter's comments. I think making some little baby steps at the moment would make some sense. I know they are resistant to the board but just even suggesting that they add two members to their board and both of those folks have to be non-CDIC representatives. My sense is the resistance breaks down a bit after boards are established that open themselves up. The fear of change will evaporate a bit more if they bring in a couple of folks from the outside. We have seen it happen in many cases. I remember in Deschutes County when the Crabtree firm was resistant to bringing in outside people and the notion was you need to have a banker. You need to have somebody different and that person helped them dramatically in the fiscal crisis we went through. I think that this board would warm up to it if we pushed them a little bit.
- 18:56 Chair Ellis
The other piece of this equation is how to help them start bringing in, seriously bringing in, younger lawyers. I wasn't able to get a good enough read whether that is not happening because the older lawyers are protective of their workload, or whether it is not happening because the consortium structure, generally, doesn't lend itself to bringing in new. I think they are cruising for a bad experience and, therefore, we will have a bad experience if we can't find some way of using the existing structure to bring in some new talent. I will use a bad analogy. I had occasion to be in Tibet some years ago and what struck me as amazing was that this was traditionally a religious [inaudible] society, but all of the monks that I saw were 70 years old. You just began to think where is the younger group? How does it perpetuate itself? Then maybe that is the whole idea. That is probably a bad analogy. If anybody reports to Ron Gray that I said they were all 70-year old monks that is unfair. I do

think it is a problem and I think they are drifting along because they have been in a pretty comfortable mode for themselves for a long, long time, but they are not giving attention to the institutional need to replenish. Any thoughts how we can help them on that?

20:54 Hon. Elizabeth
Welch

I have a question. I have to admit that I have never read what the instructions are to the contractors about boards. It would seem what is good for them is good for everybody and I just wonder if there might be a way to simply say, "When this organization gives money to a consortium, or to anybody, that there is an expectation of having a board and that the board will be composed, in part, of people ..."

21:32 Chair Ellis

I think the way it is done now is something short of a condition of the contract. We have gentle persuasion modes called best practices. We have encouraged it without requiring it. I am not quite at a point that I would advocate a requirement, but I sure would like to push that. I think the two tend to go hand in hand. I think if you brought in some outside board people they would look at this institution or group and say the same thing we are saying. They are just aging in place. There is no sustainability to this.

22:26 I. Swenson

You know, Mr. Chair, I realize that you didn't hear any testimony about the mentoring that they do for people who don't end up in the consortium. I don't have any numbers for you but for a number of years we have heard from CIDC, as well as others, that they do offer that avenue for lawyers who are interested in criminal law without any assurance of consortium membership and many of them never get there. I will get the numbers on that. Maybe none of those people were suitable. Maybe that is why they mentored them and then let them go. I don't know. There is that piece that we haven't explored. The size of the consortium has actually declined a little bit. It used to be 30. There are 27 members now and I think the caseload is pretty stable so I am not sure why the membership is declining. Judge Maurer thinks the caseload will continue to be what it is.

23:26 Chair Ellis

The third area that I know they say they are addressing - and I know it is the hardest for a group like that to do - is what do you do with the underperforming attorney. When you have the same group of 27, and maybe they have trimmed it to 24, whatever, in place for so long they tend to protect each other. They tend to think, "There for the grace of God go I." They tend to think, "We're all in this together."

24:05 P. Ozanne

They are all really busy lawyers and want to stick to their own business.

24:10 Chair Ellis

And frankly they are defenders so they don't like to attack colleagues. That is all understandable, but when you get sort of a closed system, which I think we have there with the - I'll call it inbred board and kind of a static group - it becomes very difficult to take any step to weed out the - the extreme case maybe, yes - but the underperforming lawyer. It is just too easy to ride along with that. All of these, in my mind, are issues that are not being addressed very aggressively and over time they are going to take a toll. I would like our report to highlight all three of these points and push them to address them. That doesn't mean that we drop a curtain on them, because we don't have a good, immediately available, alternative. I don't want to make it sound like I think they are in crisis mode, but I think these are pretty predictable conditions that if not addressed now are going to get worse. They are going to become something we are not going to be very happy with three or four years out.

25:46 C. Lazenby

Mr. Chair, are you suggesting that maybe what these groups do is prepare something like a succession plan? That they actually start putting it on paper.

25:56 Chair Ellis

And the plan can be, "How are we going to go about the process of succession?" Right now we asked Ron pretty directly, the same way we did with Jack Morris out in Hood River, and Ron gave, I thought, a classic evasive answer, which I probably would have done, but I think

they need to answer these things. I think they need to start talking about them and I think they need to get a little revitalized energy.

26:33 P. Ozanne

I think, Mr. Chair, you were asking for suggestions about how to maybe encourage more turnover – not turnover but more new blood. I think, and I get a sense of the group so far that John suggested baby steps and you said go forward. I would be prepared to make a motion next time as to the structure of the board. I don't want to if people generally feel – I think staggered terms with perhaps the thought of getting members who were in different stages of practice and one board or two board members would be 0-5. Now young lawyers or new lawyers are probably just as prone to status quo after a while as older lawyers. I think the fact that there are younger lawyers there would mean that they would be more sensitive to those issues than somebody who has been there 25 years. At least I would like to think about that concept. I don't want to waste staff time if that is not really something our Commission wants to proceed with. Whether it is a recommendation or a notice that by next contract period here is the kind of structure of the board we would like. Maybe there is some discussion and some suggestions. I would be prepared to entertain a motion like that.

28:07 Chair Ellis

The ones that I think have been most successful is where the – it is not a self-perpetuating body that elects itself. It is a body that is appointed from external sources. They haven't done that to my knowledge and I think they probably don't want to do that. I think maybe what we ought to do is have the next iteration of this plan and ask them to provide us with their proposal going forward. How to get there from here on recruiting and training younger lawyers; on the internal discipline issues, and on how do we get to a more independent board than we have now.? We put the ball in their court to come back to us with a proposal. I would encourage us doing it that way as opposed to a direction to do this or else.

29:21 P. Ozanne

I like Judge Welch's idea and I am kind of in line with that. Maybe if we frame it in a way that we are giving you an opportunity to help us think through a model. We are not just necessarily picking on this county but to ask them to think through a model to be used in other consortia going forward. It is kind of like, "Give us what you would like to help us with this in other areas." I think it is a common problem.

29:49 Chair Ellis

They are the largest county with a single provider that we have in the state. From our trusteeship point of view, I think we have to watch that.

30:08 P. Ozanne

The other thing I thought about was quality assurance. I could be wrong and maybe misread the report, Ingrid, but I know you are probably more careful than I was when I was doing these. I think, without exception, and John was along on a lot of these as others were too, but without exception if I felt like I had to note that there was an attorney who many people felt should no longer practice, that the system of quality assurance wasn't operating well. It is kind of the canary in the mineshaft. Those are the ones if the administration isn't dealing with them, it seems to be - as good as Ron Gray is, for example, and we have used him a lot in thinking through some of these issue, something of a signal. I guess when you have those kinds of situations where there seems to be a consensus about an attorney, it seems to me that we ought to say, "This is kind a facially valid reason why we think you need to rethink your quality assurance. If you can't deal with it with someone who everybody says is a problem then who are they dealing with?"

31:13 I. Swenson

We did deal with that fairly directly in our discussion with Judge Darling in the juvenile consortium. In the adult practice area I don't think there was anybody in particular who was identified as the problem.

31:28 P. Ozanne

We don't want to mention names typically but sometimes we have had to. When there is a consensus that somebody here isn't up to standards then, okay, why? Why has it gone on this long?

31:47 Chair Ellis Other comments on Clackamas County?

31:48 J. Potter The RFP itself, the application, and I should know this but I don't. Does it have questions that are being asked like, "Tell us about your board. How would it be structured? Tell us about retention policies. Tell us about performance issues."

32:05 K. Aylward We actually have two versions of the request for proposals now. The one for new contractors would include a lot of that detail. But with the existing contractors at some point we realized, "We have been doing business with this entity for 20 years. Why every two years do we have to ask them to answer all the same sets of questions and do all this work? If we want to know the answer we will call them up and find out." So, no, the RFP for existing contractors does not provide that.

32:43 Chair Ellis I think it is interesting and possibly emblematic that here everybody in this room is talking about issues in Clackamas and there is nobody here from Clackamas to my knowledge. Unlike every other major population center they almost never have someone here. What I think is emblematic about that is I think – there is a long history here – but I think they view themselves as self-contained and we are probably viewed as outsiders and strangers. I think that is too bad. I think we ought to try and change that. I think one of the things that has been very successful about this Commission's efforts over the last eight years has been the attendance at these meetings by providers, and the input that providers have had, and the sense of statewide community among the providers. I have a feeling that they don't share that view. I would like to see them share that view because I think it has been important.

34:01 I. Swenson I think, Mr. Chair, it is a reflection of the fact that Mr. Gray is the administrator and the fact that he has so many roles. As he told you he also prosecutes in the local courts and serves as a judicial officer. He has very limited time so we see less and less of him at our work group meetings, as well.

34:24 Chair Ellis I have great regard for Ron. Nothing I have said is a personal criticism of him. That said, he can't do it all. He is not getting younger and I think it is bad for the system to get so dependent on one person to do these things. He does have a little bit of an attitude of, "Don't touch me, I'm on my own." Any other thoughts?

34:56 Hon. Elizabeth Welch Slightly different issue and what you said reminded me of it. I think in that same spirit it was notable that there was no one present at that gathering from the district attorney's office. I didn't see anything in the report from the district attorney. Did they blow you off?

34:14 I. Swenson No. Paul Levy and I met with John Foote and Greg Horner, his chief deputy, and it was interesting. They were very welcoming and we had a good conversation. John Foote absolutely committed to be at that meeting and then didn't come. I had no further contact with him about that. Also, I made an effort to talk to several deputy DAs and they were not returning my calls. I am just not sure why that is. I could explore it further but since he and his chief deputy had meet with us I thought I would probably leave that alone.

36:02 Hon. Elizabeth Welch It was in the midst of all the furor with the court.

36:11 P. Ozanne Didn't one of the leaders of the consortium indicate that the tone has changed and it is more adversarial?

36:14 Chair Ellis Ron said that.

36:22 P. Ozanne It might be worth a comment in the narrative or something about the importance.

36:28 Chair Ellis I think it would be helpful to send to Ron and the whole consortium group a transcript of our meeting a month ago and the transcript of this meeting as it relates to them. I understand that human nature is what it is. They don't want to think about these problems because it is easier not to. I think it is our job to make them start thinking about these problems. Maybe sending them those two transcripts may spark a little fire under somebody.

37:15 K. Aylward Mr. Chair, not to disagree with anything you have said but I do want to commend CDIC. I think they are the only consortium that actually has a formal mentoring program and they do regularly bring people in. Especially now, if caseload is dropping and they are talking about a piece of their pie going away, they are still bringing in - do you know his name, Amy?

37:34 A. Jackson Jerod Justice.

37:38 K. Aylward Jerod Justice, a new young attorney that they have just brought in. They go through the mentoring and they give him a small group of misdemeanors. They are still committed to giving away a piece of their pie to a new mentee who comes in and they have done that regularly over the years.

37:49 Chair Ellis I am glad to hear that. I wasn't getting that from the meeting. I don't want this to all come out negative because it is not all negative. Maybe we ought to add to that as a building block.

38:14 I. Swenson I will get some numbers from them about how often they do it and what happens to the people who go through the program.

38:19 Chair Ellis Any other thoughts or comments?

38:20 C. Lazenby The last part of that is really going to be the important part. It is one thing to bring folks in and mentor them for awhile, but if what they end up doing is going to Multnomah County and practicing or Washington County that doesn't do much for the problems the Chair has identified in terms of succession and what the future of the system is going to be.

38:45 Chair Ellis I would send the transcripts to Judge Maurer.

38:50 I. Swenson I usually send a summary of the testimony.

38:54 Chair Ellis I actually think the transcript is critical. Alright is there anything else? Welcome Chief. We were hoping you would share how well things are going. Any reports you want to make on the fate of the world in the judiciary?

39:29 Chief Justice De Muniz Sure. I could share a few things with people. Let me put it in perspective. There are basically two things I have tried to implement in the judicial branch. The key thing for us is to maintain an open and accessible court system. That is the standard that we need to judge ourselves by and that is actually what the framers of the Oregon Constitution said is expected of the judicial branch and what is expected of the legislative branch vis-à-vis the funding of the judicial branch. In the Constitution it says that justice shall be administered openly, completely, and without delay and that our court system needs to meet that constitutional standard. That said, one of things I had done about a year ago was to create a judicial council as a new form of governance for the judicial branch. I thought in this modern day managing the court systems out of the hip pocket of the Chief Justice was probably - a change in that was probably long overdue. I created this judicial council. Unfortunately, the first job the judicial council was given was as a Budget Reduction Advisory Committee. That subcommittee started meeting months and months ago in preparation for the rebalance of the budget for 07-09 and then for long-term planning for 09-11. That work was completed since we, like the PDSC, were required to submit a budget reduction plan to the legislative fiscal office. That can be found on their website and that plan provides for what would happen if

we had cuts of 5 percent, 10 percent, 15 percent, 20 percent, 25 percent, and 30 percent. The good news - and I think this is extraordinary quite honestly - is that contrary to reports in the paper I have a very good working relationships with the President of the Senate, the Speaker of the House, the two co-chairs of the Ways & Means, and the chairs of the Senate and House Judiciary Committees. I meet every Tuesday morning for breakfast with the House chairs. They are working with us and in fact there is an unprecedented meeting tonight at 5:00 between the co-chairs of Ways & Means, the Senate Chair of the Judiciary, the Chair of the House Judiciary, and my staff along with myself. They organized this meeting to work with us on my revenue proposals. What I believed they wanted was for us to come to the table with solutions. One of the things that we have done is we have identified about \$40,000,000 in new fees and assessments and some enhancements to fees, but some of them will affect your own clients and the lawyers in this room. For example, one of our proposals is to have a court probation fee to defray the administrative expenses that we undertake when a person is placed on court probation. It would be \$100, which is not an arm and a leg but that could raise over the biennium over a half a million dollars even at a 48 percent collection rate. I suspect the collection rate will be greater. We have a number of those kinds of fees that have never been used before. I met and worked this with the President of the Senate and the Speaker of the House. As many of you know who are familiar with the legislative process, you can have revenue proposals that were intended to enhance your branch of government but may end up in the general fund. This is the first time that we have been able to get this far. I was late getting to this meeting because I was meeting with the Chair of the House Judiciary Committee to begin the drafting of the referral process with legislative counsel for these various revenue raising fees. Why this becomes important is because at a 10 percent reduction rate that would be a reduction of \$34.8 million general fund. It would be 153.3 FTE. At 10 percent right now we would eliminate general fund support for the indigent defense verification program. We would eliminate most staff counsel and the support services division. We would reduce staff counsel and legal support in the State Court Administrator's Office. We would cut 11 positions in the tax court and both appellate courts. We would eliminate all of whatever pretrial release programs we are responsible for. We would eliminate all 28 court referees statewide. We would eliminate the remaining Citizen's Review Board program and we would reduce our court interpreter services. That is not the interpreters that is the support for the interpreters. We would make a change in (inaudible) compensation. So you can see when 88 percent of your general fund budget is personnel, we don't have any programs and projects or capitol projects that we can just say we are not going to do anymore. Some of you may be thinking well what about your e-court program? Our e-court program is not general funded. I have already reduced that program by half. As I have been telling the leadership my realistic assessment is if you cut our budget 10 percent I can no longer, in good conscience, look at you and say, "I can deliver this e-court system in the next biennium statewide." It is impossible to do because we have to rely on our staff to implement these along with the contractors. We will significantly restrict what we will do probably to two pilot courts if our budget is reduced by 10 percent. My hope is that we will get full credit for the revenue raising concepts that I have submitted and that are being drafted now. I believe that the budget cuts are going to come in somewhere between 17 and 20 percent and that we will be able to enhance our budget from that point up. There are no guarantees to any of that.

48:25 P. Ozanne

Chief, maybe this is too detailed a question but obviously at the local government level we are all trying to anticipate what you and the other state agencies are doing. Do you happen to recall, and we have it on our agenda today, where the drug courts are? I know they fall off at some point. Is it 10 percent? Is that where it hits?

48:46 Chief Justice
De Muniz

No. It is in the 15 percent reduction. Let me explain that. There is a more sophisticated point. As I have said publicly, the fact that the word "drug court" appears in our 15 percent cut doesn't mean that we want to cut drug courts. What appears there is elimination of general fund support for the coordinators. Now there is stimulus money. There is \$33 million

in Byrne Grants in the federal stimulus money. We are now working with the legislature and the Governor's office about how to other-fund those positions. My position is not that we want to eliminate drug courts, but we have to find a way to fund the coordinator part of that as we go.

50:00 P. Ozanne

You know there is a threat to any kind of treatment so that is also a problem.

50:06 Chief Justice
De Muniz

There is treatment money and then money that can get into the court system for the coordinator part. We are trying to make sure we have other funds funding those positions. The House Chair of Ways & Means is completely committed to the success of drug courts.

50:35 Chair Ellis

Questions for the Chief? Ingrid, do you and Kathryn want to update us ...

50:42 P. Ozanne

Excuse me, Mr. Chair. Were we done with Clackamas County because I had a thought about the juvenile piece, too. Are we moving on?

50:54 Chair Ellis

Why don't we get this report because it kind of follows where we were and we will come back to Clackamas County.

51:07 I. Swenson

As you know we had our budget hearings about two weeks ago. We had three days as we have had in the past. One day is devoted essentially to public testimony. Both you and the Chief painted the big picture of public defense, where PDSC came from, and what we do. From there, Kathryn and I talked about the details of our three budgets, our office account, our Appellate Division account, and then, of course, the Public Defense Services account from which we fund all trial level services. It was a very positive experience. I have listened to some of the other agencies' presentations as well and the subcommittee is seemingly very courteous to all of them. They seemed very receptive and the questions were good. I think we presented our needs and basically told them that there are ways to cut public defense. You don't just cut the bottom line because the impact would be on essential services that you can't eliminate. They are constitutionally or statutorily required, so the way to cut, if you have to, is to limit the need for defense services by downsizing the public safety system in some way. We had spoken to all of the members before the hearings and they were prepared for that presentation and were receptive to it. Legislative Fiscal staff was especially appreciative of the approach that Kathryn had taken to our essential budget level presentation, advising them at the appropriate time that our caseloads were declining and that we could actually reduce the essential budget level numbers based on the projections we had of where we are going. They appreciated that and the committee appreciated that. We were one of very few agencies who were able to bring them good news. We had testimony from two prosecutors. John Kroger came as he had volunteered to do and he spoke in support of adequate funding for public defense. Mike Schunk from Multnomah County came again as he has most years in the past. We heard from a number of our contractors some of whom are here today, who presented different pictures of their circumstances and needs. I think they made a very compelling case that their businesses are operated efficiently and effectively and that you can't just decide to cut resources and expect them to continue performing the vital service that they do. We also heard from one client, a client's grandmother, and her attorney. This was a Juvenile Rights Project case and it involved a child who was placed in a foster home situation. There was a grandmother who appeared to the attorney to be an appropriate provider and caretaker. She launched essentially a five-year battle with DHS and the state to have this child permanently placed with her grandmother. After many administrative appeals as well as judicial hearings, termination petitions and so forth, she was successful and that placement is now stable and good. At this point the agency would concur that that was an appropriate placement. It was a good presentation about lawyers who work hard and are committed to their clients and what they can accomplish. Kathryn, would you like to talk a little bit about the budget details?

55:08 K. Aylward Certainly. Late last night I reread the minutes from the last meeting and I did go through it a little bit at the last meeting. Nothing has changed and as the Chief indicated this is sort of the calm before the storm. We are just of waiting to find out what is going to happen next.

55:27 Chair Ellis Is May 15th the next economic forecast?

55:31 K. Aylward LFO has asked to meet with us hopefully next week, but possibly the week after to go through our reduction options in the same way that they will be doing it with judicial. I generally said, "Let us know where the court ends up since that is going to have an impact on our office." If the court is having to cut, let's say drug court, for example, the people that we pay to provide representation in drug court will no longer be paid. Our budget will ratchet down a step depending on what judicial does. I pretty much said to LFO, "You have to do them first. Our picture could change depending on that picture." That is where we are now in terms of any changes.

56:36 Chief Justice
De Muniz One comment about Kathryn's presentation and the materials that were submitted to LFO and the Ways & Means Committee. I received a note from Margaret Carter, the Chair of the Ways & Means. Attached to the note was one of the spreadsheets that Kathryn had prepared and they were very complimentary in suggesting that the staff of the judicial branch might follow that. I said we will do it but that it is one thing to do it for X number of employees. It is another thing to do it for 1800.

57:37 K. Aylward Chief, when we were testifying we were talking about technical things. If it had come up, I would have said, "It is a completely different picture," as I did say, "for our little clump of 70 people because I can go door to door and say, 'You are going to do this and now you are set up.'" The thought of having to deal with thousands of employees and the public for all of those technical things, we don't have that at all. It is easy for us to make that change and implement things.

58:06 Chair Ellis I would comment that I felt comfortable with that group of legislators and what I mean by that is I think they all started with much better awareness of the role of defense and the importance of defense than we saw at the legislature four, six, eight years ago. It is not a year, obviously, that there are a lot of resources around, but in terms of did they have a supportive attitude I certainly felt that they did. I attribute that to the building blocks from prior legislative sessions and how you to in particular are relating to LFO staff. To the extent they can, I think they will treat us reasonably well. It wasn't one of those situations where you felt they were hostile to the whole idea of the state funding people to get people off and the whole mindset that we used to see.

59:25 K. Aylward Could I add too that my contact at LFO indicated that they are impressed by the Commission and your process. I was even sort of pulled aside at one point and asked, "Are you going to talk about your site review process and service delivery?" I think when John Borden came to one of the Commission meetings he was impressed by the process. I think in another subsequent budget hearing for another agency, he actually commented on the fact that PDSC members were all volunteers and were donating their time to do this. You get some of the credit too.

1:00:15 I. Swenson Senator Walker mentioned that too, I think.

1:00:20 Chair Ellis I thought the climate was very supportive.

1:00:38 Chief Justice
De Muniz One other comment. One of the things that is much different than in the past is in the Public Safety Subcommittee that we are both in. They have had a number, X billion dollars, and then the Public Safety Committee had that money to sort of divide up and work out. There

isn't that scenario this time. The Public Safety Committee doesn't have a number yet and I don't know whether they actually will. As we get closer and closer to May 15 it is a much different process. One of the examples of that is this meeting that is going to occur tonight between the Chairs of Ways & Means and the policy people, the Senate and the House Judiciary people and LFO. The purpose in the letter was an attempt to marry some of these policy issues with the revenue proposals that I have along with the judicial budget cuts. They are actually trying to see how they can do that on an individual budget basis without this idea that, "Well you get this sliver of the Public Safety Subcommittee pie." That is a much different approach than they have had in the past. I don't know where we will end up.

- 1:02:13 C. Lazenby That is incredibly sane.
- 1:02:18 Chief Justice De Muniz Well, you remember, for example, in the last session, they actually took a million dollars on one of the last days of the session and moved it from the Corrections Department budget to judicial compensation.
- 1:02:43 I. Swenson One other comment I should make is that I try to listen to some of the other public safety agencies' hearings. Both the Department of Justice and the district attorneys in their hearings had some very favorable comments about public defense. From the Department of Justice, Mary Williams, as always, gave a lot of credit to our appellate division people, Pete and his staff, for working very cooperatively with the court and with the Department of Justice to identify lead cases and so forth to conserve resources. That was a nice comment and then the district attorneys who are not asking for a lot of funding - as you know, the elected district attorneys are paid by the state, so that is part of the legislative budget - and then they are also seeking an administrative position for district attorneys. Dan Norris, the current president of ODAA, testified on their behalf and he was asked by legislators, "Well, you are an experienced prosecutor. Help us figure out where we can make cuts here?" He said, "An easy answer would be to cut public defense, but I am not going to suggest that to you. You can't do that. This is a three-legged stool" - the analogy we have talked about before - "and you can't eliminate or cut one portion of that without affecting all the others." He talked about the court, public defense, and district attorneys, and in fact advised them that, "If you are going to save money you probably have to close prisons."
- 1:04:29 Chair Ellis All of that pain of '03 still has some positive ripple effect. I felt that. That is a lesson that we preach every year. I think there are enough of them with memories.
- 1:04:46 I. Swenson We certainly heard it when we spoke to some of them.
- 1:04:50 Chair Ellis Any other questions or comments on this subject? Peter, I apologize. I hadn't meant to cut off discussion.
- 1:05:02 P. Ozanne You want to do that now?
- 1:05:05 Chair Ellis Yes.
- 1:05:05 P. Ozanne The juvenile consortium, my comments and some of my information is dated and I wasn't here for the direct testimony, but I think some of the comments about the parochial or insular nature of practice in the county applies to the juvenile consortium. I don't see them involved in this Commission or statewide activities. I think I would suggest that staff reflect on that in commenting on the juvenile. I also have problems with the three-person board. Sure it is 11 lawyers but [inaudible] - if I am right about that.
- 1:05:47 I. Swenson Four.

- 1:05:50 P. Ozanne I come up with five. Again it is an issue of how directive we want to be on boards. I have a sense, and again it is not this particular consortium, but a lot people don't get engaged in governance issues. I think we should encourage more members to be engaged in governance issues. Four is better than three. The other thing is maybe we will come up with standards. I would defer to Judge Welch on this and Ingrid, both of whom are experts. Every time we have a report on the juvenile system it always comes up that lawyers aren't contacting clients and that sort of thing. I know a lot of it is the fault of the legislature, and therefore us, because we are not providing enough funds to do it. I would like discuss the topic, and I don't know how detailed we will get on standards, but I almost think that it is time when the lawyers are certified that we put some things in there rather than just references to bar rules, that we actually say that to be a certified lawyer you are going to do these things in the juvenile area. It is just a thought. I think now we have it in the contracts. I think there are still people floating around that say they can practice law in the termination area without seeing children. I think we should at least try to get them to drink from the trough, but at least head there by signing something that says, "These are the expectations." It is not that it is a problem here, in particular. Maybe there should be some language in the final report. And the last thing was you mentioned that there was some agreement or discussion about giving termination cases to a certain group with expertise. What is your recommendation on that?
- 1:08:04 I. Swenson That is a good question. I haven't discussed it yet with Kathryn except at this meeting with Judge Darling. It didn't seem like a good solution to the problem there, but it doesn't mean that it isn't something we could explore. People's availability is so limited that if you have try to have it regional, which was the suggestion - a regional specialty office - I think that makes scheduling, if anything, a little bit more difficult. Also there isn't the connection to the client. Of course there is a benefit to having a fresh set of eyes on these cases, but there is a lot of information you need to be familiar with in a termination case and most of the lawyers who handle the dependency at least start there and they have a relationship with the client which is sometimes difficult to develop.
- 1:08:56 P. Ozanne I didn't say the regional thing was practical, but I thought you suggested sending more cases to the people who are good at it. Against that there would be scheduling issues and I just didn't know how far you were going to take that.
- 1:09:09 I. Swenson It is worth exploring. It had been proposed as a sort of regional termination specialist office and a contract for that purpose alone. We discussed specialization with respect to child representation, selecting the attorneys who do the best work at that. We could certainly talk about whether that couldn't apply to terminations too.
- 1:09:33 P. Ozanne I wasn't particularly attracted to it except you had mentioned it in your comments. That is all I have.
- 1:09:35 Hon. Elizabeth Welch What is ironic about that is that the real problems aren't in the Metro area. They are everywhere else. There are all the problems that exist in the Metro area and a whole bunch more having to do with tremendous distances. How does a lawyer have a relationship with a child client when the office and the child are 200 miles apart? The lawyer is busy all the time running around representing parents, children, whatever. That makes the Multnomah/Clackamas/Washington situation pretty easy. It is a tremendous challenge.
- 1:10:23 P. Ozanne Some I have told, and it shows that money isn't everything, when I was Maricopa County there were lawyers in the termination cases that were making three and four hundred thousand a year and the quality wasn't any better. They have the same problems down there so it not necessarily a money issue.
- 1:10:53 Chair Ellis Why don't we take about a 10 minute recess.

(Recess)

Agenda Item No. 3 Review of Proposed Amendments to Qualification Standards

- 1:12:02 Chair Ellis The next item on the agenda is the amendments to the qualification standards. Paul, I understand that this is your baby?
- 1:12:15 P. Levy Yes. I know that the Commissioners would feel deprived if you didn't have the opportunity to look at these standards every couple of months. If we don't highlight the additions when they are printed you can't see them. So the highlighted text is new language. Most of this version is cleanup and fixes of little things. There are a couple of bigger changes. In some of the cleanups we are making clear that this alternate method of meeting minimum qualifications for public defense organizations is not just for public defender offices. There has been some confusion about that. We are also reconciling the equivalent skill and experience provision that governs all of the standards with the provisions of the capital standards. You will see throughout that we have taken out the requirement you have been on so and so many cases that went to final verdict in a trial to a jury, to simply required that you have tried them to a jury. We have encountered a number of instances where people went all the way through to the very end and there was a judgment of acquittal or a mistrial. It seems that they had the experience that we wanted even though they didn't get to hear that two word verdict.
- 1:14:32 P. Ozanne I proceed with trepidation because I hear some kind of inside joke here. Maybe this has been up in the meetings that I have missed and we are all sick of this. I wonder why you changed "must" to "may" in the prescreening panels.
- 1:14:51 P. Levy Thank you for noticing that. There are instances where we want to very quickly get an attorney qualified to handle a capital case and we may need to get them on a case before we have had them screened by the peer panel. It just allows for some flexibility. Now if we don't want to have that flexibility...
- 1:15:47 P. Ozanne I see some evil eyes. I guess my philosophical concern, and it is not about any individuals in our bureaucratic arm and I mean that positively of OPDS, is that on one hand we don't have a lawyer out there and we have to get one, on the other we want that dynamic tension between a senior panel of capital lawyers and OPDS. I just wonder, and particularly in the murder area, whether we wanted to give that discretion or not.
- 1:16:27 P. Levy This is on capital cases.
- 1:16:29 P. Ozanne That is what I meant.
- 1:16:28 P. Levy I think it is now understood that the practice is universal that courts know we assign counsel in those cases. The court appoints and we assign. Exigencies can take control at times.
- 1:16:52 Chair Ellis If it is as written it is meaningless.
- 1:17:02 P. Levy Yes, well no.
- 1:17:04 Chair Ellis Anybody walking down the street may have been prescreened.
- 1:17:13 P. Levy If you would like to keep it the way it is...
- 1:17:31 C. Lazenby Why don't you add a provision for some limited exceptions. The general rule is that in order for someone to do this they must be prescreened, and you could describe some circumstances under which that condition may be waived. I think the Chair is right, as you are writing it

right now anybody walking down the street could get a capital case without prescreening under these guidelines. It is permissive as opposed to mandatory.

1:18:01 P. Levy Presumably a person will have to... No, you are right. We are not asking to approve these today. I will add that the contractor advisory group has also seen this draft and clearly didn't read it as such. We will come back with a revision of that.

1:18:53 Chair Ellis What else are you slipping by us?

1:18:54 P. Levy I don't think I will be able to slip much by. In the capital requirements you had to be murder qualified previously but it didn't specify that you had to be lead counsel murder qualified in order to be capital case qualified. That has now been fixed and is established. We have beefed up a little bit the post conviction standards particularly in light of the State Bar Task Force recommendations. In capital PCR we have changed it from having to be qualified for capital appeals to having to be qualified for capital trial work in order to do capital post conviction work. That is the experience that seems more relevant than PCR appeals. We don't have in here, I think I overlooked this or didn't realize this, a recommendation from the the Chief had that we include in our qualification standards an education component requirement for PCR. There is a component now in the state bar's performance guidelines for post conviction relief that a lawyer have formal and informal training in post conviction. We will probably return to this discussion when we talk about PCR because there isn't that much in the way of opportunity for PCR training in this state. If you would like to see that in these standards we can put that in.

1:21:00 P. Ozanne I have a couple of other suggestions or thoughts that you would maybe want to think about if we are going to come back to this. I think it was an agreement at OPDS and probably still is that we ought to send a message that these certificates are self-executing or that somebody just says something and that is it. The way it is structured, and this is more of a drafting issue, but it seems to me that the general provisions in most of these sections say that someone will demonstrate that. Then when you want to get an exception it is, "OPDS shall determine." I think we want to send the message, and you have said it, and I think everybody mostly knows that it is OPDS that reviews this. I think maybe a change to the active tense in that general section might send the right message. I am probably at fault because it was probably drafted when I was there. That was my impression today that we ought to make it clear that everyone is submitting stuff to OPDS. There is a lot of verification in there. People are supposed to have direct observations of lawyer's performance and that sort of thing. There are lots of protections. That is just something you might want to think about. The other thing I have to suggest for certifying, especially now in the position I have where I am looking at the whole system up in Multnomah County, it is in the civil commitment area. There are really a lot of bad things happening to people that go through that system. It used to be a very hot constitutional issue for civil rights advocates. It has died down in the last 20 years. I am wondering if we are doing enough in that certification process to ensure that we are getting good people. I didn't have anything specific. A panel might be a good idea. There were so few specialists. I worry about that area. I know when I was working with you I think we overlooked it and we were worried about it. Is there more that can be done?

1:23:04 I. Swenson Peter, our Commission is scheduled to review civil commitments, the delivery of services in that area during the course of this year. I would also like to just quickly report that before Pete Shepard left the Department of Justice he wanted to organize a joint training with judges, prosecutors, and defense lawyers on civil commitments because the problem is everywhere. He didn't get it done. It still needs to be done and I think Alex Bassos is either done with or about to complete his guide to civil commitment practice. Once those pieces do come together I think that might help.

1:23:51 P. Levy The section here on civil commitment was redone when these were overhauled in 2005 with input from Alex Bassos, among others, and were beefed up a bit at that time.

1:24:08 P. Ozanne Maybe it is as far as we want to take it.

1:24:09 P. Levy On the review of the submissions, we have restructured that section a little bit over time to make it clear that courts could only appoint lawyers who we have approved for inclusion on lists or whose certifications we have accepted.

1:24:39 P. Ozanne That is all I had.

1:24:37 P. Levy One other thing, and you don't see it here, is we will be changing the actual attorney certificate to include one more box at the bottom to make it clear that if lawyers are submitting a certificate on the basis of their belief that they have equivalent skill and experience, the standards require that they submit to us documentation establishing that and indicate on the form that that is the basis on which they are claiming qualification. That had not been clear before.

1:25:19 P. Ozanne This was a vehicle I was thinking about to address particular chronic issues of practice. This was where I was wondering whether we could deal with the issue of failure to contact witnesses or even represent people below a certain age. Whether we really want to put a question in there do you understand under section blah, blah, that this ... there are probably other pervasive areas, but I just see in the juvenile practice that there seems to be a professional standard by some people that they don't need to contact their clients.

1:25:55 P. Levy I have a suggestion and I don't know if this is a good one or not. At the very beginning of these standards, for misdemeanor qualification and for every other case type, including juvenile dependency, the very first requirement is that the person say that he or she has reviewed and is familiar with the current version of the ABA Standards, the Rules of Professional Conduct and the bar performance standards. We could say instead of "has reviewed," "has reviewed and agrees to adhere to."

1:26:52 P. Ozanne I am thinking again because of this pervasiveness, and again you can push back, but I just think that it would be good if there is a problem that has arisen over and over again, and even though it says, "I have reviewed," that if you actually have some statement in the certification that says that "I understand it," then when we go to these consortia or whatever meetings that Ingrid and I have gone to and others where somebody steps up and says that they don't contact people, then you can ask, "Do you remember reading the certificate that you signed? Forget it buddy. Start seeing your client or ask for more money." Again, it seems to be a particular problem in the juvenile area. There are probably some things like that in civil commitments, frankly, I suspect. I am just suggesting that that certificate could be a vehicle by which we would add an additional emphasis on different things.

1:27:58 P. Levy I continue to be a little queasy about just saying that we want you to have reviewed these things.

1:28:12 Chair Ellis Any other thoughts or comments on this? I gather you will go back to the drawing board a little bit.

1:28:20 J. Potter May I ask a question, Mr. Chair? This may have been discussed and I may have missed it. On page 2, when you are talking about the misdemeanor cases you have taken out the certified law students. What was the reason?

1:28:28 P. Levy Thank you for noticing that as well. Because the court will never appoint a certified law student. The court will always appoint an attorney. The intent here is not to imply that they can't continue to work on and handle cases. These are qualification for appointment.

1:29:06 P. Ozanne We look forward to the next round.

Agenda Item No. 4

Defense Representation in Drug Courts

1:29:09 Chair Ellis

Okay. The next item is No. 4, the drug court piece.

1:29:24 I. Swenson

I apologize. It is labeled Agenda Item 5. It is under tab number 4, though. It has been a while since we talked about this. It was actually late last year, October or November, when we heard about drug courts. Although the subject matter may not have been compelling in some ways because of the type of presentation that we arranged, I do think that there is something learned from those hearings that might point toward a need to create some guidelines, rules, something of that nature, for defense participation in these kinds of programs. We heard from Alex Bassos, Gary Berlant, Bob Hutchins, and Phil Swogger from four different counties around the state. They told us a little bit about how each of their programs differs. I think the biggest difference was the eligible offenses for inclusion in drug court. In some counties it was only minor possession charges that permitted you to participate in drug court. In other counties they took people with much more serious offenses and with very serious criminal histories. They each focused on a different population. In some counties the defense had had a significant amount of input into the design of the court, in others none at all.

Phil from MCAD said that he would suggest that you look at a couple of things in terms of either standards or guidelines. He said the lawyers who do this work should be among the most experienced lawyers available because they need to have a significant amount of knowledge about the clients, the drug laws and all the things that would help you to be a good advocate. He also recommended that you require that a sufficient period of time be provided for the defendant to meet with counsel and make an informed decision about whether this is really a good choice for this particular client or not. Most programs do permit up to two weeks but not all of them do. There is a lot of pressure in some drug court models to get people in there very quickly, so it might be valuable to have a guideline that says it is appropriate to have a suitable amount of time to confer with your counsel. He also recommended that you discourage defense counsel from participating in programs where in order to qualify the defendant has to plead guilty to multiple felonies even though if he were to resolve the case by a plea the district attorney would be dismissing most of those felonies. As you recall, in Umatilla County that was the model that we heard about. In order to participate in drug court if you were charged 15 felonies you plead guilty to all 15. If you are successful it doesn't matter. They all go away. If you are not, you are convicted of all 15 counts and sentenced accordingly. He recommended against that kind of model.

Gary Berlant is the senior attorney at Southern Oregon Public Defender in Josephine County. He had worked in that drug court for a number of years. He told you that some of his concerns were – this is maybe a drug court problem not in a representation problem, but the inability to transfer clients from one county to another. They get heavily involved in a particular program and then, of course, there are some difficulties associated with transferring from one county to another. He said that there were some common values that defense lawyers should promote within each of their programs. He thought the guidelines would empower them to do that. If they show the judges and the other people involved in the creation of the court, “Here is what the Public Defense Services Commission recommends in terms of program aspects relating to defendants and their rights,” that that would be a good thing. He suggested these guidelines might include the level of experience required for defense counsel. He would endorse a program that had flexibility in terms of eligibility. He thought that it was an appropriate area of advocacy for an attorney to be able to say, “Yeah, this doesn't meet your exact guidelines but here is why this particular person should be permitted to participate. He also thought that it was a good idea to have a separate policy-making body for each drug or specialty court apart from the treatment team and that that would be something the Commission could consider recommending. We would have to

explore that. Among the people who testified in October and November nobody spoke about that.

Alex Bassos from MPD in Portland testified about the Multnomah County program. In that program, as he described it, only PCS cases, possession of a controlled substance cases, are eligible. It doesn't matter whether you have multiple priors or not, but the charge that is pending is limited to possession of a controlled substance. He recommended that there be at least an opportunity for drug court lawyers to get together, say at OCDLA's annual conference in a break out session. Apparently there is very little communication between drug court lawyers and no real opportunity for that to happen. We have talked about it in the OCDLA Education Committee that it would be a worthwhile thing for these attorneys.

Bob Hutchins from Lane County testified that only PCS cases, and more particularly principally residue cases, are eligible for drug court treatment in that county. That is an interesting contrast to the counties that permit much more serious offenses.

1:36:17 G. Hazarabedian Ingrid, there is an update to that. That is no longer the practice in the Lane County Drug Court. The Drug Court Policy Advisory Board, or whatever the name of that group I am on is, we are now taking people with much more serious criminal histories. The drug court team in Lane County now understands that you get more bang for the buck by taking more serious people and rehabilitating them than by messing around with college students or residue type cases. The focus of the drug court has changed to some degree.

1:36:58 I. Swenson The offense, however, is still possession only?

1:37:00 G. Hazarabedian That is the way it is stated, but in terms of the people who actually get into drug court, the district attorney's office has shown flexibility on whom they let into drug court when a good case is made. The practice is a little more flexible than it looks on paper.

1:37:26 I. Swenson Okay. He suggested that the standards might include a statement about the kind of training and experience defense lawyers should have before they participate in these courts. In the attachment, I gave you a list of standards that have been recommended or adopted by a couple of different bodies. NLADA set out some standards that they recommended. The National Drug Court Institute also published standards and I gave you a combination of those. Then Missouri has adopted a set of particular guidelines for defense lawyers in drug court cases. Those are certainly among the things that you might want to consider if you decide that guidelines or standards would be a good thing. You can decide to do nothing and let each county do as they are doing now which is to put together their own program within the county working with, we hope, defense lawyers in the creation of those courts. Or you could ask us to prepare some proposed guidelines, review them and see if that is something you would like to pursue. I know with respect to the Early Disposition Programs, OCDLA organized a work group of its members to consider what standards might be appropriate for defense participation.

1:39:03 Chair Ellis What can or should we do with the Umatilla situation? That doesn't sound right at all to me that a condition of entry into the program is pleading to 15 felonies. Then, if you fall off the wagon that is irretrievable. You have been locked in. It doesn't feel very much like a voluntary plea at some point. I wonder if our providers have a level of discomfort encouraging somebody to enter that program knowing that a slip over here and you are really in trouble over there. Where do you see us having some leverage to deal with that?

1:40:04 I. Swenson Interestingly, the issue came to our attention because the drug court representatives up there complained that Blue Mountain Defenders were never recommending clients to their program. We spoke with them and asked why that was and they explained that this was one of the reasons, that it rarely benefited their clients in a way that they could recommend it to them. Our other provider there was very cooperative with the program so it was an interesting

contrast. We did include criticism of that approach in the report that was ultimately produced and provided to people there. I haven't followed up to know what the current situation is.

- 1:40:48 P. Ozanne I think what we did with the early disposition, at least the view that I had with OCDLA, was to protect lawyers against the culpable culture. I think we have to remind the lawyers in this area that the role of the defense in drug court is particularly murky. Are you an advocate or are you suddenly a helper doing what is best for the client or doing what they want? With all due respect to the judiciary, of course, we have to weigh in on the shape of these programs. We need to give support to lawyers who are in that position when they are saying, "No. This is not acceptable." I have been thinking a lot about what happens with these budget cuts. It is all about where are we going to spend our money. I personally am not in favor of spending money on programs like what I understand Umatilla to be. I think we have an obligation to provide counsel but we don't have an obligation to provide specialized people to work in a system or program that, in my mind, doesn't get what drug courts are supposed to do. There is the need to remind lawyers of what their obligations are in this new and strange terrain and provide backup to them by way of standards. I think what we say to the court is that we are here to help design the program that will allow our lawyers to comply with their ethical and constitutional obligations. We can't participate in ones that don't and on the financial issue, aren't we wasting our money on programs that are just cosmetic?
- 1:42:41 Chair Ellis It is a little hard for us or the providers to be the ones trying to set either consistency or fairness in those standards. It should really, I think, be the courts saying that, "You can condition it on that plea, but if it goes down that way we are going to reopen and look at those charges because that is just unconscionable."
- 1:43:10 P. Ozanne Can't we enforce it through the obligations of the lawyers, the ethical obligations, and constitutional standards? We can say that our lawyers can't participate in this program.
- 1:43:25 Chair Ellis What do you do in the situation where you have a client who says they are okay with this. "I will do it." Does the lawyer say the program is too bad?
- 1:43:31 P. Ozanne Maybe the split is on an individual representation issue. What the lawyer does in court - they are typically processing lots of cases. I haven't thought it through. We would need a lot of help from other people to draft this. We are already in a difficult situation if one of our contractors is not doing it for these reasons and another is participating in it. How do we resolve that current practice?
- 1:44:01 I. Swenson It would be a totally different issue with existing courts. They won't be creating a lot of new ones. Over time they will, but these are all existing programs. Getting input from all of the judges and others about any proposed guidelines would be an interesting experience too. We would circulate whatever draft guidelines this group decided were appropriate and then look for input from the court and others, and see what their responses would be.
- 1:44:30 P. Ozanne One of the simple issues we dealt with in early disposition was that the lawyers
- 1:44:48 Hon. Elizabeth Welch Having been involved in the creation of such efforts, or the attempt to create such efforts, the whole center of gravity in drug courts is with the prosecution, which hasn't been mentioned in this discussion. That is where the action is. "We will participate in this program if it works like such and such, otherwise we won't do it." That is the way it works. That is the way it starts and apparently in some places that is where it ends. The judges don't necessarily have a major role. If they do, they may not have the time.
- 1:45:28 Chair Ellis The court doesn't have leverage in the Umatilla setting to say, "We will reexamine those pleas if they come back to us because we are not going to just assume they are voluntary?"

1:45:43 I. Swenson District attorneys can walk away from this method of handling cases. They have refused to do it some counties. Some of them don't believe in drug court or any specialty court and they won't participate. That is the card they hold that is controlling.

1:46:02 G. Hazarabedian Mr. Chair, in a drug court policy meeting in Lane County about two years ago, former District Attorney Harcelroad bluntly stated, including to the judge who was there, that if they made changes that he didn't like they would walk away and the drug court would be no more. The DAs are wielding that power in some circumstances pretty boldly.

1:46:27 ?? I just want to echo something that Commissioner Ozanne said, and Greg and I were just talking about this, is I think you should look at having standards because it will help in leveraging individual contractor discussions assuming they don't walk away. Because there are also motivations for DAs not walking away, which is it resolves a lot of cases. Politically they can look good to their funding sources if they say, "Look we aren't just being draconian with this." It gives us leverage and the more agencies are looking outside, like to the stimulus package and other outside funding, they are going to have to comply with your standards. If there are no guidelines really then they can put a lot of pressure on local providers to acquiesce in unacceptable measures. We can say, "There are some bottom lines. We shouldn't have to do this." You shouldn't have just a week or two to opt out. There needs to be adequate consultation. Then it isn't the individual contractor having to stand up to the pressures of that group. It is saying that, "I am not going to be get paid for this if we don't have these components in it."

1:47:43 Chair Ellis Any other thoughts or comments on that? Where do we go from here?

1:47:48 I. Swenson If you would like I can inquire of the Oregon Criminal Defense Lawyers Association if they would like to have some input. Otherwise, staff can use the models that are there and prepare a draft that you can look at and that we can circulate to all the drug court participants.

1:48:13 Chair Ellis I think we ought to go in that direction.

Agenda Item No. 5 Commission Discussion of Service Delivery Plan for Post Conviction Relief Cases

1:48:20 Chair Ellis The next item is PCR. Ingrid, do you want to start on that?

1:48:34 I. Swenson As you know, Paul worked with the task force that put together the standards that were described to you at our last meeting. This has a long history. As far as I can tell it was about May, 2000, when the bar initially called attention to representation in these cases. It had undoubtedly been a problem before that. Indigent Defense Task Force III issued a report in May of that year expressing significant concerns about the quality of representation. Among the people they interviewed were Steve Wax who also testified at your hearing last year. I think it was in March when we heard from all of those witnesses. He explained the heart of the problem at that time and it appears that it is still the heart of the problem. From his point of view and from Marc Sussman's and other people's point of view, you can't average out the cost of these cases between ones that cost very little because they lack merit and cases that are determined to have merit at the beginning. You have to go through the effort in every case to investigate, to obtain all the relevant information before you can decide there is really nothing there. What he told you at the March meeting last year was he just didn't see how you could do that for the amount of money that we are able to pay. His recommendation and the recommendation of a number of people including this task force now which created the performance standards, was for the creation of an FTE unit. You have included that as a policy option package in your budget proposal for at least the last three legislative sessions. We have been unsuccessful in all of those efforts and we are less likely to be successful this time than ever. The alternative which has been discussed, and I know Peter pursued it as the Executive Director of PDSC, would be to create a contract office which would perform the same general function, that is to hire a number of lawyers, do training, use investigators on a

regular basis and elevate the standard of practice by creating a specialty unit. Kathryn explained to you at the last meeting that that effort has certainly been made. She has been successful in finding some additional post conviction relief counsel, but none of those folks at this point is willing to take on the task of creating the kind of office that might make the difference that we were hoping for. The task force did accomplish something major by preparing the performance standards. That is an awfully good thing to have available as a training tool - a set of standards against which to compare actual practice. I know Commissioner McCrea recommended that long ago and it has finally occurred. I think the work group that put that together was as good as it could be and included all points of view. It is a very strong statement of what is required. The Chief Justice wrote a preface to them and they have now been published and are on the bar's website. The next step is probably to do a comprehensive training. I haven't talked to John Potter about this. We did mention at the last Education Committee meeting of the Oregon Criminal Defense Lawyer's Association. We really need to do a full day of training for post conviction lawyers based on the new standards. John's organization does a half day or a couple of hours training every two years which is helpful, but our thought was that maybe the next step is to do a more comprehensive training and to contact each of our providers to let them know that we would strongly recommend that they attend and participate in such a training. If we could encourage their participation by supporting them with some kind of funding, or at least minimizing the cost to them of participating, I think that would be good. If we look at a service delivery plan, which ideally is where we end up at the conclusion of these discussions, I think we have to continue to explore the FTE plan and hope that in a couple of years there will be additional funding. The other option you have talked about from time to time is having our appellate division pull some attorneys from that division to create a post conviction relief division. Unfortunately, in the current budget situation, it will be all they can do to manage the appellate caseload. That is going to become more challenging as time goes by. If positions are actually cut, we are not going to be in a position to spare attorneys from that division. So other than that I certainly don't have any new ideas for you. We have talked about all of these for some time so I would propose a service delivery report that essentially reports all of this, and talks about the options - the ones we have pursued, and the ones we will continue to pursue.

- 1:54:54 Chair Ellis In reality certainly this year we are not going to get that package of FTEs, but let me ask you a couple of questions. I know you have answered this for legislators so you probably know the answer now. In dollars how much are we spending biennially on PCR cases?
- 1:55:18 K. Aylward We are at \$1.3 three million for habeas corpus and post conviction relief together. That is per year.
- 1:55:33 Chair Ellis How many contractors are we dealing with?
- 1:55:45 K. Aylward We probably have five contractors that exclusively or primarily do PCR. Then a lot of regular contractors have PCR as part of their contracts, maybe 15 contracts with PCR in it.
- 1:56:08 Chair Ellis Didn't we hear that there are something like 400 new cases a year that get filed?
- 1:56:15 K. Aylward Yes.
- 1:56:15 Chair Ellis And there are about 650 in the caseload that the AG's office can identify?
- 1:56:26 K. Aylward I am not sure I understand what you mean by that.
- 1:56:35 Chair Ellis On page 22 it says, "DOJ currently has 650 PCR cases in the office." Then below that it says, "There are 1100 appeals and 400 post conviction cases filed every year." Where I am headed is, to me the less satisfactory model is the regular defense contractor who has one or two PCR cases. That is because, as we have talked about many times, PCR is civil not criminal. There is a whole set of very tricky rules that you need to know about. You can mess things up for

the client big time if you don't do them in a timely way, and you have the venue issue. All of which says to me that we ought to move in the direction of concentrating this work in a few hands and hopefully get people -and I think there are a couple in Marion County now that are doing it - get some providers for whom this is their thing, this is what they do and then down the road that is a model that can be converted to an FTE system much easier than one that is spread out.

- 1:58:14 K. Aylward I think of all the case types we do that PCR is unique in that way. I don't think, other than capital cases, that we have any contracts that say that you are only going to do DUIs, or you are only going to Measure 11s, but with PCR we do have a lot. We have Mordini, Mahoney Grefenson, Cowan, at least those four and that is all they do. In addition, you have contractors like Radar, Stoddard and Perez whose office and whose county has a Department of Corrections facility where a lot of the post convictions are generated from. In their case a lot of their regular caseload is post conviction relief. When I am talking about contracts that have PCR as a case type, for example, Public Defender Services of Lane County has post conviction relief in their contract. They have probably done one in the last five or six years. It is in their contract because we might need to tap that resource. We are specializing with that case type more than any other.
- 1:59:20 Chair Ellis The other thing that strikes me is that PCR is probably where the burden is heaviest to have investigative services. I was impressed by what Steve Wax said which is you can't tell when a case comes in whether it is one of those that really ought to have a terrific investigation or one of those that may sound like something at the beginning but where there is really not much to it. How do we handle the investigative piece of it?
- 1:59:54 K. Aylward With Radar, Stoddard, and Perez, I think they have a staff investigator. If their investigator had to go to investigate in the county where it was committed then they would have that as a non-routine expense. The other contractors that do exclusively post conviction relief don't have staff investigators. When they need investigation they ask for it from our office as a separate expense, which is kind of nice because they can say they want one in Lane County or Jackson County rather than sending someone centrally located to go travel.
- 2:00:29 Chair Ellis Part of what keeps bugging me about it is I can see that on the prosecution side this is a very concentrated specialized activity. It is all in the AG's office. My impression is that they have three or four people and this is all they do. Of course they carry on through the PCR system beyond where our people would. The thing is they carry through the federal process which our people drop out of. Maybe I am just preaching to the choir here but I really would like to see us spend what resources we have on PCR in a more concentrated way and get away from the idea that this it is incidental to what a public defender otherwise does, and try to replicate in our contracts what the AG seems to have in terms of concentrating this work among a few to whom this is routine. They darn well know all the issues.
- 2:01:41 P. Ozanne I guess I would like to pitch - maybe it would wind up as a minority report which we have never done before. If you talk about this as a business model it is an unsustainable business model, this whole system. I think the way I look at it now, in the most cynical view, is that we are simply facilitators of a system that can't live up to its expectations and we are enabling the prosecutors and the courts to get away with this, frankly. Every session that we have tried they have said, "Without you we will really have a mess on our hands because it will go to habeas corpus." They come in and they have got other things that are more important. We are not going to get enough money. The legislature, I am convinced in good times or bad, will never fund the FTE program and that we ought to get out of this business. We ought to tell the courts, or at least start using language about the other option, which is if you don't have PCR you use the habeas process or you have people come in that are not represented. We can't provide meaningful representation in this system. The main problem is the investigation. How do these people who come to the attention of the lawyers, how do those cases surface? They surface by the intuition of the lawyers or the articulateness of the client.

All of these cases aren't getting screened. We are not screening them in a systematic way and we will never have the money to do it systematically. I think we have to – at least I am asking myself is “Do we really continue on with this approach?” Even though yours is logical it will always really just be a thumb in the dyke or a cup in the ocean, it seems to me. It puts us in a position of continuing to rationalize and justify what is essentially a bad system and we are on the hook for it. I am going to show my ignorance. I know enough to know the goal we have is to make sure that their access to the federal review process is maintained -at least that is my belief - by making a record.

- 2:14:15 Chair Ellis Right, and by doing all the steps on a timely basis because Rehnquist's opinions are still out there. Is there a way to accomplish that with your radical thought? What happens if all of a sudden the state just doesn't provide PCR but the federals do? How does a prisoner get into the federal system without falling into the trap of not adequately exhausting the state?
- 2:04:55 P. Ozanne I would need to talk to experts about it. Pete certainly has far more expertise than I have and a lot of other people in the room. I think habeas is the route. It is probably much narrower so there may be unethical or unconstitutional component to my recommendation.
- 2:05:17 Chair Ellis But other than that they are fine?
- 2:05:20 P. Ozanne Other than that it is a way to tell the legislature to quit playing this game. “You created the system and it is corrupt because there is not enough money in it to really carry out its wish.” I think that this legislature with the people in it right now, and probably the next, would probably listen. Ultimately then maybe they would fund an FTE office. I would want wiser legal minds than mine but I think that is the saber to rattle and we have never really done it. We have just kind of tried to limp along.
- 2:06:00 C. Lazenby So Pete, is there a way for us to get out of the PCR business without prejudicing inmates or people who have been convicted with regard to their federal rights?
- 2:06:10 P. Gartlan Right now there is a right to counsel through PCR statutes and it says you have a right to counsel. I don't know how OPDS or PDSC can say that we are just not providing counsel. That would be in violation of the statute. Peter is right. The reason the AG has gone in in the past to support counsel for people on PCR is because the record that is made in the PCR court becomes the evidentiary record that can be used in the federal court. If the federal court at some point decides that that evidentiary record that was created in state court is fundamentally inadequate, then the federal court has the option of saying, “Federal Public Defenders, you go out, you do the investigation, you create a different record.” That is what the AG wants to avoid because the AG knows that the Federal Public Defender has a lot more resources than the state does.
- 2:07:10 Chair Ellis And they are good at what they do.
- 2:07:16 C. Lazenby Even though the statute says that you have a right to counsel and you shall have counsel, there is a whole series of cases that say in the face of mandatory laws if the legislature doesn't fund it then there is no obligation to provide it.
- 2:07:33 P. Gartlan Correct.
- 2:07:31 I. Swenson But haven't they funded it?
- 2:07:37 C. Lazenby Legislatively they have gone down that path to where they are basically taking that function out of the budget. That brings about this specter that the prosecutor's don't want to see.

2:07:51 P. Levy I am not convinced that we are not funding it. We could use more, we could use an FTE unit or a good contractor with a team of people as the state bar is recommending, but Kathryn will tell you that we pay the highest rate of any case type for post conviction.

2:08:31 I. Swenson Non-homicide.

2:08:29 P. Levy The key to success with these cases aside from client contact is investigation. That is really the thrust of the recommendations in the performance standards. The cost of investigation does not come out of the provider's pocket. It is a non-routine expense. Historically the lawyers have not been asking.

2:08:55 S. McCrea That is the problem. They have got to spend the time to figure out what investigation they want done instead of sending an investigator out and saying go find something. They have to learn the story.

2:09:09 P. Levy I am not sure why they haven't done it. They don't care? They don't know that is how to do it? I am interested in seeing if there is any value to the performance standards, which emphasize investigation.

2:09:34 P. Ozanne Standards are nice but ...

2:09:33 I. Swenson We have them in juvenile cases too.

2:09:37 G. Hazarabedian Thank you, Mr. Chair. It strikes me that there is not a shortage of contract lawyers who can competently handle appellate work. I wonder if the thought of taking some lawyers from OPDS who are not doing appellate work, creating the PCR in house to set the standard for the work in the state, and then contracting out the appellate work instead of contracting out the PCR work isn't a thought that is worth consideration. I haven't run this by anyone, the practicalities of it. It is just a thought that occurred to me.

2:10:09 P. Levy Ironically, the background and skills you need to do PCR well is trial work. That is the problem with PCR practice now. It is viewed largely as record review.

2:10:29 Chair Ellis That is the problem.

2:10:32 G. Hazarabedian None of your appellate lawyers are previous trial lawyers? I didn't know that.

2:10:42 S. McCrea I thought you were going so far as to suggest that we should lobby the legislature to repeal PCR, the statute. That is where I thought you were going.

2:11:05 P. Ozanne I could go that far. I guess you would have to go that far to get it off our chest.

2:11:06 C. Lazenby It has always been a needle in a haystack. You have got, what, 17,000 convictions and you end up with 400 of these cases? I don't see the success rate on here but I am willing to bet it is extremely low.

2:11:18 Chair Ellis Probably one out of the 400.

2:11:26 P. Gartlan I think part of the problem, or the explanation for the low number is that the individual defendant has to initiate, has to petition. The person doesn't get court appointed counsel until they file the document with the court saying, "I want PCR and please appoint counsel."

2:11:47 Chair Ellis Do our trial lawyers, if they see things that might justify a PCR case, do they do anything to initiate that? I know this is a little bit like shooting yourself in the foot.

2:12:08 I. Swenson Appellate lawyers point that out to clients.

2:12:11 P. Gartlan We do. As appellate attorneys we might tell them that their complaints really lie in post conviction relief because your complaints are about your trial attorney. That is a process that follows direct appeal and if we see something glaring we will say, “We particularly have some concerns about this issue.” That is just alerting the client. The client still has to take that step independently after the direct appeal process to file a petition. I am guessing that probably more than 90 percent of these are filed by people who are in prison who have the assistance of research assistants in the prison who will help them fill out the petitions and file them.

2:13:03 Chair Ellis I have always understood the reason the AG supports us in our budget needs to have PCR is that it makes their life easier. They deal with a lawyer instead of other *pro se* prisoners. I have got to believe that is much easier for them. Particularly if they can deal with lawyers that are spread out, don’t have experience, don’t do this very often.

2:13:35 P. Ozanne They have sanctified the record, as Pete said. The lawyer is there so the federal courts are going to say we had a lawyer there.

2:13:44 Chair Ellis Where do we go from here?

2:13:59 P. Ozanne It is a legislative strategy question too. Not this term but maybe next.

2:14:07 Chair Ellis This is probably another bad analogy but I am full of them today. It is a little like in Iraq you either surge or withdraw. We either do really well the PCR system we now have or get out.

2:14:29 P. Ozanne With that analogy they gave some extra troops to do the surge. Here we are surging with whatever we have.

2:14:39 K. Aylward First of all, the PCR caseload has dropped off more dramatically than any other case type that I have seen drop. Was it just up because of *Blakely*? I don’t know but we are down to a number of cases that could be handled by six or seven, but I know that is too high a caseload. We are talking 10 attorneys and because we have concentrated this work in a small number of individuals, I agree that standards don’t work because people just blow them off. If we are talking about four attorneys, in four contracts that exclusively provide for them to do PCR cases, it is a little more personal for the analyst for that contract and me to sit down with them and say, “See these standards. Let’s talk about renegotiating your contract for next time. This is what we expect. This is the record of your investigation. Look, no investigation on any of these cases. How can that be?” I think it can be a little bit easier to investigate if we are talking about specific individuals and a small number.

2:15:55 P. Ozanne Clearly an improvement.

2:15:55 O. Thompson Mr. Chair, one thing I would suggest that you do, and I think most of you know that I do a fair amount of post conviction work, I won’t go east of the mountains. Just like Commissioner Ozanne was talking about the standards for drug courts, I think you need to build some standards in to try and convince the courts to give petitioner’s attorney more than 90 days to investigate this thing and get it ready for trial. I think that is a little shorter than the numbers in eastern Oregon. They have ratcheted that process so tightly down that you might have enough time to determine whether it is worth pursuing or not but you don’t have time to pursue anything.

2:16:49 Chair Ellis I am going to show my ignorance but I thought there were timelines under the federal system that if you don’t meet them in the state system you have lost your federal.

2:16:56 O. Thompson It is a one-year statute of limitations in the federal system that is tolled while you are in state post conviction. There is nothing about how fast the state post conviction process works.

You have one year from the time of the final appellate judgment to file a federal habeas. That time is tolled once you file your state post conviction petition before you get the state post conviction final appellate judgment. If that takes one week or 20 years it doesn't affect the federal statute of limitations.

- 2:17:36 Chair Ellis On the numbers you gave does that include the capital cases that are going through the PCR?
- 2:17:46 K. Aylward No. Everything that is capital is always sort of segregated from any of our other statistics.
- 2:17:52 Chair Ellis My impression is that every capital case goes through this process.
- 2:18:03 K. Aylward When you say capital case do you mean death sentence?
- 2:18:11 Chair Ellis By definition it is after the sentence.
- 2:18:18 K. Aylward Of the death sentences I would say – I can't see why they wouldn't unless you waive. Maybe the two volunteers didn't get as far as PCR. I don't know but basically, yes.
- 2:18:41 Chair Ellis The data you were giving us is not those, it is everything else?
- 2:18:45 K. Aylward That is correct. Are you going to ask me what we spend on death sentence PCR?
- 2:18:50 Chair Ellis Right.
- 2:18:56 K. Aylward I can tell you. I have my death penalty analyst here. The average is about \$83,000 a case.
- 2:19:14 I. Swenson We only have a couple of cases.
- 2:19:14 K. Aylward How many pending death sentence PCRs do we have? Twenty-four. I'm sorry. What is your question?
- 2:19:35 Chair Ellis I do feel a special obligation to make sure the federal rights of those individuals are not prejudiced because of some screw up in the state PCR process.
- 2:19:48 K. Aylward The majority of those cases are handled by either our death penalty contractors or we have a few people who have agreed to do death sentence PCR. That is a completely separate focus than what we are talking about with the flat rate trial level.
- 2:20:02 I. Swenson I wanted Peter to know that Wendy Willis is now prepared to handle one of our death penalty PCR cases.
- 2:20:14 P. Ozanne To help you, Mr. Chair, on where to go with this, I will temper my left or right wing approach. I think the report ought to do what it sounds like it is going to do, which is to articulate in a concise way the standards that are Oregon's standards for quality. I would like some language that talks about – because I think the best solution other than getting out of the business is getting an FTE situation. There are some good people out there but we have a legal culture kind of like what we found in the appellate office. There are people practicing that don't know what good practice is because no one has told them. Clearly the courts aren't telling them. The courts are just moving this thing along. What we have got to do is create a new culture and the only way to do that is ultimately through the FTE. I don't think the contract system will do it.
- 2:21:06 Chair Ellis FTE to include a concentrated contract?
- 2:21:10 P. Ozanne Not unless there is some mechanism for hiring somebody like you have done in the death penalty area who can train people and oversee their work. What I am suggesting is maybe

there is a way to do this that is not illegal, unconstitutional, or usurping other people's roles, to put some strong language in there. We are pretty much at the end of our rope here in terms of service delivery. The only way that we can see to do this is X. Next session resources are going to be less. A lot more thought has to go into it but I am just saying we need to load this thing up. We need to use this report as kind of an attack on the barricades of the status quo, whatever.

2:22:17 J. Potter We might prefer to read a minority report that Peter provides because I think that would be more interesting.

2:22:27 P. Ozanne I bet if I crafted it I could talk a couple of people into it. It wouldn't just be me, but maybe not.

2:22:40 Chair Ellis I am just sort of listening to this and thinking it is not all bad.

2:22:40 P. Ozanne You could say we are chaining this guy up but next time we might let him loose.

2:22:54 Chair Ellis With all that clarity any other questions?

Agenda Item No. 6 OPDS Monthly Report

2:23:04 Chair Ellis I think the last item is the report from you, Ingrid, and OPDS.

2:23:09 I. Swenson Well, I was going to over the budget but we have already done that. Before we finish today we need to discuss our May date, and maybe August, and then what we are going to be doing at those meetings. Pete is here to tell us a little bit about what has been happening in the appellate division. Anything to report, Pete?

2:23:29 P. Gartlan Three things. First of all, really important is what is happening internally and thanks to Kathryn. She has improved the database and made life easier for the secretaries. She has created a word merge format where we can print up a document and the document will automatically go into the database. It will fill in some routine items. It is done automatically and avoids the human error aspect. We are trending toward paperless. It is terrific because now we can bring up a file at our desk station instead of physically going to a file cabinet and picking out a file and looking through it. It is wonderful. We get phone calls and we can just look through the database and come up with the information that we need. That has been a tremendous improvement. On the legal front there is a petition for cert that is in the United States Supreme Court. It is challenging the Oregon system of non-unanimous jury verdicts. Only Oregon and Louisiana have non-unanimous juries.

2:24:56 Chair Ellis We were wondering what your case next year would be. You always have at least one.

2:25:03 P. Gartlan That is Bronson James's case. He is a chief deputy. He worked in conjunction with Jeff Fisher at Stanford. Jeff Fisher's group and our office are on this petition.

2:25:18 Chair Ellis Back to the history books and where things stood in 1787.

2:25:23 P. Gartlan Exactly. Right now that petition has not been assigned to a conference so we don't know when the Supreme Court will consider the petition.

2:25:34 C. Lazenby What is the name of the case?

2:25:34 P. Gartlan *Bowen v. Oregon*. Third, I want to report on what the Court of Appeals is doing or contemplates doing in light of the budget crunch that will affect our practice. First they are proposing some legislation that would give the Court of Appeals the discretion to review equity cases as cases as a matter of law. What that means for us is that in the juvenile

cases.... Right now the court reviews juvenile cases de novo which means they read the transcript and they come to their own factual determinations. It is a much lengthier process. The Court of Appeals is asking the legislature for permission to exercise discretion with respect to equity cases, juvenile cases, to sometimes accept the trial court's findings of fact and not have to review de novo and just make rulings of law, which facilitate the appeal because it goes faster. That would be in cases other than termination of parental rights. In termination of parental rights the Court of Appeals would still review de novo.

2:26:59 P. Ozanne

What about family law cases?

2:27:07 P. Gartlan

I think it would be the same. Civil commitment would be the same.

2:27:12 P. Ozanne

Divorce?

2:27:20 P. Gartlan

The second piece of legislation would be to change – right now the court sits in panels of three. They are asking the legislature to give them the authority to sit in panels of two for submitted cases, cases that are not going to be argued. If there is a disagreement between those two judges then they would call in a third judge to break the deadlock. Third would be authority to put one full-time Court of Appeals judge on with two pro tems, so either a sitting circuit court judge or a senior judge. The contemplation is that they would always try to use former appellate judges in those roles. Right now the law is you must have two sitting Court of Appeals judges and then there is a provision for allowing one pro tem judge to be the third judge on that panel.

2:28:32 P. Ozanne

Are these all rules or statutes?

2:28:34 P. Gartlan

Statutes.

2:28:35 P. Ozanne

Are you going to ask us permission to take positions on any of this?

2:28:43 P. Gartlan

I hadn't thought about it.

2:28:43 P. Ozanne

I wonder about going from three to two on submitted cases. That sounds kind of creepy in terms of moving cases without the tension of three judges. That is the one that kind of jumped out as you were talking. Maybe I am wrong about that.

2:29:06 P. Gartlan

We are going to draft a memo and submit it to Chief Judge Brewer at the Court of Appeals with our views of what the changes would bring about and how it would impact us and whether we agree or disagree. We have not fully articulated our position. We have concerns, definitely on the statutory level.

On the Oregon Rules of Appellate Procedure level, assuming that the budget settles and it is negative the way the judiciary anticipates, they will seek to reduce the page lengths for briefs. Right now their page length for briefs is 50 pages.

2:29:56 S. McCrea

To two pages? Sorry, Chief.

2:29:56 P. Gartlan

From 50 pages to 35 pages and eliminate oral argument by request. So instead of the lawyer saying, "We want to argue this case," we think they are contemplating a system where either we ask for permission and they grant it or they invite it, they initiate. Presently the current system is if we want to argue a case we alert the court that we intend to argue this case and have an oral argument. They want to reverse that and say that you can argue when we permit it. They would go to fewer sittings per month.

2:30:55 Chair Ellis

This is all saving them money. I don't think it helps us very much.

2:31:00 P. Gartlan I don't think it does because without oral argument we are going to be filing more reply briefs. We want to be able to respond directly to what the state has filed in their brief.

2:31:12 Chair Ellis It sure feels like the old rubber stamp is hanging over.

2:31:20 P. Gartlan They have used the argument that other states have models like this, but most of those other states also have different built in safety measures such as the requirement of a written opinion.. Here most of the cases are resolved by AWOP and in other jurisdictions it is either an opinion or a unpublished order explaining the court's rational for its decision. They are already doing this but they are using Jim Nass as kind of a commissioner of motions so he is resolving most of the routine motions that come before the Court of Appeals. If it is non-routine it can go to a panel, but Jim Nass is resolving most of the motions. That is about it.

2:32:18 Chair Ellis Okay.

2:32:18 I. Swenson If the Commission would like I have asked Greg Hazarabedian to be prepared to describe very quickly for you some of the work groups that are happening in the legislature which would impact the caseload for public defense. Would that be helpful?

2:32:35 Chair Ellis Sure.

2:32:36 G. Hazarabedian There are a number of work groups going on. OCDLA is participating in all of them. A couple that I have been involved with there are a streamlining criminal justice system work group that Bill Taylor brought together at the request of Chair Prozanski and a work group with Joe O'Leary from the Governor's office on community corrections. Then Joe O'Leary is leading another small discussion of public safety professionals. John, do you remember what the name of the group that we went to yesterday was?

2:33:10 J. Potter I am not sure it had any.

2:33:14 G. Hazarabedian There are a number of cost saving ideas that are being floated around that are not directly tied to this agency's budget. They are tied to how to save costs in the criminal justice system as a whole that would impact our caseloads in one way or another. Probably the biggest caseload impact would be reducing possession of controlled substance cases from felonies to misdemeanors. That came out of the streamlining justice system workgroup. That would vastly impact your budget and our budget in terms of changing all the Level I PCS cases from felony cases to misdemeanors cases. It would also probably have the corollary effect of largely gutting drug courts. The threat of a felony conviction is the single most motivating factor that causes clients to say yes to drug court. The threat of a misdemeanor conviction, I don't think, would motivate too many people to do much in Lane County where there is virtually nothing that happens to you if you are convicted of a misdemeanor. There was a subcommittee of that group that included a couple of people from the defense and a couple from the prosecution. The prosecution was against reducing all PCSs to misdemeanors. We negotiated to something they could live with and came back to the big group and said how about first time PCS being a Class A misdemeanor instead of a felony? I don't know what Bill Taylor is running up the flag pole to Chair Prozanski. At the end of those meetings he did not announce which ideas he was carrying forward. There is some stuff going on with Bill Taylor as well with regard to the death penalty. There is some talk about a notice of intent provision about whether the state has to announce in a certain time frame that they are seeking the death penalty. There is also some talk about review by a panel of senior attorneys at the Attorney General's Office possibly with some senior judges involved to review the appropriateness of a county seeking death in a particular case. That review panel would then say "Yeah" or "Nay" that death was appropriate to be sought or not appropriate. If it were not appropriate the county would then be on the hook financially for the rest of the cost of the case from that point forward including appellate, defense and prosecution. I don't know how much political traction these ideas have, but I am giving you the ideas that have come out of

these various groups that seem to have legs. There is also some talk in the capital that some people are proposing the idea of releasing four to six thousand people from prison, taking low level offenders from prison and releasing several thousand prisoners. That purportedly would save the 200 to 300 million dollars that public safety collectively needs to save all in one fell swoop from the Department of Corrections' budget. I personally doubt that has much political chance of happening. There are those who feel otherwise and continue to pursue the idea.

I was on a Governor's Community Corrections workgroup that Joe O'Leary put together and that group came to a consensus on a couple of ideas that do seem to have a pretty good chance of going forward. None of them are huge dollars. I think they are good public policy. One of them is that there be earned good time off a probationary sentence. For everyday a probationer survives without a violation, the probationer gets a half day or three-quarters of a day or a full day off of the length of probation supervision. I know OCDLA supports that because it certainly offers our clients more incentives to behave themselves. It is in their best interest and all of our best interests. That one looks like it has some legs. There is another thought of the group that the maximum sentence for a probation revocation would be 60 days instead of the current 180 days. I don't think many people are serving 180 days but the sentence is sometimes that long. This would cap the PV revocation sentence at 60 days. I think part of that might also be changing the 90 day standard revocation on post prison supervision from 90 to 60.

Another idea that seems to have some currency is doing some sort of phase in on Ballot Measure 57 and saying all of those who would now be going to prison under Measure 57 would be given, in effect, a downward departure in the guidelines and would be kept in the counties. The Criminal Justice Commission apparently has some grant funding to set up intensive drug court models. It is called the Hope Program and it is from Hawaii. There was a hearing with a judge from Hawaii who dreamed it up came over and talked about it. Those people would be in that intensive probation drug court unless and until they screwed up. Then they would get the prison sentence, the way most people do, on downward departure. It would be just the property offenses. The drug people under Measure 57 are pretty serious drug criminals. The thought is, quite honestly from a lot of us, that most of those people are going to be prosecuted in the federal system anyway. All of the talk about delaying 57 or phasing in 57 that I have heard from various groups has been just about the property criminals not the drug criminals. The DAs seem pretty solid that they don't want to budge from that thought.

There is a bill that OCDLA has for changing Bucholz/Miller and avoiding the stacking of sentences. The Criminal Justice Commission is right now working on some numbers to figure out what that might save in the next biennium. I think there is a hearing on that bill coming up. I know, Kathryn, you have probably done some number crunching. I guess what I would leave the Commission with is that you ought to be congratulated, Kathryn and Ingrid ought to be congratulated, and to some degree OCDLA ought to take some credit. In none of these workgroups or meetings that I have been to has anybody sort of thrown public defense cuts up on the board as an idea independently. Certainly some of the statutory changes would reduce the defense expenditure on some of these cases, but nobody is saying cut public defense as a way to save money in the public safety system. I think the people in this room are largely due the credit for that for the education that has been done over past sessions and this session. I think they do understand that they simply can't cut us and have their system work for them, "them" meaning the law enforcement folks who largely populate these rooms. That is the short version.

2:40:26 Chair Ellis

Good. Thank you. Any questions of Greg? Any other subjects?

240:36 I. Swenson

We do have meetings scheduled in May, in June, and then in August. Last December we talked about the next budget cycle and how you would like to deal with establishing priorities

for us in negotiating the next round of contracts. We decided if we met in June and got input from the contractors that might not be early enough to start this process. So we decided that a meeting date in May might serve as a good beginning point.

- 2:41:11 Chair Ellis In lieu of June?
- 2:41:11 I. Swenson No. In addition to June.
- 2:41:18 Chair Ellis I think I am scheduled for a trial at the time of the current June meeting.
- 2:41:23 I. Swenson I think your staff reported that that was probably the case. We can change any or all of these dates. The thought that we had when we spoke yesterday, Kathryn and I, was that at the May meeting it might be appropriate to revisit all of the priorities you have previously established and provided to us, let you review those and also bring to your attention, again, all of the information you have received in the last couple of years from various site visits and structural reviews about what the needs are in various communities, let you sift through that and then at the June meeting, and maybe partly at the May meeting too, begin to hear from contractors and others with their recommendations for your priorities this time around.
- 2:42:16 Chair Ellis Is there any flexibility on that June date?
- 2:42:21 I. Swenson That one, of course, is in conjunction with the OCDLA conference. We tend to get good attendance because we are up there and most of these folks are there as well. Other than that it is not fixed.
- 2:42:36 C. Lazenby I have the May meeting now set for the 14th. Is that right?
- 2:42:42 I. Swenson That is right.
- 2:42:42 C. Lazenby It might be better if we could bump it out a week because the forecast will come in the next day. It would be better if we meet after the forecast so then we have a better handle on the budget pieces and fiscally what is going to happen. That will give us a week to digest what is happening in the legislature and what their reaction is. We can be informed about that rather than pick that up after the meeting.
- 2:43:08 I. Swenson We could do that. Usually, as you know, we have a lot of information about what the forecast is going to be but nobody will have digested it by then. That would be the 21st if you wanted to move that meeting.
- 2:43:22 P. Ozanne I vote for that because I can't be here on the 14th.
- 2:43:24 S. McCrea I will be out of the country on the 14th.
- 2:43:30 Chair Ellis Will you be back on the 21st?
- 2:43:38 S. McCrea Yes. That is my birthday.
- 2:43:44 I. Swenson So the 21st sounds good. Nine to one or so. Then the OCDLA conference is the 18th through the 20th of June. We usually meet on the Thursday of that conference in the morning. Would you like to move that one?
- 2:44:04 Chair Ellis I think it is important to have it coincide with OCDLA. It is a lot easier for a lot of the people who have an interest. If my case doesn't go away, which it shows no current signs of doing...
- 2:44:23 S. McCrea I will handle it for you, Mr. Chair.

2:44:34 Audience Would it be possible to have the Commission meeting Saturday at noon? The conference usually ends at noon on Saturday.

2:44:40 S. McCrea No.

2:44:47 I. Swenson The June date is the 18th. Then we generally have canceled the July meeting. I have not scheduled the meeting but we could do that if you wanted to. Our next meeting after June wouldn't be until August 13th. I would like to change that date if possible. If we hadn't met in July it might make sense to move that up a little bit to like the 6th of August if that works for Commissioners

2:45:26 S. McCrea That is okay.

2:45:31 C. Lazenby Is that going to be eastern Oregon or a travel meeting?

2:45:34 I. Swenson It could well be. It is the time we generally try to get together for a little longer meeting. We could do that in September or August.

2:45:44 Chair Ellis He is worried about location.

2:45:27 C. Lazenby That is my anniversary weekend so if I make plans to do something it could be my divorce weekend.

2:45:57 J. Potter Where are you planning to be?

2:45:55 C. Lazenby I don't know.

2:45:57 S. McCrea Not with us.

2:46:24 I. Swenson I will write you a little memo to remind everybody that we have moved all these dates. Then we are scheduled after that on September 10 and then in October in conjunction with the management conference. I think that is the only business we have for you.

2:46:28 Chair Ellis What is the date in October?

2:46:53 S. McCrea The 23rd.

2:46:55 I. Swenson We have posted all of those on our website. They are all incorrect as of right now.

2:47:05 Chair Ellis Any other subjects for the good of the order? If not, I would entertain a motion to adjourn.
MOTION: John Potter moved to adjourn the meeting; Shaun McCrea second the motion; hearing no objection, the motion carried: **VOTE 7-0.**

The meeting was adjourned at 12:00.

Attachment 2

Summaries of Previous PDSC Discussions regarding Funding Priorities

September 2005 PDSC retreat – Mitigation of rate disparities was identified as a spending priority with the very limited resources available.

August 2007 PDSC retreat

1. Items proposed/considered for priority funding
 - increase the hourly rate for attorneys and for investigators
 - provide an across-the-board inflationary adjustment
 - mitigate rate disparities within the same markets
 - reduce caseloads
 - subsidize provider in areas unable to attract/retain needed attorneys
 - subsidize providers in counties where the difference between public defender and district attorney compensation is the greatest
 - fund a student loan repayment program
 - increase investigator compensation
 - increase death penalty mitigator compensation
 - fund a pilot project for juvenile dependency cases
 - Increase funding for non-profit public defender offices
 - allocate resources to improving representation in PCR cases
 - allocate resources to improving representation in death penalty cases
 - allocate resource to improving representation in juvenile cases; pilot funding could be considered

2. Principles and priorities established by commission:
 - increase in hourly rate for attorneys and investigators
 - all contractors except Yamhill Defense Consortium to get 3.1% increase
 - mitigate rate disparities in any market in which the disparity would jeopardize OPDS's ability to retain desired contractors. Rate disparities with PD offices may remain since PDs provide services that consortia do not
 - reduction in caseloads. Case rates can be increased if it would result in an actual caseload reduction
 - subsidize providers to help attract and retain qualified attorneys where needed: OPDS to develop a loan repayment program proposal, OPDS can increase case rates, OPDS can work to minimize differential between public defender office and DA office

March 21, 2008 PDSC retreat

Minutes included the following summary of the commission discussion about the Commission's oversight of the contracting process.

"Commissioner Greenfield said that the process needs to be transparent; that there needs to be a level playing field for contract applicants; and that with such a process in place the role of the Commission should be limited.

Chair Ellis, after noting that Oregon is a diverse state, [said] that the [c]ommission assumed its role after the public defense system was already in place, that the agency may not have the resources to use a standard competitive bidding process, and that PDSC is contracting for personal services, not fungible goods, [and] said that the process appeared to have worked fairly well in the last contract cycle. The commission worked hard to identify its priorities at the retreat in August of 2007 and the contractors who participated provided very positive input. OPDS then applied those priorities, although some contractors took issue with how they were applied. One solution may be to have the commission establish its priorities and review their application earlier in the process.

Commissioner Welch asked whether PDSC knows whether OPDS actually applied the priorities established by the Commission for the 2008-2009 contracts.

Commissioner Lazenby responded that PDSC approved staff's plan and that the [c]ommission should review particular decisions only if they are clearly against its priorities.

Commissioner Greenfield said that the question for commissioners should be, "Does the contract reflect the priorities and was the process followed?"

Jim Hennings said that the process for the most recent contract cycle had not been transparent, that OPDS needs to show PDSC that its policies were applied. Steve Houze, in his capacity as chair of the Metropolitan Public Defender, Inc. board, discussed the role of public defenders and the importance of their work.

Commissioner Greenfield suggested that the [c]ommission consider issuing separate requests for proposals in each geographic area of the state, possibly convening a "bidder's conference" in each region and leaving the decision-making up to OPDS's director based on the priorities established by the [c]ommission.

Commissioner Lazenby said that a regional process would tend to pit one region against another and that since the budget is finite, each region would argue that the commission's priorities were not properly applied.

Commissioner McCrea said that since we don't start with a level playing field, in part because of the different needs in different areas, maybe the [c]ommission should take the approach of simply determining what the needs are and telling the legislature what the cost will be.

Chair Ellis suggested starting the process in May of odd-numbered years and requiring OPDS not to contract by region, but at least to report to the commission in a paragraph or two how its priorities were applied in each region. A three to four hour hearing might be needed for reviewing this report. Starting earlier would give OPDS the opportunity to bring issues of potentially conflicting priorities to the [c]ommission for consideration.

Staff noted that due to priorities established by the [c]ommission in earlier budget cycles the agency had been moving towards uniform case rates statewide, with variations based solely on articulated [c]ommission priorities, including the need to ensure case coverage in all regions of the state.

Commissioner Greenfield reiterated that the process needs to be more transparent, predictable and bureaucratic and that OPDS should identify all of the factors that it will consider, including base rates and the numerous other selection criteria that will be applied. One factor that should be identified is the information received from any structural review performed by the [c]ommission in a particular region.

The [c]ommission adopted the following schedule for PDSC review of the contracting process in future budget cycles.

- June PDSC meeting in even numbered years –
[c]ommission to receive input from contractors regarding funding needs to be included in PDSC budget request
- May PDSC meeting in odd numbered years – [c]ommission to establish budget allocation priorities with or without a final budget amount
- July or August – OPDS to issue RFP in accordance with PDSC priorities
- September – Three to four hour meeting for PDSC to review OPDS's proposed statewide distribution plan

September – December – OPDS to negotiate final proposed agreements
December – PDSC contract approval and possible review of individual contract proposals.”

December 13, 2007 PDSC meeting

Kathryn Aylward then summarized for the Commission the process by which she and her staff had considered the needs of each contractor in light of the priorities established by the Commission, had negotiated with each of them, and arrived at agreement. She noted that the principal goal had been to maintain the system to make sure that the caseload would be covered for the next two years and that the providers would survive that period in a viable condition. They also tried to avoid agreeing to excessive caseloads as a way for contractors to increase their incomes. She described some of the changes that were made in an effort to standardize base rates and eliminate special provisions that make it hard to compare one contract to another. She talked about differentials that were developed for public defender offices, for in-house investigators, and for maintaining contract offices in Eastern Oregon. She also described the limited time available for negotiating contracts between the Commission’s meeting in August and the expiration date for existing contracts. She suggested that in the next contract cycle some of the planning be done prior to completion of the state’s budget process. The Commission could meet and decide on its priorities for the next biennium without assigning particular dollar amounts. She explained how she had applied the Commission’s contract priorities to achieve the long-term goals established by the commission. She then reviewed all of the contracts that were proposed for Commission approval and explained the reasons some contractors received greater increases than others and responded to questions from Commissioners about particular contracts.

August 14, 2008 PDSC retreat minutes

Chair Ellis convened the retreat by describing the August, 2007 PDSC retreat in Coos Bay Oregon. He noted that the Commission had been able to identify its budget priorities for the 2007-2009 biennium after receiving input from providers and discussing a long list of ideas. OPDS staff, under Kathryn Aylward’s direction, was then responsible for negotiating contracts consistent with PDSC’s priorities. By the end of the year, proposed contracts were presented to the Commission for approval.

Kathryn Aylward said the principal issue to be addressed is whether the Commission wishes to adopt an administrative model or a free market model. For the past several years the Commission had been moving towards the administrative model and she has been supportive of that

model since it results in consistent rates. She is not certain, however, that it can be implemented statewide because in most areas there are no potential competitors for current contracts. It may not be possible to reach agreement without making concessions on at least some rates in some areas.

The increase in hourly rates was easily implemented. With respect to the 3.1% inflationary adjustment that the Commission directed OPDS to apply to every contractor, across-the-board implementation limited OPDS's ability to distribute the inflationary adjustment based on areas of greatest need. Ingrid Swenson suggested that in the next contract cycle the Commission be given an opportunity to amend its directions to staff when the attempted application reveals possible exceptions.

Kathryn Aylward said that mitigating rate disparities was a particularly difficult priority to apply since in most contracts the aim is to make sure that it is the "bottom line" that is appropriate even if that involves disparate rates for some case types. Contractors also have different needs depending on their style of practice and the amount of monthly overhead they have to recover before receiving any net income. If PDSC wants to attract new and younger attorneys to practice in underserved areas of the state, rates in those areas have to be higher.

Commissioner Stevens asked if the model being used wasn't in fact a market driven model in disguise since you have to negotiate in order to reach agreement.

Chair Ellis said that consistency in rates is needed in order to avoid an appearance of favoritism. What has made it work is that both sides have been reasonable. Our system is a blend of the two approaches.

Kathryn Aylward said that contract funds would be used more effectively if the benefits actually got to the individuals who provide the services. As independent contractors, law firm partners determine the salaries that are paid to their associates so OPDS cannot guarantee that additional contract funds will be directed toward recruitment and retention of associates.

Chair Ellis noted that the Commission makes a distinction between public defender offices and other contractors and pays the former more. In addition, a subsidy for those practicing in low population areas would be appropriate.

Kathryn Aylward said that the rates paid in eastern Oregon were higher and that she believed that an even greater differential should be considered in the next contract period. In the past OPDS agreed to some

“output” contracts under which contractors agree to handle all of the public defense cases in the area for a fixed sum. What happened in practice was that the estimated number of cases on which the contract was based tended to exceed the actual number of cases handled. Such contracts can appear wasteful. During the “BRAC” period, the caseload disappeared but OPDS still had to pay the amount agreed upon. OPDS has been flexible in trying to find solutions for fluctuations in the number of cases. For some contractors in less populated areas OPDS has agreed to a flat rate for all case types so that the contractor’s income is not dependent on how many appointments are made for each case type, just the total number of cases assigned. In addition, OPDS often allows contractors to carry over caseload deficits to the next contract period.

Commissioner Ozanne said that PDSC might always be needing to find the middle ground between these two models. The current contracting process relies on a single individual to hold the system together and it would be hard to reconstruct the process if that individual were not available. In addition, involving the Commission in service delivery reviews may not be the best use of members’ time. We need to find a way for the Commission to get more involved in the contracting process. More Commission meetings during legislative sessions and contracting periods would increase the Commission’s involvement in the decision making process.

Chair Ellis said that in the last contract cycle the Commission established its priorities in August and did not review the application of those priorities until December when it was asked to approve final contracts. If the Commission were to begin its discussion in May of odd numbered years it could then review the proposed plan for implementing those priorities, but not individual contract provisions, before final contracts were negotiated.

Commissioner Stevens said that she thinks public defense would be better served if the Commission simply established guidelines and trusted that it had hired good people to apply them. Guidelines are not rules. It is staff’s job to identify circumstances that justify a deviation from the guideline and contracts cannot be negotiated in a public meeting.

Chair Ellis agreed that the Commission should avoid reviewing specific contracts.

Commissioner Stevens said that with the 3.1% increase, for example, OPDS should have been comfortable not applying it to those who did not need or seek it. Chair Ellis said that with that particular priority, the Commission had been clear that it wanted the increase to be applied across the board.

Commissioner Ozanne said this would have been a type of application that might have come back to the Commission for review had time permitted.

Kathryn Aylward said that she does not want to pay a contractor more than she reasonably believes the contractor needs. Chair Ellis pointed to the contractors who take more cases than they should in order to increase their income. It is appropriate for the Commission to say, "You need more money but you should not have to take additional cases in order to receive it." Kathryn Aylward said that her office maintains bid files and that a person reviewing those files might not understand why a contract was higher than the amount bid. She suggested that there be an advance discussion with contractors at the annual OCDLA conference so that they are aware of the commission's priorities. In the last cycle OCDLA posted the Commission's priority list but there was no official notification from the Commission to contractors. Kathryn Aylward suggested that the RFP itself could include the list of priorities. She would also like to explain to providers the difficulty in applying any priority across the board. If there are five priorities, for example, they need to know that none of them might be achieved in full unless the Commission has so directed as was the case with the 3.1% cost of living increase.

Commissioner Potter asked whether OPDS had actually received competing bids for some contracts and Kathryn Aylward said it had. In order to select among competing bids she said she looked first to the current provider and whether there had been complaints about the provider. If not, she believed it was much less disruptive to organizations and individuals as well as to clients if the providers are there for the long term.

Chair Ellis said that the best measure of the success of the contracting system may be that people accept the outcome even if they don't like it.

Ingrid Swenson said that at the May 2009 Commission meeting members could determine whether their priorities would remain the same for the next contract period or would be amended to reflect changes in the budget and other factors.

Commissioner Welch said that some of the items identified as priorities are actually caveats or principles to be applied.

Chair Ellis asked whether the Commission would be reviewing caseloads as proposed in the 2008 Commission schedule. Ingrid Swenson responded that after an initial meeting of the Contractor Advisory Group to explore the issue, a major study by the Commission was not recommended. Focus during this biennium might more appropriately be

placed on dramatic differences in caseloads between current providers, especially with respect to juvenile caseloads.

Commissioner Potter noted the high juvenile caseload numbers in Jackson County and asked whether OPDS would again contract for that number of cases per attorney. Kathryn Aylward said that independent contractors may agree to assign a given number of attorneys to handle contract cases but the number can change; attorneys can decide to leave or take fewer cases and it is not always possible to replace them even if the contractor is willing to do so.

Peter Ozanne said that when the income of some providers can be disproportionately increased by taking excessive caseloads it can reflect badly on the entire system.

Commissioner McCrea said that contractors need to have a certain amount of freedom to manage their own caseloads as long as they produce quality outcomes at reasonable rates. On the other hand, oversight is needed.

John Connors said that it appeared that the Commission had moved towards a free market model in Portland. He believes that public defenders should continue to have priority. In Washington County PDSC should determine whether its experiment with increasing consortium rates has actually resulted in increased quality or not. He believes that public defender offices provide better quality. Caseload shortfall is a major issue in Multnomah County. Carrying shortages over to a new contract period can be very hard on contractors. Kathryn Aylward said that after a shortfall has been carried forward for a period, it may be waived in recognition of the fact that overhead and salaries have to be paid in any case. This is the more responsible approach because of the need for organizational stability. If we want a public defender office to exist for the long term, we cannot expect it to be hiring and firing on a regular basis. Linda Bergman, the interim executive director of Metropolitan Public Defender Services, Inc. (MPD), provided Commission members with copies of recent caseload information as well as salary information comparing public defender salaries with district attorney salaries. An issue for MPD is, with caseloads declining, who will have priority for the cases that are there? Full time defenders provide services that others don't. MPD can continue to document the many valuable services beyond its contract requirements that it provides. John Connors said that another benefit of public defender offices is that they can be more flexible than other providers. Recently, for example, the Washington County office received 121% of its Measure 11 quota. Since other types of cases were down, MPD could simply move attorneys from one section of the office to

another. The Washington County consortium administrator, however, would have responded by simply declining to take more cases.

Funding priority suggestions/recommendations to PDSC in structural reviews since August 2007

- In counties with active early disposition cases, the cases that are not disposed of are more difficult and a higher rate should be assigned. (October 12, 2007)
 - Although contractors have priority over non-contractors for public defense cases, there is a value in maintaining a role for hourly attorneys, at least in some counties. (October 12, 2007)
 - Direct contact with juvenile clients who are housed in distant treatment facilities is difficult without additional compensation for time spent traveling to see clients. (December 13, 2007)
 - Public defense attorneys in some counties (in this case, Union and Wallowa) are “irreplaceable” and other stakeholders urge PDSC to provide sufficient support to retain them (December 13, 2007)
 - Are all commission priorities of equal value or should some be accorded higher priority than others? (December 13, 2007)
 - Should funding be increased for PCR cases to create a specialty contract office? (March 21, 2008, March 12, 2009, April 9, 2009) Should contracts require PCR attorneys to attend a minimum number of hours of PCR training?
 - Should hourly rate be increased for death penalty mitigation specialists? (October 17, 2008, January 22, 2009)
 - Should funding be increased for juvenile dependency cases either statewide or in a pilot project in order to improve the quality of representation? (Policy Option Package 100, 2009-11 PDSC budget request; July 2, 2008) Should contracts require juvenile dependency attorneys to attend a minimum number of hours of specialized training in dependency representation?
 - Providers in some counties are having difficulty retaining enough attorneys to represent all of the parties. Although the case numbers/attorney may not be high in some counties, a sufficient number of attorneys to handle conflict cases is needed and some portion of their compensation should not be dependent on caseload. (August 9, 2007, March 21, 2008 – Coos and Curry Counties; December 13, 2007 - Union and Wallowa Counties; June 12, 2008 – Clatsop County; August 14, 2008, September 11, 2008, November 20, 2008 - Grant/Harney, Baker and Malheur Counties.
 - There is a need for attorneys in areas with limited resources to be able to access “resource attorneys” in specific areas of practice such as the Indian Child Welfare Act, and complicated sentencing issues. (Coos and Curry County Service Delivery Plan, March 21, 2008.)

- Should PDSC create caseload limits for contractors to prevent contractors from agreeing to handle excessive caseloads? (April 10, 2008, May 8, 2008, September 11, 2008)

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

BEGINNING

JANUARY 1, 2010

TABLE OF CONTENTS

	<u>Page</u>
<u>PART I - GENERAL INFORMATION</u>	
1.1 Request For Proposals (RFP) Description	1
1.2 Authority	1
1.3 Funding Source	2
1.4 Schedule of Events	2
1.5 General Proposal Review Procedures	2
A. Inadequate Proposals	
B. Facially Adequate Proposals	
C. Negotiations	
D. Contract Awards	
E. Contract General Terms	
1.6 Proposal Evaluation Criteria	3
1.7 Proposal Records	4
<u>PART II - PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS</u>	
2.1 Submitting Proposals	5
A. Number of Copies	
B. Deadline	
2.2 Application Format	6
2.3 Acceptance of RFP and General Contract Terms	6
2.4 Multiple Proposals	7
2.5 Modification of Proposals	7
A. When Permitted	
B. Delivery	
C. Included in Proposal File	
2.6 Mistakes in Submitted Proposals	7
A. When Corrections Permitted	
B. Procedure When PDSC or Applicant Discovers Mistake	
C. Included in Proposal File	

	<u>Page</u>
2.7	Withdrawal of Proposals 8
	A. Request to Withdraw
	B. Included in Proposal File
2.8	Evaluation of Proposals 9
2.9	Categories of Cases Available for Contract 9
2.10	Number of Cases 9
	A. Available Caseload
	B. Fixed Caseloads and Value- or Hourly-Based Workloads
	C. Proposed Caseload
2.11	Cost of Services 10
	A. Expenses Included in Contract Price
	B. Reasonable Expenses
	C. Factors to Consider
2.12	Proposal Application Format 11

PART III - PROPOSAL APPLICATION AND PROPOSAL OUTLINE

3.1	Application Summary Appl. 1
	A. Methodology, Explanations and Estimates Appl. 2
	B. Proposal Staffing Summary Appl. 3
3.2	Certification Form Appl. 3
3.3	Proposal Outline
	A. Service Delivery Plan Appl. 4
	B. Proposed Estimated Allocation of Contract Funds Appl. 6
	C. Proposed List of Contract Attorneys Appl. 10
	D. Proposed List of Contract Non-Attorney Staff Appl. 11
	E. Certificate of Attorney Qualification and Supplemental Questionnaire Appl. 12
	F. Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws Appl. 15
	G. Proposed Contractor Independent Contractor Certification Statement Appl. 16

PART IV - GENERAL CONTRACT TERMS

PART I – GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. **PDSC is accepting proposals for all case types in all counties. Proposals for post-conviction relief representation, either as part of a broad case mix or proposals solely for post-conviction relief representation are strongly encouraged. The contracts awarded may have one-year, two-year, or four-year terms beginning January 1, 2010, as determined by PDSC.** The basic services required are legal representation and support services necessary to provide effective legal representation that meets established professional standards of practice.

As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services's administrative rules or the related statutes that govern competitive public bidding for personal services contracts. PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

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

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

1.2 Authority

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

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

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

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

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

1.3 Funding Source

Under ORS 151.225, the Public Defense Services Account in the General Fund is continuously appropriated to PDSC to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

1.4 Schedule of Events

Release of RFP	May 22, 2009
Proposal Submission <u>Deadline</u> (Receipt by 4:30 p.m. <u>OR</u> Postmark)	July 13, 2009
Contract Awards	On or before December 10, 2009
Contract Effective Date	January 1, 2010

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

1.5 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, their review by the affected court(s), and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications **MUST** be received by PDSC and the appropriate presiding judge(s) by 4:30 p.m. OR be postmarked on the submission deadline date. Applications faxed to the PDSC will be accepted only when the applicant has received prior consent to submit via fax. The following events will then occur.

A. Inadequate Proposals

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

B. Facially Adequate Proposals

PDSC will evaluate proposals that meet the administrative and contractual minimum requirements as set forth in Part II of the RFP. PDSC will evaluate each proposal based on its total characteristics and any other information available to PDSC. During the evaluation period, PDSC may:

- 1) request additional information from applicants to clarify information or material in the proposal;

- 2) consult with judges, court administrative staff, and others who have knowledge of the applicant or the local caseloads and practices to aid in the review of the proposal's merits; and
- 3) request individuals with experience and expertise in the proposed case types to review the apparent qualifications of the applicants, the strengths and weaknesses of the management plans submitted by applicants and the apparent cost-effectiveness and quality of the various proposals.

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the particular court(s), county(ies), judicial district(s), region(s), and the state;
- 2) other public defense contracts in place or contemplated; and
- 3) budget allocations.

During negotiations, PDSC may discuss adjustments to proposed costs, caseload types, coverage, level of services, or service providers necessary to meet these objectives.

D. Contract Awards

Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.

E. General Contract Terms

PDSC will offer all applicants the same general contract provisions. Successful applicants will enter into a contract substantively similar to the general contract document in Part IV of this RFP, unless otherwise specifically agreed by PDSC.

An applicant may request in the proposal to amend general terms of the contract for good reason. PDSC must approve any change. Applicants who do not otherwise accept the general terms contract in Part IV may be disqualified.

1.6 Proposal Evaluation Criteria

PDSC shall evaluate proposals based on the criteria listed below. PDSC reserves the right to reject any proposals that do not comply with the RFP requirements. PDSC shall be the sole determiner of the relative weight given any criterion. Although price is an important criterion, the intent is to provide financially eligible persons with effective legal representation. The applicant with the lowest cost proposed will not necessarily be awarded a contract. PDSC reserves the sole right to make this determination.

CRITERIA:

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The applicant meets the minimum attorney qualification standards for the types of cases proposed, as specified in PDSC's Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense.

- 3) The proposed plan for delivery of services is adequate to ensure effective legal representation. Among the factors PDSC may consider are the quality of legal representation, the experience of the attorneys, staffing patterns, available support staff and other services, and caseload per attorney.
- 4) The applicant has the ability to perform the contract effectively and efficiently and to provide representation in the types of cases proposed. Among the factors PDSC may consider are financial ability, personnel qualifications, and successful experience providing public defense services under contract or on a private bar basis.
- 5) The cost for services is reasonable. PDSC may consider factors that affect the cost, including those outside the applicant's control, such as district attorney (DA) negotiation practices, local jail facilities, and court programs and procedures.
- 6) The budget is reasonable, and expenses are prorated to the proportion of applicant's time to be devoted to the contract. Among the factors PDSC may consider are the ratios of administrative cost, support services, and non-personnel expenses to direct legal services, as well as compensation, benefit, and other resource levels.
- 7) The proposal is consistent with the needs and best interests of the court(s), county(ies), judicial district(s), and region(s) involved. Among the factors PDSC may consider are the other service methods and service providers available, the applicant's ability to work with the court(s) and within its procedures, and the mix of service providers.
- 8) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available caseload, the current number of contractors or private bar providers, and the relative cost of administering current contracts and/or new contract proposals.

The PDSC has the sole discretion to apportion or not to apportion caseloads between applicants AND to award or not to award contracts.

1.7 Proposal Records

No materials submitted by applicants will be available for public review until after contract awards have been made.

Written inquiries on preparing applications may be directed to:

Kathryn Aylward, Director
Contract and Business Services Division
Public Defense Services Commission
1320 Capitol St NE, Suite 190
Salem, Oregon 97301

PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

This part of the RFP contains the instructions and requirements for preparing and submitting proposals for public defense legal services contracts.

2.1 Submitting Proposals

The applicant is responsible for any costs incurred in preparing or delivering the proposal. The applicant is responsible for ensuring that the proposal is received timely by the Public Defense Services Commission and presiding judge(s).

There is no implied promise to award a contract to any applicant based upon the submission of a proposal.

A. Number of Copies

Except for applicants for **death penalty** contracts only, each applicant must submit one original and one copy of its proposal, distributed as follows:

1) PDSC--Original

Applicants must submit the **original** of each proposal, addressed to the attention of:

Kathryn Aylward, Director
Contract and Business Services Division
Public Defense Services Commission
1320 Capitol St NE, Suite 190
Salem, Oregon 97301

2) Presiding Judge(s)--One Copy Each (except Multnomah County)

Except for proposals for Multnomah County, applicants must submit one copy of each proposal to the presiding judge of each judicial district in which applicant proposes to provide services. For **Multnomah County**, one copy of each proposal must be submitted to the **Trial Court Administrator**.

Applicants for death penalty contracts only need to submit the original proposal to the Contract and Business Services Division; i.e., no copy needs to be provided to the presiding judges of counties in which applicant proposes death penalty coverage.

B. Deadline

Proposals **MUST BE**:

- 1) POSTMARKED no later than the submission deadline date; OR
- 2) ACTUALLY RECEIVED by PDSC and the appropriate presiding judge(s) no later than 4:30 p.m. on the submission deadline date.

The submission deadline for proposals is July 13, 2009.

Hand-delivery of proposals must be made to the appropriate presiding judge(s) AND the Contract and Business Services Division of the Public Defense Services Commission, 1320 Capitol St NE, Suite 190, Salem, Oregon.

A proposal submitted to the PDSC by fax or email will be accepted only when the applicant has received permission to do so prior to the transmission of the documents. If consent to submit a proposal is given, one original must be supplied to the PDSC, by mail or hand-delivery, by the date established when permission to fax or email the proposal is obtained.

If the applicant fails to submit the proposal(s) to all the relevant courts in accordance with the deadline, PDSC may disqualify the applicant's proposal(s).

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted by PDSC.

2.2 Application Format

Applicants must use the attached application format for submission of all proposals and must answer all questions or state the reason why a specific question is not relevant to the particular proposal. PDSC may disqualify any proposal that is not in the required format or is incomplete.

An electronic copy of this RFP is available at www.opds.state.or.us.

Applicants who do not or are unable to use an electronically produced form to prepare their application must, at a minimum, identify responses prepared on separate sheets of paper by the number, major heading, and each subsection subject.

2.3 Acceptance of RFP and General Contract Terms

- A. Applicants are responsible for reviewing the terms and conditions of the RFP and the general terms of the contract.
- B. By signing and returning the application form, the applicant acknowledges that the applicant accepts and intends to abide by the terms and conditions of the RFP. Further, the applicant accepts the terms and conditions of the general terms of the contract contained in Part IV, unless and only to the extent that the applicant proposes exceptions as described below.
- C. The applicant must clearly state in its proposal any proposed exceptions to the general terms of the contract, including reasons to support the exceptions and estimated efficiencies/cost savings if PDSC accepts the proposed exception(s). PDSC reserves the right to accept, reject, or negotiate exceptions to the contract terms.
- D. Any changes to the general terms of the contract terms proposed by PDSC will be provided, in writing, to each applicant.

2.4 Multiple Proposals

An applicant may submit more than one proposal. Each proposal must be complete in itself. The proposal must state whether it is in addition to or an alternative to other proposals submitted by the applicant.

2.5 Modification of Proposals

A. When Permitted

Applicants may not modify proposals after the submission deadline, unless PDSC agrees thereto, upon written request by applicant. Until that date, an applicant may modify its proposal(s) in writing. Modifications must be:

- 1) prepared on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) must state whether the new document supersedes or modifies the prior proposal.

B. Delivery

Applicants must deliver any modifications in the same number and manner as required by Section 2.1 for original proposals. The envelope should be marked as follows:

Public Defense Legal Services Contract
Proposal Modification
from
(Applicant Name and Address)

C. Included in Proposal File

All documents relating to the modification of proposals will be made part of the proposal file.

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants. PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

B. Procedure When PDSC or Applicant Discovers Mistake

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above.

PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

1) Minor Inaccuracies

PDSC may waive or correct minor inaccuracies or insignificant mistakes. Minor inaccuracies are:

- a) matters of form rather than substance that are evident from the proposal documents; or
- b) insignificant mistakes that do not prejudice other applicants; e.g., the inaccuracy or mistake does not affect price, quantity, quality, delivery, or contractual conditions.

2) Mistakes Where Intended Correct Proposal is Evident

If the mistake and the intended correct proposal are clearly evident on the face of the proposal or can be determined from accompanying documents, PDSC may consider the proposal. Examples of mistakes that may be clearly evident on the face of the proposal are typographical errors, transposition errors, and mathematical errors.

3) Mistakes Where Intended Correct Proposal is Not Evident

PDSC may not consider a proposal in which a mistake is clearly evident on the face of the proposal but the intended correct proposal is not evident or cannot be determined from accompanying documents, including requests for correction or modification under Sections 2.5 and 2.6.

C. Included in Proposal File

All documents relating to correcting a mistake will be made part of the proposal file.

2.7 Withdrawal of Proposals

A. Request to Withdraw

An applicant may withdraw a proposal at any time by written request. Requests to withdraw a proposal from consideration must be:

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC and presiding judge(s) of the affected court(s) and should be marked as follows:

Proposal Withdrawal
from
(Applicant Name and Address)

B. Included in Proposal File

All documents relating to the withdrawal of proposals will be made a part of the proposal file.

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I, Sections 1.4, 1.5 and 1.6. PDSC intends to make contract awards on or before December 10, 2009.

2.9 Categories of Cases Available for Contract

A proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel in state court at state expense:

- Capital Murder (death penalty)
- Noncapital Murder
- Felony
- Misdemeanor
- Probation Violation
- Juvenile
- Post-Conviction Relief
- Habeas Corpus
- Civil Commitment
- Extradition
- Contempt
- Post-Conviction Relief and Habeas Corpus Appeals

Applicants should refer to Part IV, the General Terms of the contract, section 10 for specific definitions of the categories.

2.10 Number of Cases

A. Available Caseload

To obtain the number of contract cases and/or workload likely for a particular court, county, or case type, the applicant should contact the Contract and Business Services Division of the Public Defense Services Commission at (503) 378-2478.

B. Fixed Caseloads and Value- or Hourly-Based Workloads

PDSC will contract for:

- 1) fixed workload by value of cases or hourly based; or
- 2) hourly-based workloads for death penalty contracts.

C. Proposed Caseload

The applicant should propose no more than the number of cases or hours for which the applicant can provide effective and efficient representation and adequate staff support resources.

2.11 Cost of Services

A. Expenses Included in Contract Price

Public defense contractors are responsible for all reasonable and necessary expenses that are ordinary and related to the proper preparation and presentation of the case.

PDSC bears the costs outside of any public defense contract for:

- 1) discovery;
- 2) transcripts;
- 3) witness fees and expenses; and
- 4) non-routine case expenses that are preauthorized (e.g., expert witnesses; psychiatric exams; and investigation requiring an investigator's services, unless Contractor has staff investigator(s) for this purpose).

Applicants should not include these case-related expenses in calculating the cost of providing contract services.

B. Reasonable Expenses

Applicants should project the cost of occupancy, staff, or other contract expenses at rates no greater than customary for the community and the type of service or expense. PDSC will not pay premium rates. PDSC expects contractors to provide facilities reasonably adequate to ensure an environment conducive to providing effective and efficient legal services and to maintaining the dignity of attorney, staff, and clients.

C. Factors to Consider

In calculating overall case cost figures, applicants should consider the percentage of appointments by case type (the "mix" of cases) and the percentage of appointments that:

- 1) usually terminate before trial or contested adjudication, and at what stages and why they terminate (such as, withdrawals, dismissals, multiple cases negotiated together, and bench warrants); and
- 2) usually go to trial or contested adjudication.

The applicant may consider any other relevant factors in constructing costs, as long as these factors do not jeopardize the delivery of adequate legal services at the prices proposed. Applicants must describe in the application all factors or premises on which costs are based.

2.12 Proposal Application Format (Part III of RFP)

The application format consists of:

- 1) Application Summary;
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:
 - a) Service Delivery Plan
 - b) Proposed Estimated Allocation of Contract Funds
 - c) Proposed List of Contract Attorneys
 - d) Proposed List of Contract Non-Attorney Staff
 - e) Certificate of Attorney Qualification and Supplemental Questionnaire
 - f) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
 - g) Proposed Contractor Independent Contractor Certification Statement

THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 16 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC
BY APPLICANTS WHO DO NOT CURRENTLY CONTRACT WITH PDSC)**

**PART III
PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE**

3.1 APPLICATION SUMMARY

APPLICANT INFORMATION	
County or Counties to be served: _____	
Formal Name of Applicant: _____	
Contact Person for Proposal: _____	
Address: _____ _____	
Telephone: _____ Fax: _____	
Email (required): _____	
Fed. I.D. No.: _____ or S.S.N.: _____	
Type of Organization (<i>check one</i>):	
<input type="checkbox"/> Sole Practitioner <input type="checkbox"/> Nonprofit P.D. <input type="checkbox"/> Partnership or P.C. <input type="checkbox"/> Consortium	
<input type="checkbox"/> Other (<i>describe</i>) _____	

CASELOAD INFORMATION

- A. Case Types Covered: All case types as defined in the general terms of the contract document that are subject to this RFP excluding:

- B. Complete the section below:

Case Types	Value	# of Cases	Total Value
First Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
First-Year Total			\$
Second Year			
	\$		\$
	\$		\$
	\$		\$
	\$		\$
Second-Year Total			\$
Contract Total			\$

(Add additional years if necessary.)

A. METHODOLOGY, EXPLANATIONS AND ESTIMATES

- 1) Service Cost Basis. For the types of cases, extent of coverage, and services proposed, explain how costs were projected and the premises underlying the projection.
- 2) Case Costs.

Explain:

- a) how the various case types were weighted;
- b) how the cost varies by case type; and
- c) how staff investigator, paralegal, and/or interpreter costs were factored.

Estimate:

- d) what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant;
- e) the average number of hours required for each case type proposed;
- f) the cost of providing contract counsel at arraignments to advise defendants regarding plea offers or resolution of probation violation or contempt matters if a

program were established to facilitate early resolution of cases. Describe the time required and the potential number of cases involved; and

- g) the percentage of attorney time and staff time required for administrative duties, CLE, and other professional duties not related to a particular case.
- 3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

B. PROPOSAL STAFFING SUMMARY ("FTE" means "full-time equivalent"; e.g., four attorneys each committing 50% of their full time to contract work equals two FTEs.)

Number of Attorneys _____ / FTE_____

Number of Secretarial/Receptionist Staff _____ / FTE_____

Number of Paralegals/Legal Assistants _____ / FTE_____

Number of Administrative Staff _____ / FTE_____

Number of Investigators _____ / FTE_____

Number of Interpreters _____ / FTE_____

Number of Other Staff _____ / FTE_____

Identify "Other Staff" type: _____

3.2 CERTIFICATION FORM

I hereby certify that I have the authority to submit this proposal on behalf of the applicant and that I have read and understand the terms and conditions of the general terms of the contract.

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

3.3 PROPOSAL OUTLINE

The following is an outline of the information each applicant **MUST** provide. ALL questions must be answered and all requested information must be completed. If a certain question or requested information is "Not Applicable" to the applicant's proposal, please note "NA."

Applicants who do not or are unable to use an electronic copy of the application form (allowing sufficient room for complete responses) must present their responses on separate sheets of paper in accordance with Section 2.2 of the Application Instructions.

A. **SERVICE DELIVERY PLAN**

The purpose of a public defense legal services contract is to provide cost-effective delivery of legal services that meet constitutional, statutory, and other legally mandated standards. Please describe, in detail, applicant's service delivery plan and how it will ensure effective and efficient legal representation. Include information on the following:

1. Contractor Staff Services. Describe legal, support, and other services to be provided under the contract. Include any express limitations on the range of services.

IN ADDITION to providing the information requested above, each attorney included within applicant's proposal must complete a Certificate of Attorney Qualification and Supplemental Questionnaire, to be included with applicant's proposal (see pages Appl. 12-14).

2. Case Services. Describe the caseload and case types to be covered. Include any limitations in coverage by case type. Include any differing values per type of case that applicant proposes.
3. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include:
 - a) how the court would assign cases to applicant;
 - b) whether applicant attorneys would be present at first appearances;
 - c) how applicant would assign cases to attorneys;
 - d) how applicant would provide for interviews with both in-custody and out-of-custody clients in accordance with the general terms of the contract;
 - e) how applicant would process cases from assignment through reporting to PDSC;
 - f) how applicant would work with the court to coordinate services with other contractors and with the court; and
 - g) how applicant would investigate and provide information, if any, on sentencing alternatives to the court.
4. Facilities. Describe applicant's office(s). Include information on:
 - a) office sharing arrangements;
 - b) conference room(s);
 - c) library (size and contents);
 - d) disabled access (if none, describe alternative arrangements for meeting disabled clients or witnesses) (if applicant is a consortium, describe the disabled access or alternative arrangements for each consortium member's office); and
 - e) number of separate law firms/sole practitioners included.

Does each of applicant's attorneys have his/her own office?

Are any offices housed in a residence?

Does applicant or any of its members own or have an interest in the office building(s)?

If yes, please explain: _____

5. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
6. Professional Education and Supervision Plan. Describe plans for professional development and supervision of all attorneys, direct support, and administrative staff. Include:
 - a) training;
 - b) CLE;
 - c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and
 - d) supervision and development of less experienced attorneys.
7. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.
8. Local Factors. Identify and discuss, in detail, local factors that affect caseload and case processing that may affect cost.
9. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
10. Contract Terms. Include any requests to modify terms in the general terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

B. PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

All applicants must complete the forms contained on the following five pages and estimate how contract funds would be allocated to cover service costs.

If applicant is a consortium, submit a separate form for each firm or member. In addition, you must compile all members' estimated allocations into one, overall consortium contract fund allocation form. To arrive at allocation figures, each member should estimate by line item the amount of funds reasonably necessary to perform the public defense services contemplated under the proposal. Generally, an attorney who would be spending 50 percent of his/her total billable time on public defense contract cases may allocate no more than 50 percent of total rent and other overhead costs to the proposed allocation.

Under no circumstances will the PDSC fund any lobbying or other political activities for a public defense contractor.

Each consortium must provide expense information in the allocation categories for all members, not just for the umbrella corporation or other umbrella entity. Any nonprofit organization or consortium that has expenses related to its Board of Directors' or Trustees' meetings should include that expense information with the proposed estimated allocation as well as any other expenses not otherwise listed.

APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.** (Use additional pages if needed for longer-term proposals.)

1. GROSS SALARIES	<u>First Year</u>	<u>Second Year</u>
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____# _____FTE	_____	_____
Secretarial/Reception/Clerical Staff _____# _____FTE	_____	_____
Paralegal/Legal Assistant Staff _____# _____FTE	_____	_____
Investigation Staff _____# _____FTE	_____	_____
Other Staff (identify _____ _____) _____# _____FTE	_____	_____
SUBTOTAL:	_____	_____
2. STAFF BENEFITS		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
SUBTOTAL:	_____	_____
3. STAFF EXPENSES		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____) _____)	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____) _____)	_____	_____

3. STAFF EXPENSES (continued)

First Year

Second Year

Professional Licenses/Certificates
(explain _____)
_____)

Education Training/CLE's--Attorneys

Education Training--Other Staff
(explain _____)
_____)

Attorney Travel

Other Staff Travel

SUBTOTAL:

4. OVERHEAD (OCCUPANCY)

Office Rent/Lease

Office Insurance

Building Utilities

Building Maintenance

Real Estate Taxes (if separate from rent)

SUBTOTAL:

5. OVERHEAD (OPERATIONS)

Phone Services (Equipment/Local Calls)

Long Distance Calls

Office Supplies

Postage

Outside Photocopying/Printing

Library

Subscriptions

Other Case Expenses
(explain _____)
_____)

SUBTOTAL:

6. OVERHEAD (NONCAPITAL EXPENSES)

Furniture & Equipment Leases

Description

Annual Cost

6. OVERHEAD (NONCAPITAL EXPENSES) (continued)

First Year

Second Year

Equipment Repairs/Maintenance _____

SUBTOTAL: _____

7. OVERHEAD (OTHER)

Personal Property Taxes _____

Professional Contract Services (specify) _____

Miscellaneous (specify) _____

SUBTOTAL: _____

8. TOTAL OPERATIONS (total of 1-7) _____

9. CAPITAL (Items costing over \$500 each and funded separately)

Computer--Hardware _____

Description	Quantity	Unit Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

Computer--Software _____

Description	Quantity	Unit Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

Office Furniture _____

Description	Quantity	Unit Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

Office Equipment _____

Description	Quantity	Unit Cost
_____	_____	_____
_____	_____	_____
_____	_____	_____

SUBTOTAL: _____

GRAND TOTAL* (total of 8 and 9): _____

*** Grand total must equal total proposed annual contract price.**

C. PROPOSED LIST OF CONTRACT ATTORNEYS

Directions: List every attorney position that applicant has budgeted to perform the contract. If the position is vacant, note that fact.

Firm or Office	Name	Bar #	FTE Contract Work	Annual Salary from Contract Funds
----------------	------	-------	-------------------------	--

Total FTEs: _____

D. PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF

Directions: List every non-attorney position that applicant has budgeted to perform the contract. If the position is vacant, note that fact.

Firm or Office	Position Title	# of Employees	FTE Contract Work	Annual Salary from Contract Funds
-----------------------	-----------------------	---------------------------	----------------------------------	--

Total FTEs: _____

E. CERTIFICATE OF ATTORNEY QUALIFICATION AND SUPPLEMENTAL QUESTIONNAIRE
 (Submit one certificate and questionnaire for each attorney proposed to provide contract services.)

Name: _____ Bar Number: _____
 Address: _____ Vendor or Tax ID#: _____
 _____ Email: _____
 _____ Foreign language fluency in: _____
 Phone Number: _____ Years of Experience: _____
 Fax Number: _____ Practice of Law _____ Criminal _____
 Cell/Pager: _____ Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

- Capital Murder
 - Lead Counsel
 - Co-counsel
- Murder
 - Lead Counsel
 - Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Juvenile Delinquency
 - Major Felony
 - Lesser Felony
 - Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
 - Capital Murder
 - Murder
 - Other Criminal

APPELLATE LEVEL

- Capital Murder
 - Lead Counsel
 - Co-counsel
- Murder
 - Lead Counsel
 - Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Juvenile Delinquency
 - Major Felony
 - Lesser Felony
 - Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
 - Capital Murder
 - Murder
 - Other Criminal

Please check only one box below:

I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

 Signature

 Date

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:

5. Number of years and location(s) of legal practice outside Oregon:

6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)

7. What percentage of your present practice involves handling public defense cases?

8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.

9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?

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

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

12. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.

13. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)

14. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.

15. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?

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

17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

F. PROPOSED CONTRACTOR CERTIFICATE OF COMPLIANCE WITH APPLICABLE OREGON TAX LAWS

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of _____,
(name and address of firm, corporation, or partnership [PLEASE TYPE])

hereby certify under penalty of perjury that _____
(name of firm, corporation, or partnership [PLEASE TYPE])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 200____.

Notary Public

My commission expires: _____

G. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature _____ Date _____

Entity _____

**PART III OF 2009 REQUEST FOR PROPOSALS
FOR PUBLIC DEFENSE LEGAL SERVICES CONTRACTS
(for existing contractors)**

Parts I, II and IV of the 2009 Request For Proposals apply to this proposal and are available online at www.opds.state.or.us.

Formal Name of Applicant _____

Contact Person for Proposal _____

Address _____

Telephone Number _____ Fax Number _____

Email address _____

Please provide the following information.

1. Describe any changes to your current contract that would be required to enable you to continue to provide legal representation without a reduction in the quality of representation. Examples might include the need to increase employee salaries to address issues of recruitment and retention; the need to add additional attorneys to reduce caseloads; the need to upgrade hardware/software. Include an explanation as to why the changes are needed and the estimated additional funding that would be required to achieve these goals.
2. Describe any measures you plan to take to improve the quality of representation. Include any costs that may be associated with achieving these goals.
3. Describe any system or resource changes, those which occurred during the current contract term or will likely occur in the future, that have or will affect the contract workload.
4. Are the types of cases you propose to accept under a new contract different from your current contract? If yes, please indicate what changes you propose.
5. Are there any terms or conditions in your current contract or in the General Terms included in the 2009 Request For Proposals you propose be modified or clarified for a new contract?
6. Review the Best Practices List (online at www.opds.state.or.us under Reports & Publications) and indicate which of the Best Practices are currently in place and those that are under development. Please indicate any resource changes that may be required to implement additional Best Practices.
7. Additional information you request be considered.

I hereby certify that:

- (1) the information contained in this summary proposal and its appendices is, to the best of my knowledge, accurate;
- (2) I have the authority to submit this proposal on behalf of the applicant; and
- (3) I have read and understand the terms and conditions of the relevant General Terms of the contract.

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

APPENDIX A

PROPOSED CONTRACTOR ATTORNEYS

Applicant certifies that each attorney intended to perform services under the proposed contract is listed in Appendix A and that each attorney listed satisfies the qualification standards that PDSC has established for the types of cases to which that attorney will be assigned. (List vacant positions as well.)

Firm or Office	Name	Bar #	FTE Contract Work	Current Salary*
----------------	------	-------	----------------------	-----------------

*Applicable to salaried employees only

Total FTEs: _____

APPENDIX B

PROPOSED CONTRACTOR NON-ATTORNEY STAFF

Directions: List every non-attorney position allocated to perform work under the proposed contract.

Firm or Office	Position Title	# of Employees	FTE Contract Work
----------------	----------------	----------------	-------------------------

Total FTEs: _____

APPENDIX C
(To Be Completed by Not-for-Profit Public Defenders Only)
PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

Directions: Provide estimated cost information for all applicable categories. If a category is not applicable, list "N/A." Add any necessary categories not listed below. **Prorate all estimated expenses for part-time attorneys or staff by the percentage of time they will spend on contract work.**

	<u>First Year</u>	<u>Second Year</u>
1. GROSS SALARIES		
Attorneys (estimated gross income to attorneys after attorneys' overhead and F.I.C.A. self-employment taxes are deducted) _____# _____FTE	_____	_____
Secretarial/Reception/Clerical Staff _____# _____FTE	_____	_____
Paralegal/Legal Assistant Staff _____# _____FTE	_____	_____
Investigation Staff _____# _____FTE	_____	_____
Other Staff (identify _____) _____# _____FTE	_____	_____
SUBTOTAL:	_____	_____
2. STAFF BENEFITS		
F.I.C.A. Self-Employment Tax (if applicable)	_____	_____
F.I.C.A. (Employer's portion or Social Security only)	_____	_____
Unemployment Insurance	_____	_____
Health and Other Insurance	_____	_____
Workers' Compensation	_____	_____
Retirement Program	_____	_____
SUBTOTAL:	_____	_____
3. STAFF EXPENSES		
Malpractice Insurance check _____ PLF or _____ NLADA	_____	_____
Other Professional Insurance (describe _____) _____)	_____	_____
OCDLA--Membership Dues	_____	_____
OSB--Membership Dues	_____	_____
Other Membership Dues Necessary to Contract (explain _____) _____)	_____	_____

3. STAFF EXPENSES (continued)

First Year

Second Year

Professional Licenses/Certificates
(explain _____)

Education Training/CLE's--Attorneys

Education Training--Other Staff
(explain _____)

Attorney Travel

Other Staff Travel

SUBTOTAL:

4. OVERHEAD (OCCUPANCY)

Office Rent/Lease

Office Insurance

Building Utilities

Building Maintenance

Real Estate Taxes (if separate from rent)

SUBTOTAL:

5. OVERHEAD (OPERATIONS)

Phone Services (Equipment/Local Calls)

Long Distance Calls

Office Supplies

Postage

Outside Photocopying/Printing

Library

Subscriptions

Other Case Expenses
(explain _____)

SUBTOTAL:

6. OVERHEAD (NONCAPITAL EXPENSES)

Furniture & Equipment Leases
Description Annual Cost

Equipment Repairs/Maintenance

SUBTOTAL:

7. OVERHEAD (OTHER)

First Year

Second Year

Personal Property Taxes

Professional Contract Services (specify)

Miscellaneous (specify)

SUBTOTAL:

8. TOTAL OPERATIONS (total of 1-7)

9. CAPITAL

Computer--Hardware

Description Quantity Unit Cost

Computer--Software

Description Quantity Unit Cost

Office Furniture

Description Quantity Unit Cost

Office Equipment

Description Quantity Unit Cost

SUBTOTAL:

GRAND TOTAL (total of 8 and 9):

=====

=====

**APPENDIX D
PROPOSED CONTRACTOR
CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS**

Must be provided for a consortium (corporation) as well as for each consortium member.

I, the undersigned, being first duly sworn,

Mark only one: (X)

_____ hereby certify under penalty of perjury that I am not in violation of any Oregon tax laws.

_____ authorized to act in behalf of _____,
(name and address of firm, corporation, or partnership [PLEASE TYPE])

_____ hereby certify under penalty of perjury that _____
(name of firm, corporation, or partnership [PLEASE TYPE])

is, to the best of my knowledge, not in violation of any Oregon tax laws.

For purposes of this certificate, "Oregon tax laws" are ORS chapters 118, 119, and 305 through 324; and any local tax laws administered by the Oregon Department of Revenue under ORS 305.620.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 200____.

Notary Public

My commission expires: _____

**APPENDIX E
PROPOSED CONTRACTOR
INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT**

You can qualify as an independent contractor by certifying that you meet the following standards as required by ORS chapters 316, 656, 657 and 670:

1. You provide labor and services free from direction and control, subject only to the accomplishment of specified results.
2. You are responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law.
3. You furnish the tools or equipment necessary to do the work.
4. You have the authority to hire and fire employees to perform the work.
5. You are paid on completion of the project or on the basis of a periodic retainer.
6. You filed federal and state income tax returns for the business for the previous year, if you performed labor or services as an independent contractor in the previous year.
7. You represent to the public that you are an independently established business, as follows:

YOU MUST MEET FOUR (4) OR MORE OF THE FOLLOWING:

- A. You work primarily at a location separate from your residence.
- B. You have purchased commercial advertising, business cards, or have a trade association membership.
- C. You use a telephone listing and service separate from your personal residence listing and service.
- D. You perform labor or services only pursuant to written contracts.
- E. You perform labor or services for two or more different persons within a period of one year.
- F. You assume financial responsibility for defective workmanship and breach of contract, as evidenced by performance bonds or liability insurance coverage.

I hereby certify that the above information is correct.

Signature _____ Date _____

Entity _____

Attachment 3

MEMORANDUM

TO: Public Defense Services Commission

FROM: Jesse Wm. Barton
Attorney at Law

SUBJECT: Veterans and Servicemembers Legal Resource Center

DATE: May 12, 2009

INTRODUCTION

The memorandum introduces a concept I will submit during the impending request-for-proposal period—specifically, funding for the creation and operation of a legal resource center (LRC) that, through training and on-going technical support, would assist law firms with providing quality representation to clients whose cases present special needs stemming from military service.

It should go without saying that the LRC would assist in criminal cases that present **service-connected** mental-state defenses not found in “civilian” cases (*i.e.*, cases where the defendants are not military veterans). But the LRC would not assist in those cases exclusively. It would also assist in dependency and delinquency proceedings, where the clients are the civilian spouses and children of veterans. Nevertheless, in this memorandum I refer to all cases that the LRC would serve as “veteran cases.”

BACKGROUND

Presently, the approximately 2,700 citizen-soldiers who comprise Oregon’s 41st Infantry Brigade Combat Team are undergoing deployment to Operation Iraqi Freedom (OIF). This will be the state’s largest deployment since World War II. The 41st Brigade will receive two months of specialized training at Ft. Benning, Georgia, and then will spend 10 months engaged in OIF. This will be a “multiple deployment” for many of these citizen-soldiers, in that it will be their second or subsequent deployment to OIF, or to Operation Enduring Freedom (Afghanistan), or both. Research and past experience show that there is a likelihood that this deployment will generate the need for a specialized LRC.

Many veterans—combat veterans in particular—frequently suffer from afflictions such as post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI). For example, it is estimated that 30 to 40 percent of the nation’s Iraq veterans will face serious psychological problems associated with PTSD.¹ After having assimilated into the warrior-orientated “military total institution,” a small percentage, but nevertheless a substantial number of these veterans, will find difficulty re-assimilating into civilian society. This can result in anti-social behavior, which

¹ U.S. Department of Veterans Affairs *Fifth Annual Report of the Department of Veterans Affairs Undersecretary for Health’s Special Committee on Post-Traumatic Stress Disorder* (Wash. D.C. 2007).

may lead to criminal prosecution² and, even worse, suicide. For example, veterans are twice as likely as civilians to commit suicide.³ Indeed, a CBS News report revealed that nationally, Oregon had had the highest suicide rate among young veterans.⁴

This difficulty in re-assimilation also may lead to juvenile court dependency and delinquency proceedings. For example, one study disclosed that divorce plans among veterans and their spouses increased 9% to 15% after deployment.⁵ Even if the family remains intact, the effects of “secondary traumatization”—the phenomenon wherein the spouses of veterans with PTSD themselves suffer PTSD-type symptoms—also may be felt.⁶ But whatever the state of the marriage, a recent study revealed that incidents of child abuse involving military families rose 30% after 2001.⁷

The state’s previous, major deployment of citizen-soldiers to OIF ended in early 2005. According to information the DOC’s research and statistics section provided Western Oregon University criminologist William B. Brown, over the four-year period from 2005-08,⁸ the DOC processed the following numbers of veterans into its system:

YEAR	TOTAL
2005	416
2006	89
2007	89
2008	98

Although no definitive study exists, it may be that the early 2005 return of the state’s citizen-soldiers from OIF generated the DOC’s high intake of veterans in 2005. Assuming that is the case, rather than view it as some sort of failure of military or civilian authorities, it should

² See William B. Brown, *Another Emerging “Storm”: Iraq and Afghanistan Veterans with PTSD in the Criminal Justice System*, Justice Policy Journal (Fall 2008).

³ Kaplan, Huguet, McFarland, Newsom, *Suicide Among Male Veterans: A Prospective Population-Based Study*, Journal of Epidemiology and Community Health (online, June 11, 2008).

⁴ Malbran, *Young Vets Most at Risk for Suicide in Oregon*, www.cbsnews.com/blogs/2008/01/25/primarysource/entry3753590.shtml (Jan. 25, 2008).

⁵ *Mental Health Needs of Soldiers Increase Several Months After Returning from Iraq War*, Journal of American Medical Association, and Archives Journals (2007). (Nov. 14, 2007).

⁶ Dirkzwager, Bramsen, Ader, and van der Ploeg, *Secondary Traumatization in Partners and Parents of Dutch Peacekeeping Soldiers*, Journal of Family Psychology (2005); Verbosky and Ryan, *Female Partners of Vietnam Veterans: Stress by Proximity*, Issues in Mental Health Nursing (1988).

⁷ Rentz, Marshall, Loomis, Casteel, Martin, and Gibbs, *Effect of Deployment on the Occurrence of Child Maltreatment in Military and Nonmilitary Families*, American Journal of Epidemiology (2007).

⁸ DOC provided Dr. Brown no data for the years before 2005. Furthermore, I wish to acknowledge that am indebted to Dr. Brown for most of the research that I use in this memorandum.

instead be seen as an historical lesson demonstrating the need for proactive measures designed to avoid a recurrence. An LRC would serve as such a measure.⁹

LEGAL RESOURCE CENTER SERVICES

The LRC's services would supplement and enhance, **but not replace**, the legal services that now are provided by entities funded from the Public Defense Services Account (PDSA).¹⁰ Because of LRC's reliance of preexisting entities, the costs of it should be minimal (perhaps equal to 0.25 to 0.5 FTE positions). The LRC's services essentially would come in two forms, as follows:

1. Organizing conferences for the training of law firms in such areas as:
 - Intake screening for identifying cases that present special needs stemming from military service;
 - Military procedures and protocols, including the military total institution;
 - Trial defense and mitigation strategies; and
 - Miscellaneous topics in legal areas peculiar to veteran and servicemember cases that could bear on representation in PDSA-funded cases, including the Servicemembers Civil Relief Act, veterans disability claims, and the Lautenberg Act.

2. Ongoing Support for law firms:
 - Web page development and administration, including a related listserv, which would include such features as:
 - A resource list containing names and contact information of legal specialists, expert witnesses, and support organizations;
 - A regularly updated legal documents library; and
 - Onsite technical assistance on trial defense and mitigation strategies.

Finally, I should mention that if the state's 2005-08 experience is an indicator of what may occur after the 41st Brigade returns from Iraq, a year from now PDSA-funded law firms will see an escalation of veteran cases. Funding for this proposal would begin about eight months from now. That should allow sufficient time to "mobilize" the LRC.

⁹ I also wish to acknowledge that I am indebted to Steve Binder of the San Diego County Public Defender's Office, who provided me information about his office's Returning Veteran Program. That office's program served as inspiration for this LRC concept.

¹⁰ It is not expected that the LRC would solely serve PDSA-funded entities. Based on standard fee arrangements, firms representing privately retained clients also could obtain the services.

Attachment 4

Testimony of Angel Lopez
Before Ways and Means, 2009

My name is Angel Lopez. I am a 1978 Law graduate from Willamette School of Law. I am a member of both the Oregon and 9th Circuit Federal Bars. I am a past president of the Oregon State Bar (the first and only minority lawyer to hold that distinction). I am also a legal adviser to the Consulate for Mexico. I have been honored by Occidental College and Willamette School of Law as a distinguished alumni. I am also the proud recipient of the Justice Paul DeMuniz award for Professionalism presented in 2008 by the Hispanic Bar Association of Oregon. I have 27 years experience as a criminal defense lawyer.

My firm is Squires & Lopez. My wife, Wendy, and I founded the firm in 1986. We are a firm of 7 lawyers, 6 of whom perform work through Portland Defense Consortium, which in turn, contracts with the Public Defense Services Commission to represent indigents accused of crimes. There are a total of 6 firms in the consortium, 20 lawyers in all. Our attorney administrator, Bruce Liebowitz, has 27 years experience in the criminal justice system. Additionally, he has his own contract as an indigent defense provider for Probation Violation and Expedited Plea cases.

Through our indigent defense contract, our consortium defends about 40% of all serious criminal cases in Multnomah County including Jessica's Law and Murder cases. We also defend approximately 70% of all Spanish speaking cases, Misdemeanor and Felony, prosecuted in Multnomah County. My firm includes Spanish speaking lawyers, interpreter quality paralegals and support staff.

When our consortium began in 2002, one of the major cost factors facing our county's criminal justice delivery system was substitution of counsel post-appointment due to ethical conflicts in representation. Through our consortium we have internal case conflict re-assignment. Cases are rarely returned to court from our consortium for re-appointment once assigned.

All this being said- we work extremely hard. The minor felony cases we once used to balance our caseload and contract agreement have been in steep decline. Law changes such as Jessica's Law, Ballot Measure 11, and Commercial Drug offenses, Repeat offender property crimes, Ballot Measure 57 crimes including enhanced sentencing for drug deliveries have increased the complexity and seriousness of our cases. It is important to get these cases right the first time, as all the consequences are grave.

Overlay this with the increased scrutiny of immigrants by US Immigration authorities in our jails and you have a criminal justice defense system on overdrive more often than not. (See exhibit one for a typical Monday court case assignment calendar in Multnomah County and the Portland Defense Consortium case load mix for calendar year 2008).

EXHIBIT 1

Multnomah County Criminal
Call Calendar for Monday
March 30, 2009

	Portland Defense Consortium	Total Number
Ballot Measure 11	13	22
Major Felony	1	1
Minor Felony	4	11
Total	<hr/> 18	<hr/> 34

Table 2

Case Types Assigned to the
Portland Defense Consortium-
2008

Case Type	Number
Murder/ Jessica's Law	28
A Felony	295
B Felony	364
C Felony	1,058
Misdemeanors	852
PV's	215
Mis	32
	<hr/>
Total	3,239

Testimony in Favor of Increasing Oregon's Public Defense Budget

Protection against unreasonable search and seizure, the right against self-incrimination, protection against cruel and unusual punishment, the presumption of innocence, trial by jury, the right to counsel, the right to due process under the law....

These lofty concepts are the constitutional rights provided to protect us all at both federal and state levels. Together these protections form the basis of our guarantee of freedom as Oregonians and residents of this country. These rights mean nothing without assertive and talented legal defenders willing to take on the unpopular cases and clients who are charged with crimes.

In one of my darkest moments, I recall sitting in the courthouse coffee shop, putting the finishing touches on a closing argument in a horrible Ballot Measure 11 case. I walked a corrections deputy whom I had known for years. He asked what I was doing. I gave him a thumbnail description of the trial I had been working on and explained I was polishing up my closing argument. He thanked me. As he thanked me he said that but for the good lawyers like myself who were willing to throw themselves into cases such as this, he wouldn't know where to turn if he ever encountered serious trouble in his own life. I, in turn, realized just how much a factor criminal defense is to the concept of access to justice.

Through my work on the Oregon State Bar Board of Governors and later as the Oregon State Bar President, I was able to help further this access to justice concept to the Oregon State Bar Leadership. The concept has caught fire to the degree that today, the entire Bar membership sees adequate public defense funding as a top Bar priority. The concept of our critical function not only to the law but to the social fabric of the Oregon community was underscored when, due to emergency state funding cutbacks earlier this decade, many crimes went un-prosecuted, under-prosecuted or delayed in prosecution until such a time as funding was restored, simply because we could not pay our public defenders. Car thieves, identity thieves, forgerers and a majority of probation violators were furloughed for want of defense attorneys. As an Oregonian, I was deeply distressed that crime was given a green light.

As everybody in this room knows, we of the Criminal Defense Bar are sorely under-paid. I receive for instance, \$300 to defend a DUII case. A comparable case in my office as a private retainer starts at \$5,000 excluding investigation. The current court appointed hourly rate is \$40 irrespective of experience or reputation. My hourly rate based on my experience and reputation is \$250. The fees we receive as attorneys are apportioned to cover rent, bar and professional liability insurance, city, county, state and federal taxes, phone, computer and other overhead costs as well as staff costs, which in my case include an office manager, receptionist and multiple trial assistants.

Every year the cost of living escalates. The attorney and support staff have a reasonable expectation of pay increases. The longer in my employ, I find that my associate attorneys' legal ability quickly outstrips the compensation I can offer. Law school loan payments impede the lawyers' ability to do more than financially tread water. There is the reality that these lawyers can work in less stressful environments for substantially more pay. It comes as no surprise then

that I have replaced the brass plaque announcing the lawyers in my office so many times it has jokingly been recommended I might do better with a chalk board and eraser attached to the office door. This year alone I've had to replace two of the five attorneys in this office...and it's only April.

Changes in the laws such as Ballot Measure 11 sentences, repeat offender statutes, the 3-strike drunk drive statute and now Jessica's Law mandate a higher level of jurisprudence and preparation from our Bar than ever before. I come here today to ask your help for adequate funding to meet this great need for defense counsel. We want to recognize defense funding for the important component of society it is. We need to be able to attract great lawyers to this part of the system so that, should we ever have the need, someone will be there for us as well.

Respectfully submitted this _____ day of April, 2007.

Angel Lopez, OSB #79078

Attachment 5

PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS
FOR COURT-APPOINTED COUNSEL TO REPRESENT
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE

Revised 10/17/08 [new date]

TABLE OF CONTENTS

[pagination will be updated]

I.	OBJECTIVE	1
II.	ATTORNEY CASELOADS	1
III.	GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS	1
IV.	MINIMUM QUALIFICATIONS BY CASE TYPE	2
1.	Misdemeanor Cases and Misdemeanor Probation Violation Proceedings in Trial Courts	2
2.	Lesser Felony Cases; Felony Probation Violation Proceedings; Contempt Proceedings in Trial Courts	3
3.	Major Felony Cases in Trial Courts	3
4.	Murder Cases in Trial Courts	3
5.	Capital Murder Cases in Trial Courts	4
6.	Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts	7
7.	Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights	7
8.	Appeals Other Than in Murder and Capital Murder Cases	9
9.	Appeals in Murder and Capital Murder Cases	10
10.	Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases ..	10
11.	Post-Conviction Proceedings in Murder and Capital Murder Cases	11
12.	Habeas Corpus Proceedings	11
V.	QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS	11
1.	Certificate and Supplemental Questionnaire	11

2. Submission Requirements 12

3. Supporting Documentation 12

4. **Approval for** Appointment **Lists** 12

5. Suspension From Appointment **List** 13

EXHIBIT A PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

~~EXHIBIT B PRINCIPLES AND STANDARDS FOR COUNSEL IN CRIMINAL, DELINQUENCY, DEPENDENCY AND CIVIL COMMITMENT CASES, Oregon State Bar Indigent Defense Task Force, adopted by the Board of Governors September 25, 1996, revised May 2006 (appendices and annotations not reproduced)~~

PUBLIC DEFENSE SERVICES COMMISSION
QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE

The Public Defense Services Commission ~~adopts~~ the following standards ~~are adopted by the Public Defense Services Commission~~ pursuant to ORS 151.216(1)(f)(F). ~~effective March 1, 2007.~~

STANDARD I: OBJECTIVE

The objective of these standards is to ensure ~~the provision of 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 ~~to each client~~. Neither defender organizations nor assigned counsel ~~shall~~ ~~should~~ accept workloads that, by reason of their size or complexity, interfere with providing 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 **minimum** 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 satisfaction of the Office of Public Defense Services 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 ~~in~~ **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, **regular** ~~frequent~~ attorney trainings, and routine performance reviews in order to ensure 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 ~~read, understood and agree to observe applicable provisions of reviewed and are familiar with~~ the current edition of the Oregon State Bar's ~~Indigent Defense Task Force Report, Performance Standards~~ "Principles and Standards for Counsel in Criminal, Delinquency, Dependency, and Civil Commitment, and Post-Conviction Relief Cases," ~~available at www.osbar.org.~~ (Exhibit B to this policy statement.)

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

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

~~The minimum qualifications An attorney or certified law student is qualified~~ for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings ~~require that an attorney 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, ~~Vehicle~~ and Evidence Codes of Oregon; ~~the criminal drug offenses, and other crimes outside the Criminal Code;~~ the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one 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 ~~person's~~ ~~student's~~ immediate supervisor certifying the ~~person's~~ ~~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 ~~were 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 at least six months in a court that regularly conducts criminal trials;
- f. Will be working under the ~~direct~~ supervision of an attorney who does have the requisite qualifications or experience.

2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts

Lesser felony cases include all **felony** drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications ~~An attorney is qualified~~ for appointment to lesser felony cases and felony probation violation proceedings **require that an attorney** ~~if he or she:~~

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met 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 ~~were have been tried~~ **submitted** to a jury;
- D. In at least one felony **case trial tried submitted** to a jury, has served 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 experience and competence to handle felony cases involving potential incarceration of up to five years.

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies other than drug cases, all **felony** sex offenses ~~felonies~~, and all homicides other than murder and capital murder cases.

The minimum qualifications ~~An attorney is qualified~~ for appointment to major felony cases **require that an attorney** ~~if he or she:~~

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months ~~of lesser felony trial~~ experience **representing clients in lesser felony cases** ~~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 experience and

competence to handle felony cases involving potential incarceration of 25~~0~~ years or more.

4. Murder Cases in Trial Courts

- A. *Lead Counsel.* The minimum qualifications ~~An attorney is qualified~~ for appointment as lead counsel in murder cases, not including capital murder, require that an attorney ~~if he or she~~:
- a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has met the qualifications in Standard IV, section 3 for at least 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 adequate 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 at least five ~~a significant number of~~ major felonies tried to a jury, which 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) Written statements Certification from those with direct knowledge of the attorney's practice ~~declaring, indicating~~ that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Written statements Certification must include at least five letters from persons in 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.
- 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.* **The minimum qualifications** ~~An attorney is qualified~~ for appointment as lead counsel in capital murder cases **require that an attorney if he or she:**
- a. Has reviewed and is familiar with the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, **and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;**
 - b. Meets the qualifications specified in Standard IV, section 4.A;
 - c. Has **represented clients in** ~~tried~~ major felony cases for at least five years;
 - d. Has acted as lead counsel or co-counsel in **at least five** ~~significant number of~~ major felony ~~cases~~ **cases** tried to a jury, which include at least one **murder** ~~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;~~
 - e. 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 post-conviction review;
 - (8) counsel's relationship with the client and his or her family;
 - (9) post-conviction 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.
 - f. 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;

- g. 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
- h. 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) **Written statements Certification** from those with direct knowledge of the attorney's practice, **declaring indicating** that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. **Written statements Certification** must include at least five letters from persons in 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, c, e, f, g and h or must possess significant equivalent experience under Standard III, section 2.B.
- C. ~~*Alternate Procedures for Meeting Minimum Qualifications.*~~ ***Establishing Equivalent Skill And Experience In Capital Murder Cases.*** ~~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 in capital cases to the capitally charged financially eligible defendant.~~ For qualification under this paragraph, attorneys:
 - a. ~~must~~ ~~may~~ **must** be prescreened by a panel of experienced capital murder attorneys to **determine whether the attorney** ~~ensure that they~~ will provide competent representation; and
 - b. must have either:
 - (1) specialized 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. *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

The minimum qualifications ~~An attorney is qualified~~ for appointment in civil commitment proceedings under ORS Chapters 426 and 427 **require that an attorney** ~~if he or she~~:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- 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; and,
- E. Satisfies one of the following:
 - a. has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
 - b. has observed five civil commitment hearings that have been submitted to a judge for determination.

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

The minimum qualifications An attorney is qualified for appointment to juvenile cases, under ORS Chapter 419, require that an attorney if he or she:

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; 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 1973, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standard IV, sections 1-4; and satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified; or
 - b. has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer which involved alleged conduct at an offense level at least as serious as the level of qualification certified.
- C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
- D. For dependency cases, meets the qualifications specified in Standard IV, section 2; or has had equivalent experience, civil or criminal, involving complicated child-

custody issues. In addition, the attorney and satisfies at least one of the following:

- a. has served as counsel or co-counsel in at least two dependency cases adjudicated before a judge or
 - b. has observed at least five dependency cases adjudicated before a judge.
- 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. In addition, the attorney satisfies one of the following:
- a. has served as counsel or co-counsel in at least two delinquency cases adjudicated before a judge which involved alleged conduct at or above the major felony level; or
 - b. has observed, or reviewed transcripts in, at least two contested waiver hearings which involve alleged conduct at or above the major felony level;
- 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. In addition, the attorney satisfies at least one of the following:
- a. has served as counsel or co-counsel in at least two termination of parental rights cases submitted to a judge for determination; or
 - b. has observed, or reviewed the transcripts of, at least two termination of parental rights cases submitted to a judge for determination.

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

The minimum qualifications An attorney is qualified for appointment in appeals other than in murder and capital murder cases require that an attorney 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. Oregon State Bar, Juvenile Law, (current edition), in the case of appeals of juvenile cases;

- 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 Supreme Court's State Bar's Law Student Appearance Program Rule commensurate with the seriousness of the underlying case;
 - b. Has served as co-counsel in at least two 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. 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

The minimum qualifications An attorney is qualified for appointment in appeals in murder and capital murder cases require that an attorney 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 necessary for high that exemplify the quality of representation inappropriate 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~~ ~~Establishing Equivalent Skill And Experience in Capital Appeals~~.* 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 ~~in capital appeals to the capital charged financially eligible defendant~~. For qualification under this paragraph, attorneys:
- a. ~~must~~ ~~may~~ ~~must~~ be prescreened by a panel of experienced capital murder attorneys to ~~determine whether the attorney~~ ~~ensure that they~~ will provide competent representation; and
 - b. must have either:
 - (1) specialized 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. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases

~~The minimum qualifications~~ ~~An attorney is qualified~~ for appointment in post-conviction proceedings in cases other than murder and capital murder cases ~~require that an attorney if he or she:~~

- A. - ~~M~~meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. ~~Has reviewed and is familiar with:~~
 - a. ~~The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686, and~~
 - b. ~~The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.~~
- C. ~~Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition.~~
- D. ~~Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.~~

11. Post-Conviction Proceedings in Murder and Capital Murder Cases

~~The minimum qualifications~~ ~~An attorney is qualified~~ for appointment in post-conviction proceedings in murder and capital murder cases ~~require that an attorney if he or she:~~

- A. Meets the qualifications specified in Standard IV, section 4;

- B. Meets the qualifications specified in Standard IV, section 10; Has reviewed and is familiar with:

~~The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686, and~~

~~The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.~~

- CB. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D.E. For capital murder cases, meets the qualifications specified in Standard IV, section 59 for co-counsel in capital cases in the trial courts appeals. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 59.
- ED. *Alternate Procedures for Meeting Minimum Qualifications for Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in murder and capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases to the financially eligible petitioner. For qualification under this paragraph, attorneys:
 - a. must may must be prescreened by a panel of experienced capital murder attorneys to determine whether the attorney ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized 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

The minimum qualifications An attorney is qualified for appointment in habeas corpus proceedings require that an attorney if he or she meets the qualifications specified in Standard IV, section 2.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL

1. Certificate and Supplemental Questionnaire

In order to receive an appointment to represent a financially eligible person at state

expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, ~~unless covered under Standard III, section 2.C;~~ and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made . The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards. An attorney who submitted a certificate prior to March 1, 2007 is not required to submit a new certificate unless the attorney seeks to accept appointment to cases not covered by a previous certificate, or unless submitting a new contract for execution.

2. **Submission Requirements**

- A. *Contract Attorneys* ~~(Non-public defender)~~. 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 Non-contract 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*. Contract seeking to qualify attorneys pursuant to the Public Defense Organizations provision of seeking to qualify attorneys pursuant to Standard III, section 2.C, shall submit prior to execution of its contract with OPDS and update as necessary:~~
 - ~~a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;~~
 - ~~b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;~~
 - ~~c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 2.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and~~
 - ~~d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 2.C, completed and signed by each attorney.~~

3. **Supporting Documentation**

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
 - A. a. At the request of OPDS; or
 - B. b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.

- B. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 2.C, shall submit prior to execution of its contract with OPDS and update as necessary:
 - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
 - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
 - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 2.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
 - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 2.C, completed and signed by each attorney.

4. Approval for Appointment

- 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 for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
 - a. 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 ~~that~~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 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes **demonstrates** ~~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 approved for appointment 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 as necessary.

5. Suspension From Appointment

- 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 calendar 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.

PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

Name: _____

Bar Number: _____

Address: _____

Vendor or Tax ID#: _____

Email: _____

Foreign language fluency in: _____

Phone Number: _____

Years of Experience:

Fax Number: _____

Practice of Law _____ Criminal _____

Cell/Pager: _____

Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

- Capital Murder
- Lead Counsel
- Co-counsel
- Murder
- Lead Counsel
- Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Juvenile Delinquency
- Major Felony
- Lesser Felony
- Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
- Capital Murder
- Murder
- Other Criminal

APPELLATE LEVEL

- Capital Murder
- Lead Counsel
- Co-counsel
- Murder
- Lead Counsel
- Co-counsel
- Major Felony
- Lesser Felony
- Misdemeanor

- Juvenile Delinquency
- Major Felony
- Lesser Felony
- Misdemeanor
- Juvenile Dependency
- Juvenile Termination

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
- Capital Murder
- Murder
- Other Criminal

Please check only one box below:

I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. 5-21-09) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 2.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

I certify that the above-named attorney will be working at a public defense organization as described in Standard III.2.C, which has provided the information required under Standard V.3.B.

Signature _____

Date _____

Submit signed certificates together with the supplemental questionnaire and any supporting documentation to: Office of Public Defense Services, 1320 Capitol St NE, Ste 190, Salem, OR 97301.

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:

5. Number of years and location(s) of legal practice outside Oregon:

6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)

7. What percentage of your present practice involves handling public defense cases?

8. Briefly describe the nature and extent of your work experience in the area(s) of law which you have certified and any related areas of law.

9. Before which courts and judges have you regularly appeared in case proceedings which you have certified?

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

17. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

Attachment 6

**The Public Defense Services Commission’s Guidelines
and Recommendations for Participation of Public Defense Attorneys in
Drug Court Programs**

D R A F T

In order to ensure that drug court programs involving court-appointed attorneys compensated by the Public Defense Services Commission (PDSC) meet constitutional, statutory and ethical requirements, PDSC concludes that drug courts should comply with the following guidelines. These guidelines are intended to ensure that clients of court-appointed attorneys who are considering participation in a drug court are able to make knowing, intelligent, voluntary and attorney-assisted decisions about whether to participate in a drug court program, and that clients who participate in such programs receive effective representation during the period of their participation.

Guideline 1. A drug court should ensure that the program’s operations and rules permit the establishment and maintenance of the attorney/client relationship.

Commentary

Although drug courts use a collaborative model to support clients who elect to participate in them, Oregon’s Rules of Professional Conduct govern the relationship between the client and the attorney in drug courts as they do in any other criminal proceeding, and counsel may not, for example, agree to the imposition of certain sanctions or disclosures of attorney-client communications in the course of representation without the client’s consent.

As noted by the National Drug Court Institute in “Ethical Considerations for Judges and Attorneys in Drug Court,” May 2001 (“NDCI”) at page 21: In drug court cases, “defense counsel protect the participant’s due process rights while encouraging full participation. Defense counsel’s two duties reflect the normal, bidirectional nature of legal representation. With a participant in drug court, defense counsel explains the court’s processes, prepares the participant for appearances, and helps the participant to conform his or her behavior to the obligations undertaken on entering drug court. Within the drug court team, defense counsel ensures that the client’s perspective is heard and respected, the client’s rights are protected, and the court’s procedures are followed.”

Guideline 2. A drug court should provide the opportunity for drug court candidates to receive pre-trial discovery, including adequate opportunity for counsel to review discovery material and investigate the facts of the case and the background and special conditions or circumstances of the defendant, such as residency status and mental condition.

Commentary

Article 1, Section 11 of the Oregon Constitution provides, “In all criminal prosecutions, the accused shall have the right to be heard by himself and counsel....” This constitutional right to counsel would be meaningless without an adequate opportunity for counsel to inform himself or herself about the nature of the charges against the defendant, the factual and legal circumstance of the case and the background of the defendant.

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

STANDARD 1.1 – Prerequisites for Representation

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. A lawyer should only accept an appointment or retainer if the lawyer is able to provide quality representation and diligent advocacy to the client.

STANDARD 1.2 – General Duties and Responsibilities of a Lawyer to Clients....

Upon being retained or appointed by the court, a lawyer should contact the client as soon as practicable and maintain regular contact thereafter. A lawyer should endeavor to establish a relationship of trust and open communication with the client and should diligently advocate the client’s position within the bounds of the law and the Oregon Rules of Professional Conduct.

STANDARD 1.3 – Role of the Lawyer

Except as provided by the Oregon rule of Professional conduct 1.2(b) and (c), a lawyer shall abide by a client’s decisions concerning the objectives of representation in accordance with ORPC 1.2 and shall consult with the client as to the means by which they are to be pursued in accordance with ORPC 1.4. When representing a client with diminished capacity, the lawyer shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

STANDARD 1.4 – Initial Client Interview

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

STANDARD 2.7 – Independent Investigation

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

Guideline 3. A drug court should provide adequate time and opportunity for counsel to conduct a confidential consultation with the client regarding all matters relevant to the decision to enter drug court, including:

- a. the nature and purpose of drug court,
- b. the rules regarding eligibility,
- c. the nature of a therapeutic courtroom,
- d. adversarial as opposed to non adversarial processes,
- e. the staffing, purpose, eligibility rules, and fees of the drug court,
- f. the drug court agreement and any related documents,
- g. the requirements for successful completion of the program, including the nature and extent of required treatment, the frequency of court appearances, and any other requirements of the program,
- h. the consequences of complying or failing to comply with drug court rules, including any system of graduated sanctions, rewards, the nature of proceedings to impose sanctions or terminate,
- i. the legal consequences of successful completion or voluntary or involuntary termination,
- j. any rights the defendant will be required to waive such as the right to a preliminary hearing, a speedy trial, a jury trial, or facts or evidence that will be stipulated to, or any other right that the defendant will waive,
- k. the nature and extent of any investigation that will be done,
- l. whether pretrial motions may be litigated,
- m. the client's alternatives to drug court, the likelihood of success of those alternatives in view of the information available from discovery, from the client and from any investigation conducted in the case, and the advantages and disadvantages of each alternative,
- n. the legal protections that have been established by court order or agreement with the state that protect that client from use of statements made or confidential medical, treatment or other records disclosed in drug court from use in other proceedings,
- o. the expectation of the court that the client will be open and truthful with the court and staff about substance use, assuming that adequate legal protections exist,

- p. the role of counsel for the defendant in the drug court setting,
- q. that it is the client's decision whether or not to enter and remain in drug court,
- r. the attorney's advice on whether the client should enter drug court (based on the client's legal interests and interest in recovery).

Commentary

STANDARD 2.8 – Pretrial Negotiations and Admission Agreements

A lawyer should:

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

Oregon Rule of Professional conduct 1.1 requires that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." The National Drug Court Institute's model rules for defense attorneys in drug courts provides: "Defense attorneys' ethical obligation of competence includes a duty to explore disposition without trial, a duty to become familiar with all sentencing alternatives, a duty to obtain a thorough understanding of the drug court model and court practices and to participate in interdisciplinary training regarding substance abuse and treatment and locally available treatment options." In addition lawyers for clients in drug courts should obtain adequate training in the following areas: cultural competence, treatment issues, reliability limits of individual drug tests, protection of due process rights, confidentiality protections for drug records, medical records and the like (Missouri guidelines for adult drug treatment courts).

Guideline 4. A drug court should, in consultation with the Office of Public Defense Services, identify for appointment in drug court cases attorneys

- (a) knowledgeable about: controlled substances and the nature of addiction, available treatment options, the treatment of coexisting disorders, links between domestic violence and substance abuse, the reliability limits of

- individual drug tests, confidentiality protections for drug records, medical and other records, and
- (b) with the training and experience needed: to accurately assess the merits of the charges against the defendant and any substantive or procedural defenses that may be available, to communicate effectively with drug court clients and staff, and to protect the client's right to due process throughout the proceedings.

Commentary

"Critical Issues for Defense Attorneys in Drug Court," Monograph Series 4, National Drug Court Institute, 2003.

STANDARD 1.1 – Prerequisites for Representation

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, training, experience, thoroughness, and preparation reasonably necessary for the representation. A lawyer should only accept an appointment or retainer if the lawyer is able to provide quality representation and diligent advocacy to the client.

Recommendation. Attorney involvement in planning of drug courts

In addition to the guidelines set forth above, PDSC also recommends that drug court programs involving court-appointed attorneys compensated by the Public Defense Services Commission include a representative of the local public defense system in the planning of any new drug courts or the redesign of any existing drug courts, and in the development of policies and procedures for the court.

Some of the interests of the potential clients that the defense will be seeking to protect in the design and operation of the court are: that participation be voluntary for clients, that unsuccessful participants not be penalized for voluntary or involuntary withdrawal from drug court, that eligibility criteria be broad and not restricted on the basis of race or gender, that clients be protected against use of statements made in drug court as evidence outside of the drug court setting, that clients' rights to confidentiality be protected from disclosure or use beyond the terms agreed upon, that the content of waiver documents be limited to the scope necessary for the proper functioning of the court, that treatment or other program requirements be the least restrictive possible to achieve agreed-upon goals, that costs and fees not be unduly burdensome. Derived from "Ten Tenets of Fair and Effective Problem Solving courts," American Council of Chief Defenders, National Legal Aid and Defender Association, and "Critical Issues for Defense Attorneys in Drug Court," Monograph Series 4, National Drug Court Institute, 2003.

Attachment 7

Summary of Results from the
2009 OPDS Statewide Public Defense Performance Survey
By Paul Levy
(Originally published in the April 2009
Juvenile Rights Project *Juvenile Law Reader*)

Representation in juvenile court across Oregon by public defense providers appears to be improving, according to the second annual Statewide Public Defense Performance Survey conducted earlier this year by the Office of Public Defense (OPDS). While not a scientific survey, the responses to the recent survey also show conflicting views about the quality of representation in juvenile dependency and delinquency cases, with most respondents calling the work “good” but relatively few saying that the representation is “always” satisfactory. The survey also confirms that caseloads continue to be viewed as too large. Comments by survey respondents also highlight specific concerns in some jurisdictions.

The online survey was sent to all of Oregon’s circuit court judges, each elected district attorney, all juvenile department directors, and the coordinators for each Citizen Review Board. A total of 136 persons answered the survey, which asked about the quality of representation by public defense providers in adult criminal and juvenile court cases, and provided an opportunity for open-ended comments, concerns and suggestions. OPDS has provided public defense contractors with a summary of responses for the judicial districts where they provide representation.

Of the 82 respondents who rated their “overall impression of the quality of public defense in juvenile dependency cases,” 61% rated it as “good,” 24% said “excellent,” and 15% said “fair.”¹ None rated it as “poor.” For delinquency representation, the numbers are 63% “good,” 22% “excellent,” and 14% “fair.” Asked whether the quality of representation changed in the past year for dependency cases, most respondents (64%) said it had “remained about the same,” but 28% said it had “improved somewhat,” and 5% said it had “improved significantly.” A small number (4%) responded that representation had “worsened somewhat.” For delinquency representation, the numbers are 68% “remained about the same,” 27% “improved somewhat,” 1% “improved significantly,” and 4% “worsened somewhat.” By comparison, for adult criminal representation more respondents said the representation had

¹ The numbers presented here are the percentages of all responses to the survey. Obviously, the results differ when results for a particular jurisdiction are examined.

remained the same, with only one person saying it had improved significantly and 10% responding that it had worsened somewhat.

The survey makes clear that quality concerns continue to exist with individual public defense providers. Only 34% of the respondents said attorneys “always” provide satisfactory representation of clients in dependency cases, with 49% saying it happens “often,” and 17% saying “sometimes.” The numbers were about the same for delinquency cases, but for criminal representation only 22% of respondents said representation was “always” satisfactory. Asked whether they question the competence of any attorney providing public defense representation, for dependency cases 22% said “yes,” for delinquency cases 21% said “yes,” and for criminal cases a very concerning 44% said “yes.”

The overwhelming weight of comments on the survey last year identified high caseloads as a barrier to quality representation in all case types. Asked about this on the survey this year, the concerns were most evident with criminal cases, where most respondents (61%) said caseloads were “somewhat too large,” 9% said they were “significantly too large,” and 30% said they were “about right.” For dependency caseloads, the responses were 44% “about right,” 43% “somewhat too large,” and 11% “significantly too large.” For delinquency caseloads there were fewer concerns with most (63%) saying “about right,” 31% “somewhat too large,” and 5% “significantly too large.”

The open-ended comments on the surveys provided a wealth of useful information, with most expressing either concerns or praise for particular providers. As with the survey last year, comments also addressed concerns about the low rate of compensation for some providers, and challenges for attorney recruitment and retention. Other comments elaborated on concerns about workload, case preparation, quality control and oversight. OPDS will use all of the information from the survey for system-wide planning, and to address specific concerns that were identified.

For more information about the survey, contact Paul Levy, OPDS General Counsel, at paul.levy@opds.state.or.us.