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Barnes H. Ellis, Chair
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Henry H. Lazenby, Jr.
John R. Potter
Janet C. Stevens



Ex-Officio Member

Chief Justice Wallace P. Carson, Jr.

Executive Director

Peter A. Ozanne

Public Defense Services Commission Meeting

Thursday, July 28, 2005
9:00 a.m. to 1:00 p.m.

Senator Meeting Room
Courthouse Square Building
555 Court Street N.E.
Salem, Oregon 97301

AGENDA

1. **Action Item: Approval of the Minutes** of PDSC's June 16, 2005 Meeting
(Attachment 1) Barnes Ellis

2. Review of Marion County's Public Defense Delivery System Peter Ozanne
 - a. The Judicial Perspective: Hon. Paul Lipscomb,
Presiding Judge

Hon. Terry Leggert

Hon. Pamela Abernethy

 - b. The Contractors' Perspective: Dick Cowan &
Steve Gorham, MCAD

Richard Condon &
Jeff Carter, JAC

 - c. Review of OPDS's Report to PDSC and General Discussion
(Attachment 2) Barnes Ellis
Peter Ozanne

3. Review of Qualification Standards for Court-Appointed Counsel
(Attachment 3) Peter Ozanne

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| 4. Action Item: Approval of a Revision to OPDS's Personnel Rules (<i>Attachment 4</i>) | Kathryn Aylward |
| 5. Action Item: Approval of OPDS's Proposed Compensation Plan (<i>Attachment 5</i>) | Peter Ozanne
Kathryn Aylward |
| 6. OPDS's Monthly Status Report | Management Team |
| 7. New Business | Barnes Ellis |

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

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

June 16, 2005 Meeting of the Commission
Inn of the Seventh Mountain
Mt. Washington Room
Bend, Oregon

MEMBERS PRESENT: Shaun McCrea
John Potter
Jim Brown
Chip Lazenby
Wallace P. Carson

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Ingrid Swenson
Peter Gartlan
Rebecca Duncan
Lorrie Railey

[Tape1, SideA]

Agenda Item No. 1 Approval of the Minutes of the Commission's April 2005 meeting

01 Chair McCrea The first item on the agenda as an action item is approval of the minutes from the April, 2005. Are there any corrections, discussion, motion for approval?

MOTION: John Potter moved for approval of the minutes; Jim Brown 2nd, hearing no objection, the motion passed: **VOTE 4-0.**

Agenda Item No. 2 OPDS's Monthly Report

005-731 OPDS's Management Team reported to the Commission on the following matters: the status of PDSC's proposed budget for 2005-07; administrative changes implemented by OPDS's Contract and Business Services Division (CBS), including automation of its database regarding requests for and approvals of non-routine expenses and an update of OPDS's website; personnel changes at OPDS's Legal Services Division (LSD); legislative developments regarding new criminal law and procedure; the impact of *Blakely v. Washington* on LSD's workload and appellate case backlog, and new processes the Division has developed to handle the increased caseload; the new Appellate Panel; new legislation to address the impact of *Blakely v. Washington*; progress of the contractor site visit process; a revised schedule for the Commission's service delivery planning process in 2005 (i.e., July 21 and August 11 in Marion County, September 8 in Klamath County, October 21 in Bend in conjunction with the PDSC/OCDLA Management Conference, November 10 in Yamhill County, and December 1 to finalize service delivery plans for the foregoing counties). Marc Friedman reported on progress in the development of Lane County's new court-appointment system. The Commission discussed plans for the PDSC/OCDLA Management Conference in Bend from October 21-22, 2005

and the National Association of Criminal Defense Lawyers Conference and related events in Portland from August 3-6, 2005

Agenda Item No. 3

Approval of new and amended PDSC's Policies and Procedures (Attachment 2)

740-997
[Tape 1; Side B]
001-257

PDSC reviewed and approved the policies and procedures as set forth in Attachment 2, with the exception of a new descriptive heading for section 1.7.3.

257 Chair McCrea

I would entertain a motion . . . approving the Travel Expenditure and Miscellaneous Business Expenses Policies and Procedures; Summary of Revisions Public Defense Payment Policies and Procedures; Addition of Section 1.7 as amended.

MOTION: John Potter moved to approve; Chip Lazenby 2nd; hearing no objection the motion passed; **VOTE 4-0.**

Agenda Item No. 4

Review of the Report to the Commission on Conflicts of Interest and Attorney Substitutions

271- 887

Following a report from Ann Christian and Paul Levy, co-chairs of a Workgroup on Conflict of Interest and Attorney Substitution authorized and supported by PDSC, and after lengthy discussions between the Commission and those in attendance, the Commission deferred formal approval or acceptance of the Workgroup's written report and recommendations to a subsequent meeting.

[Tape 2; Side A]

Agenda Item No. 5

Review of the Executive Director's Biennial Report to the Legislature.

002-050

PDSC offered suggestions to the Executive Director regarding his Biennial Report, including recommending greater emphasis in the report's Executive Summary on the lack of additional expense incurred by CBS in moving to more economical "consolidated" office space.

Agenda Item No. 6

New Business

055 Chair McCrea

Any new business? I would entertain a motion to adjourn.

MOTION: John Potter moved to adjourn the meeting; C. Lazenby 2nd; hearing no objection, the motion passed.

VOTE: 4-0

Meeting adjourned.

Attachment 2

PRELIMINARY DRAFT

(July 21, 2005)

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

Introduction

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

Foremost among those strategies is PDSC's "service delivery planning process," which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 and the first quarter of 2005, the Commission completed evaluations of the local delivery systems in Benton, Lane, Lincoln, Linn and Multnomah Counties and developed Service Delivery Plans in those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report presents the results of OPDS's initial examination and preliminary investigation of conditions in Marion County's public defense delivery system. It also represents the first step in PDSC's service delivery planning process.

PDSC's Service Delivery Planning Process

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

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

Third, after considering OPDS's report and public comments in response to that report and during its meetings in the region, PDSC will develop a Service Delivery Plan for the region. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's

public defense services. In either event, the Commission's Service Delivery Plans will (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

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

Background and Context to the Service Delivery Planning Process

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the Quality Assurance Task Force is planning site visits of the largest contractors in counties across the state, including Columbia, Jackson, Klamath, Multnomah and Umatilla Counties.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers.

In accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

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

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

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

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the

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

delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or

³ *Id.*

district attorney offices and larger law firms, but in which they no longer wish to practice law.

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

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

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

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

quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

OPDS's Preliminary Investigation in Marion County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are (1) to provide PDSC with an assessment of the strengths and

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

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

On July 28 and August 11, 2005, PDSC will hold public meetings in Marion County to (a) consider the results of OPDS's investigation in the county as reported in preliminary drafts like this one, (b) receive testimony and comments from the Commission's local contractors, prosecutors, judges and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Marion County.

Early drafts of this report are intended to provide a framework to guide the Commission's discussions about the condition of Marion County's public defense system and services and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. These draft reports also offer guidance to PDSC's contractors, public officials, justice professionals and other citizens interested in Marion County's criminal and juvenile justice systems about the kind of information and advice that will assist the Commission in improving the county's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Marion County's justice system may be the single most important factor contributing to the quality of the final version of this report and the Commission's Service Delivery Plan for Marion County. OPDS welcomes written comments from any interested official or citizen, which should be mailed at least five days in advance of PDSC's July 28 or August 11, 2005 meeting in Salem to:

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

or e-mailed two days in advance to:

Peter.A.Ozanne@opds.state.or.us

PDSC also welcomes any interested official or citizen to attend its July 28 and August 11, 2005 meetings in Salem, Oregon. Both meetings will begin at 9:00 a.m. and end at 1:00 p.m. and will be held at the following location:

Senator Meeting Room
Courthouse Square Building
555 Court Street N.E.
Salem, Oregon 97301

OPDS will invite representatives of its local contractors, the Circuit Court, the District Attorney's Office, the Sheriff's Office and other local justice agencies to appear at these two meetings for the purposes of presenting testimony and discussing issues concerning the condition and operation of the public defense system in Marion County. On July 28, OPDS anticipates that at least three Circuit Court judges and representatives of the two consortia that contract with PDSC will be present to testify concerning issues of concern to them and to discuss matters of interest to the Commission.

The Commission will also reserve time during its July and August 2005 meetings in Salem for comments from other persons in attendance who wish to provide the Commission with additional input regarding public defense services in Marion County. PDSC conducts its meetings openly and informally in order to encourage free-flowing discussions between Commission members, its guests and the audience.

A Demographic Snapshot of Marion County⁴

Located 50 miles south of the Portland Metropolitan Area and between the Willamette River and the Cascade Mountains, Marion County covers 1,200 square miles and includes 20 cities, as well as the state capital. With a population of nearly 300,000, Marion County is the fourth largest county in Oregon. It is also the fastest growing county in the Willamette Valley, with a growth rate of 25 percent from 1990 to 2000 and a projected growth rate of 16 percent from 2000 to 2010.

Although Marion County remains the largest producer of agricultural income among Oregon's 36 counties, its economy is increasingly dependent on government, with 38 of the largest state agencies located in and around Salem.

⁴ The following information was taken from Marion County's official website and from data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's Oregon: A Statistical Overview (May 2002) and Oregon: A Demographic Profile (May 2003).

Marion County is also the home of Willamette University and Chemeketa Community College. Nevertheless, the education level of its residents is relatively low, with 13 percent of its adult population holding a Bachelor's Degree and 6.7 percent with a post-graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent). Twenty-one percent of the county's population of adults (25 years old or older) does not have high school diplomas, compared to 15 percent of all Oregonians. Marion County also has the second highest teen pregnancy rate in the state at 22 percent, compared to a statewide average of 16.7 percent.

Although Marion County is the home of state government, it has had above average unemployment rates over the past decade and ranked only twelfth in per capita income in 2000. The county also has a relatively small proportion of professionals, scientists and managers in its workforce for a populous county with numerous state agencies (7.2 percent, compared to 11.4 percent in Multnomah County and a state average of 8.9 percent in 2000). The percentage of Marion County's residents living in poverty is 13.5, compared to 11.6 percent in Oregon and 12.4 percent in the United States.

Marion County is the third most diverse county in Oregon. Its non-white and Hispanic residents make up 23.5 percent of the county's population, compared to 16.5 percent for the state as a whole.

With juveniles (18 years old or younger) making up a high percentage of its total population at 27.4 percent, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is larger than the state's at-risk population of 24.7 percent. Marion County had the second highest index crime rate in the state in 2000 with 58.5 index crimes per 1,000 residents, following Multnomah County with 74.8 per 1,000 and compared to the state average of 49.2.⁵ The fact that the county is the site of two major state correctional institutions and the state's largest mental hospital is considered by many residents and observers as a significant contributing factor to the county's relatively high crime rate

The public defense caseload in Marion County is approximately ten percent of Oregon's total public defense caseload.

OPDS's Preliminary Findings in Marion County

PDSC's Contractors. The Commission has four contractors that provide public defense services in Marion County: (1) the Marion County Association of Defenders, Ltd. (MCAD), which handles the bulk of the county's criminal cases; (2) the Juvenile Advocacy

⁵ For the purposes of this statistic, "index crimes" are those crimes reported by the Oregon State Police as part of its Oregon Uniform Crime Reports, and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft, including auto theft, and arson. Oregon: A Statistical Overview at p. 122.

Crime rates in Marion County have been dropping, however, as they have been across the state. For example, from 1990 to 2000 the index crime rate in Marion County dropped by 7 percent and across the state by 14 percent. Over the same period of time, the county's crime rate for offenses against persons decreased by 21 percent, compared to a statewide decrease of 24.5 percent.

Consortium (JAC), which specializes in juvenile defense representation in the county; (3) Andrew Ositis, who appears in civil commitment proceedings on behalf of allegedly mentally ill persons; and (4) Harris Matarazzo, who represents persons subject to the jurisdiction of the Psychiatric Security Review Board.⁶

OPDS has already interviewed a significant number of judges, defense attorneys, prosecutors and corrections officials in Marion County regarding the Commission's two largest contractors,⁷ the structure and operation of the county's service delivery system and the quality of local public defense services. Nevertheless, OPDS will restrict its preliminary findings in this draft report primarily to information gathered at OPDS's formal meetings with members of MCAD's Board of Directors and members of JAC, and from the consortia's written responses to OPDS's request for information. Once the Commission obtains information from the testimony and discussions at its July 28 meeting, and after OPDS completes its full schedule of interviews of justice stakeholders in the county, OPDS will include in the next draft of this report more extensive and perhaps more critical findings regarding the structure and operation of the public defense delivery system and the quality of public defense services in Marion County.

Marion County Association of Defenders, Ltd. MCAD lists 55 members on its "Active Roster" of participating attorneys, although some of those lawyers apparently handle consortium cases infrequently.⁸ MCAD employs Steve Gorham for 70 percent of his time (.70 FTE) as its Executive Director and operates under the direction of a nine-member Board of Directors chaired by Salem attorney Richard Cowan.

⁶ OPDS plans to interview Mr. Ositis and Mr. Matarazzo and other stakeholders in the civil commitment and Psychiatric Security Review Board processes in preparation of the next draft of this report for the Commission's August 2005 meeting in Salem.

⁷ OPDS understands that the membership of the two largest consortium contractors in Marion County, MCAD and JAC, are made up of individual lawyers rather than law firms. Therefore, Marion County apparently will not present the Commission with the policy question of whether PDSC should encourage, and perhaps eventually require, some or all consortia to be comprised of individual lawyers, presumably including individual lawyers from the same law firm. While a significant number of able and effective law firms currently participate in consortia across the state, OPDS has found that an understandable resistance to operational transparency and loss of management prerogatives by law firms increases the challenges to a consortium's administrator in addressing problems with attorneys' performance and conduct, and to OPDS in determining who is performing, and who is getting compensated for, legal work pursuant to PDSC's contracts.

⁸ In response to the questionnaire that OPDS requested MCAD and JAC to complete prior to PDSC's July meeting in Marion County, MCAD stated:

Each consortium attorney decides whether or not to specialize in criminal defense. There is no limit to an attorney's practice that can be consortium related. The vast majority of consortium members who do the everyday work of the consortium "specialize" in indigent defense.

Appendix A, MCAD's "Answers to Questionnaire for Consortia Administrators and Boards" (MCAD's Answers") at page 3, Question 9. Because of an ambiguity in the relevant question, OPDS is currently unable to determine (a) what percentage of an average MCAD member's law practice is devoted to criminal defense practice, (b) the range of such percentages among MCAD's membership or (c) whether MCAD has policy objectives or aspirational goals regarding the extent to which any member of the consortium should specialize in criminal defense practice.

To provide guidance to PDSC's largest contractors in Marion County concerning this service delivery planning process and background information to the Commission in preparation for its public meetings in the county, OPDS distributed copies of PDSC's Service Delivery Plan for Multnomah County and a lengthy questionnaire to both MCAD and JAC. The questionnaire (the "Site Visit Questionnaire") was designed for consortium contractors by OPDS's Quality Assurance Task Force in preparation for contractor site visits.

MCAD's "Answers to Questionnaire for Consortium Administrators and Boards" ("MCAD's Answers") is attached as Appendix A, along with the following attachments: Att-1, "Articles of Incorporation; Att-2 "Corporate Bylaws;" Att-3, "Attorney Manual: Policies and Procedures," ("MCAD's Attorney Manual"); Att-4, "Position Description" for the Executive Director; Att-5, "MCAD New Member Information Sheet" and Att-6, MCAD's most recent "Email Summary." The apparent corporate formalities and the lengthy and detailed policies and procedures set forth in these materials reflect MCAD's careful attention to administrative detail and its lengthy history as the primary public defense consortium in Marion County.

On May 18, 2005, Shelley Dillon and Peter Ozanne of OPDS met with Dick Cowan and three other members of MCAD's Board of Directors. These board members expressed enthusiasm for public defense practice and a personal commitment to ensuring the quality of the legal services provided by MCAD. Recognizing that MCAD's size presented particular challenges to monitoring the performance and conduct of its attorneys and to addressing problems with the quality of their services, they noted recent improvements in MCAD's quality assurance processes, including a more systematic and rigorous review of attorney performance problems, design of more effective remedial strategies, and the delegation of greater authority to MCAD's Executive Director to intervene when such problems arise.⁹ They pointed to the relatively recent removal from MCAD of one underperforming attorney as a sign of MCAD's more systematic and rigorous quality assurance process, which is administered by the consortium's Quality Assurance Committee.

MCAD's answers to the Site Visit Questionnaire describe these quality assurance processes in more detail.¹⁰ In light of the importance of this topic, OPDS urges the readers of this report to review in their entirety MCAD's answers to Questions 21 and 22 in the Site Visit Questionnaire in Appendix A.

All four board members were adamant in their support for MCAD's attorney compensation system, which is based on billable hours and supported by detailed policies and procedures and a specially-designed electronic billing system. They believe this compensation system is far superior to a per case rate of compensation because hourly rates reward actual work required and performed in a case.¹¹ At the same time, they

⁹ See also MCAD's Attorney Manual at pages 2-6.

¹⁰ MCAD's Answers at pages 7-8, Question 21 and 22.

¹¹ See also MCAD's Attorney Manual at pages 13-20 and 31-34.

expressed pride in the detail and rigor of MCAD's policies and procedures to cap total attorney billings and non-routine expenses in individual cases.¹² MCAD's billing system, which includes what OPDS understands to be a proprietary electronic system, and to which nearly half of its 40-page Attorney Manual is devoted,¹³ clearly reflects a commitment to accurate and prompt billing and payment. MCAD's four board members also expressed confidence that, as a result of its compensation and billing systems, their consortium was providing public defense services at a lower cost than most, if not all, other contractors in the state.¹⁴

The process of admitting new members to the consortium remains somewhat unclear to OPDS. The four board members indicated that they recently interviewed and hired several new attorneys pursuant to a relatively new formal hiring process. They explained this process as beginning with an interested attorney's letter of inquiry, followed by an interview with the Executive Director and members of the board, and concluding with a vote of the Board of Directors to grant or deny the applicant's admission to the consortium. This process appears to be memorialized in MCAD's Attorney Manual as follows: "New members must be voted in by a majority of the Board of Directors."¹⁵ MCAD does not appear to have any formal policies or procedures to actively recruit qualified candidates for membership, in addition to responding to the applications of interested lawyers.¹⁶ Several past and present MCAD members whom OPDS has spoken with indicate that MCAD's admission process has historically been quite informal, based upon a candidate's personal contacts with consortium members and the assessment of a candidate's qualifications by the most influential members of MCAD.¹⁷

In response to the Site Visit Questionnaire, MCAD indicated that it has a formal mentoring system for new and inexperienced members, which is described in its Attorney Manual.¹⁸ OPDS was unable to locate that description in the Attorney Manual, though Section 1.0 D. of the manual does set forth a requirement that "[a]ll new members are required to develop and complete a personal mentoring program" and Section 1.0 G. refers to a "Quality Assurance Mentor Program."¹⁹ MCAD's "New Member Information Sheet" also refers to a

¹² MCAD's Attorney Manual at pages 21-30 and 30-40.

¹³ *Id.*

¹⁴ See also MCAD's Answers at page 11, Question 29. Presumably, Yamhill County Defenders, Inc., which adopted MCAD's compensation and billing systems, can make the same claim. PDSC plans to visit Yamhill County in November 2005.

¹⁵ MCAD's Attorney Manual at pages 1-2, section 1.0 D. Prior to July 13, 2005 when MCAD's Attorney Manual was modified, Section 1.0 D. of the manual stated that "[m]embership is currently closed" and that "[a]ction must be taken by both the Board of Directors and the membership in order to open the MCAD membership." OPDS assumes that such actions were taken recently.

¹⁶ In MCAD's Answers, MCAD does state that, in the event its membership becomes too small or too imbalanced between experienced and inexperienced attorneys, MCAD "will advertise for new membership by communicating this need" to law schools and in relevant professional publications. (at pages 4 and 10.)

¹⁷ MCAD's Answers tend to confirm these reports. In response to Question 12 of the Site Visit Questionnaire – "How do you insure that new attorneys can become part of the consortium?" – MCAD stated: "In the past, [by] word of mouth . . ." *Id.* at page 4, Question 10.

¹⁸ *Id.* at page 4, Question 12.

¹⁹ MCAD's Attorney Manual, page 1-2; page 3, section 1.0 G.3) b.). MCAD's Answers also state that "MCAD encourages new members to observe Marion County Court procedures and to call any MCAD member with questions." MCAD's Answers at page 4, Question 10.

mentoring program, stating that “[a]ll new members are required to enroll in MCAD’s mentoring program,”²⁰ but does not contain a description of the program either.

Court-appointments of MCAD members are made on a “rotational basis” in which attorneys sign up for specific dates as “attorney-of-the-day” and receive all the cases generated by a particular court or court docket on that date.²¹ OPDS is uncertain of the extent to which MCAD’s cases, other than murder and aggravated murder cases, are assigned to individual attorneys based upon the complexity of a case and the qualifications of the lawyer, other than by the categories of cases set forth in the Attorney Manual such as “felony,” “misdemeanor” and “Spanish speaking misdemeanor.”²² At least one of MCAD’s board members expressed opposition to this case assignment system due to the resulting uncontrolled and unequal distribution of cases among MCAD’s attorneys. The majority of MCAD’s members apparently favor this system, however, on the ground that it promotes early personal attorney contact with clients in the courtroom.

Based upon its May 18 meeting and informal conversations with MCAD’s Executive Director and Board members, OPDS has the impression that MCAD is in the process of trying to move away from an organizational structure in which its members historically regarded consortium membership as a vested right and significantly limited their delegation of authority to MCAD’s Board and Executive Director to affect that right or to manage the organization²³ – akin to the traditional relationship between a university president and tenured faculty. MCAD now appears to be moving in the direction of an organizational structure in which MCAD’s Board and Executive Director are authorized to exert more control over the admission of new members, remedying members’ underperformance or misconduct, the suspension or termination of rights to membership, and the day-to-day operations of the organization – much like a large law firm’s delegation of such authority to a managing partner, an executive committee or a firm administrator.²⁴

²⁰ MCAD’s Answers, Att-5, page 2.

²¹ MCAD’s Attorney Manual at pages 11-12, section 3.5.

²² Id.

²³ Perhaps this organizational structure and allocation of authority arose from MCAD’s origins. MCAD’s Answers state, in relevant part:

MCAD was created to both protect the then current indigent defense providers in Marion County from arbitrary and capricious actions that had in the past been taken against them.

* * * * *

MCAD . . . provides to its members the protection, pride of membership, and power of the group to allow them to do their job without outside political or other influence.

MCAD’s Answers at pages 10-11, Question 29.

²⁴ MCAD’s Attorney Manual may reflect this potential shift in organizational structure and redistribution of management authority. MCAD’s policies and procedures afford extensive protections for its members in the context of complaints about their performance. See MCAD’s Attorney Manual, pages 3-6, section 1.0 H. and I. On the other hand, other subsections of the Attorney Manual governing membership establish the authority of the Executive Director or the Board of Directors to suspend a member “for good cause shown” and terminate a member “with the recommendation of the Quality Assurance Committee.” Id. at pages 2-3, section 1.0 G 2.) 2.) (sic) and 3). Other than “prior notice and an opportunity to be heard,” Id. at section 1.0 G 3), it is unclear whether the protections afforded to members facing a formal complaint in MCAD’s Attorney

At this stage of its investigations, OPDS is uncertain about the extent to which MCAD has accomplished this change in organizational structure and distribution of authority.

The board members who met with OPDS on May 18 did not appear to be enthusiastic about changing an organizational structure that has evolved over time to address the need for public defense services in Marion County. For example, they did not believe that adding outside members to their board would improve MCAD's management or relations with the community, observing that MCAD's current board members have sufficient business and management expertise and ties to the local community.

These MCAD board members expressed general satisfaction with their members' professional relationships and dealings with judges, prosecutors and other justice professionals. They did express concern, however, over the rate of turn-over among the Circuit Court's staff and the resulting difficulties for MCAD's attorneys in understanding local court processes and working efficiently with the court.

MCAD provided a lengthy response to the request in the Site Visit Questionnaire to describe "some of the things your consortium does well," including MCAD's (1) high quality legal services, (2) management, planning and personal services in support of Marion County's judicial and justice systems, (3) innovative administrative processes and management systems that have benefited OPDS and contractors across the state, (4) an hourly rate system based on payment for actual work done in an efficient and accountable manner and (5) a wealth of experience in post conviction relief and habeas corpus cases.²⁵ In summarizing its strengths, MCAD stated: ". . . if one chose to compare MCAD's representation of the indigent accused against any other current actual system with the same resources available, based on any set standard, that MCAD's representation would be equal or exceed that other group or system."²⁶ OPDS again urges readers to review this response to the Site Visit Questionnaire in its entirety.

In response to the final question in the Site Visit Questionnaire regarding "areas in which you think improvement is needed," MCAD concluded:

At this time it is best to leave areas of improvement for others to suggest. That is not to say that MCAD and its members cannot improve. One can always incrementally and individually strive to improve oneself and the work that we do. Given the resources provided improvement might need to be left to this type of individual improvement. Given more resources, especially in the hourly rate and the lessening of caseloads (read more time to work on less cases) could not help but improve the system.

Manual also apply to members facing termination. Section 1.0 G. of the Attorney Manual governing "Membership Termination" does not cross-reference MCAD's formal complaint process, other than references to the "Quality Assurance Committee" and a "Quality Assurance Mentor Program." Finally, MCAD's lines of authority or responsibility regarding membership and its members' rights with regard to these matters are further complicated by Section J. of the Attorney Manual, which provides for binding arbitration for "[a]ny disagreement between MCAD and the member attorney. Id. at page 6.

²⁵ MCAD's Answers, pages 9-11, Question 29.

²⁶ Id. at page 11.

More resources to expand training or fund a full time trainer would also at least theoretically improve quality.²⁷

Juvenile Advocacy Consortium. JAC specializes in juvenile law and handles most of the juvenile caseload in Marion County. It is a much smaller and, therefore, more tightly-knit organization than MCAD.²⁸ Until the beginning of this year when JAC added two new lawyers, the consortium had 10 members. Because of the rapidly growing juvenile caseload in the county, JAC plans to recruit three more lawyers in the next 30 to 60 days.²⁹

On June 22, 2005, Shelley Dillon and Peter Ozanne met with five of the most senior members of JAC. Their comments and responses to OPDS's questions during that meeting, as well as JAC's written "Responses to Questions" ("JAC's Responses") to the Site Visit Questionnaire (which is attached as Appendix B, along with a copy of the questionnaire), generally reflect a serious commitment to juvenile law practice, rigor in their selection and mentoring of new lawyers, pride in the quality of the lawyers in their consortium and a willingness to consider changes to improve the way JAC operates and manages itself.

Because of the consortium's relatively small size, JAC's members have traditionally shared management responsibilities among its members and reached decisions affecting the consortium by consensus.³⁰ While the consortium has no formally designated administrator or executive director, Salem attorney Richard Condon has been primarily responsible for negotiating and administering JAC's public defense contracts in recent years.³¹ The members of JAC now recognize that the recent growth in Marion County's juvenile caseload, the resulting increase in the size of their consortium and PDSC's interest in systematic quality assurance and management processes, require them to develop a more formal organizational structure and more explicit policies and procedures, including designation of a consortium administrator, formal bylaws, more structured contractual relationships among JAC's members, and a board of directors with outside members.³²

²⁷ MCAD's Answers at page, 11, Question 30.

²⁸ For example, JAC's members meet for lunch once a week and participate in a retreat once a year. Appendix B, JAC's "Responses to Questions" ("JAC's Responses") at Question 1 and 17.

²⁹ Id. at Question 6.

³⁰ Id. at Question 2.

³¹ Id. at Question 3.

³² JAC suggests in its response to OPDS's questionnaire that formalities like a board of directors will change the consortium's management style. See JAC's Responses at Question 3. OPDS would hope that JAC retains the collaborative and collegial approach to governing itself that has apparently promoted the quality of its law practice and the enthusiasm and commitment to that practice of its members.

JAC also proposes that its new board of directors "will meet weekly or biweekly" and handle all major issues for the consortium, "including but not limited to: hiring, mentoring, performance review, conflicts issues, division of workload [and] committee assignments." Id. at Question 2. Given its apparent interest in attracting (and retaining) competent, influential and presumably busy people as outside board members, JAC should consider delegating some of the foregoing tasks of operational significance to its new administrator and an executive committee made up of rotating consortium members; and reserving to its board the more

Among JAC's most apparent strengths are the commitment of its members to recruiting and retaining highly motivated and capable juvenile law practitioners and their pride in the legal skills and civic contributions of their colleagues.³³ JAC's members also express a commendable desire to increase the cultural diversity of their consortium.³⁴ Nevertheless, and without implying any criticism of JAC's worthy objectives of promoting quality and diversity, the consortium has no formal application process for the admission of new members, and apparently recruits potential members informally, based upon direct observations of a candidate's personal attributes and legal skills and the assessments of judges and other legal professionals.³⁵ While such practices are common and practical, particularly among private law firms in relatively small legal markets, they can also be subjective and exclusionary.

The assignment of cases to JAC's members seems to be governed principally by juvenile court staff, which results according to JAC in an "equal number of cases" assigned to each lawyer.³⁶ Other than adjustments in caseload assignments for its new and relatively inexperienced members, JAC apparently does not attempt to match complex cases with its most experienced or qualified lawyers.

JAC appears to rely primarily on its relatively rigorous admission standards to address potential problems with the underperformance or misconduct of its attorneys. It also relies on the fact that JAC's size has, in the past, permitted its members to directly observe each other's performance in the courtroom on a regular basis. Among the potential structural and operational changes to address its increasing size, JAC is apparently not currently considering additional systematic processes to review and evaluate the professional performance and personal conduct of its members.

JAC describes how it addresses quality assurance and the underperformance of its attorneys as follows:

Periodically, we check with judges to determine if there are any concerns from the bench. We contact district attorneys, DHS officials and probation officers regarding performance issues – particularly, with new members. We have almost daily contact among the group and know and discuss performance concerns.

The issue [of attorney underperformance] rarely occurs. However, we have addressed the issue in the past by discussing the issues with the individual and have the individual work with a mentor. Then we regularly review the

traditional policymaking and oversight roles, such as approval of bylaws and operating policies and procedures, advising the consortium on its business planning and its dealings and relationship with PDSC, periodic evaluations of the administrator's performance and the consortium's legal operations, and formal reviews of the consortium's business and financial records and operations.

³³ JAC's Response at Question 29.

³⁴ Id. at Question 6.

³⁵ Id. at Question 7.

³⁶ Id. at Question 13.

performance issues with the attorney, mentor, judges, caseworkers and district attorneys. If the performance issues continue then we make it clear that the attorney will not be included in the bidding for the next contract period.³⁷

The most immediate and important challenge facing JAC appears to be its shortage of lawyers to handle Marion County's rapidly increasing juvenile caseload. Fortunately, JAC's members have not expressed the kind of resistance to increases in their membership that PDSC has sometimes encountered in other parts of the state.³⁸ JAC has conferred regularly with CBS about the issue, admitted two new members at the beginning of this year, and committed itself to the admission of three more members in the next few months.

JAC also provided extensive comments regarding "some of the things your consortium does well" in response to the Site Visit Questionnaire, including (1) its members' commitment to children, families and their community, (2) their collaboration with each other and (3) their ability to resolve cases and manage clients well.³⁹ OPDS again urges readers to review these comments in their entirety.

In response to the Site Visit Questionnaire, JAC identified the following areas in need of improvement:

We need to create a structure that will provide continuity for the future. We need to recruit younger members and develop their skills to the point where they can eventually handle full case loads.⁴⁰

Without directing particular criticism at JAC or MCAD at this point in the process, OPDS does suggest an issue for the Commission's consideration which may have statewide implications. The presumably common use of informal recruitment or hiring practices by consortia across the state under contract with PDSC may raise the following policy question: should a public contractor supported by public funds and organized solely to deliver services to the state in exchange for those funds, like PDSC's consortia,⁴¹ follow certain formal recruitment and hiring procedures to ensure equal access and fair consideration? Of course, if the answer to that question is "yes," then any such procedures would need to be simple, straightforward and easy to administer. Three suggestions come to mind: (a) formal announcements in appropriate publications of openings in a consortium within the relevant county, region or market for legal services; (b)

³⁷ JAC's Responses at Question 21 and 22.

³⁸ Indeed, JAC clearly recognizes this challenge. *Id.* at Question 6 and 10.

³⁹ *Id.* at Question 29.

⁴⁰ JAC's Responses at Question 30.

⁴¹ In counties like Marion, where PDSC contracts with consortia to handle all cases or an entire category of cases except cases involving conflicts of interest, some observers have expressed the view that the Commission has created a public monopoly in the delivery of legal services, which might arguably give rise to special obligations on the part of the contractors in question.

a formal screening of applications for admission and accompanying resumes; and (c) a formal interview process for the relatively few, screened applicants. These suggestions would not preclude the continued use of the more informal and subjective recruitment practices used by PDSC's consortium contractors across the state. But the addition of more formal recruitment and hiring practices might promote inclusiveness and reduce the appearance, if not the reality, of bias or favoritism.

A Proposed Service Delivery Plan
for Marion County

[NOTE: In subsequent drafts of the report, this section will set forth OPDS's recommendations to PDSC for changes, if any, in Marion County's public defense delivery system. In the final version of this report, this section will become "The Service Delivery Plan for Marion County" and will set forth proposals or directions by the Commission for improvements in the county's public defense delivery system.]

Appendix A

APPENDIX A

Marion County Association of Defenders Ltd. (MCAD) Answers to Questionnaire for Consortia Administrators and Boards

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

Yes. A copy of the Articles of Incorporation (Att-1) and By Laws (Att-2) are attached. A copy of the Attorney Manual Policies and Procedures (Att-3) is attached. (This addition of the Manual still needs to be updated. Recent changes concerning the indigent defense payment rules have not necessarily been made to this edition.)

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

Yes, MCAD has a Board of Directors. The Board is the policy making body of MCAD as described in the attached Articles and By Laws.

The current members of the Board are Dick Cowan, Chairperson. Olcott Thompson, Secretary. Craig Rockwell, Treasurer. Members: Tara Sinks, Velda Rogers, Steve Wall, Phil Swogger, Ted Coran, and Martin Habecost.

The Board meets once per month.

All policy matters concerning MCAD are directed to the Board. In addition, at each meeting, updates as to the statewide indigent defense system, the Marion County Court system, and/or MCAD are brought to its attention for discussion as it relates to indigent defense issues in Marion County.

There are no limits as to how long a board member can serve or how long one member can chair the board.

All of MCAD's Board members are members of MCAD.

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

MCAD has had one Executive Director (administrator) since its inception. This Executive Director was selected by the members of MCAD and the MCAD Board after consultation with the Marion County Courts and the then administrator of statewide indigent defense.

Currently the MCAD Executive Director, Steven H. Gorham, is a .7 FTE part time position. Compensation is \$5800.00 per month gross.

The Board has for the past several years conducted a formal performance evaluation of the Executive Director. The Board is currently in the middle of this years performance evaluation of the Executive Director. The Board intends to conduct yearly evaluations of the Executive Director.

Article III, Section 6, of the attached Articles of Incorporation, the attached By Laws, the attached Executive Director Job Description (Att-4) and the attached Attorney Manual set forth the functions of, and the qualifications of the Executive Director. The Executive Director is an attorney and a member of MCAD.

The “plan of succession” for the MCAD Executive Director is the same as any small organization that has a Board of Directors and employees. In all likelihood, it is the same “plan of succession” as the Executive Director of the Office Public Defense Services. The Executive Director is an employee of the organization. If the Executive Director moves on, then the Board of Directors will hire a new one under whatever procedure is decided to be best for the organization at the time.

MCAD staff, membership and Board is highly cross trained. Staff: Our highly trained staff knows the procedures of MCAD and to some degree, statewide indigent defense. As the Office of Public Defense Services is acutely aware, MCAD staff is of the highest quality. OPDS has hired two of MCAD’s office managers to fill vacant positions at OPDS. This speaks well not only of these employees but of MCAD’s training, management, and organization. MCAD has continued with barely a hic-up after these transitions because of the quality of these individuals in making sure that their replacements were themselves well trained and the MCAD organization.

The Board and membership: MCAD’s Board and membership is also up to date on the organization and the processes that must be done to keep the organization going in its place in the criminal justice system. While not every member or every Board member could substitute for the Executive Director, if need be, within a short period of time there are members and Board members with enough knowledge and experience with MCAD’s systems to make sure that the functions of MCAD both administrative and substantive can continue in an emergency or other absence of the Executive Director.

4. What percentage of the administrator’s overall workload is related to consortium matters? Is there a formal limit to the percentage?

The Executive Director is a .7 FTE paid employee of MCAD. The only formal limit to the actual amount of time that the Executive Director, actually works or volunteers for MCAD is only limited by State and Federal wage and hour laws.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

The Executive Director of MCAD arranges with other members of the consortium to perform the functions of Executive Director if he is unavailable. Some of these functions are formally assigned to other members. For example, if the Executive Director is not available to sign checks, then one of the other check signers of the organization is available to sign checks. If the Executive Director is not available to approve NRE's (EEA's) then usually the Chairperson or the Chairperson of the Fee Review Committee is available. This is mainly an informal system since most of these day to day functions can be delayed a short period of time or done by alternative communication methods (telephone or e-mail) and in the history of MCAD the Executive Director has either made alternative arrangements, or has continually been available.

Also see answer to number 3 above.

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

A member of the consortium must be eligible to serve as appointed counsel in an Oregon Court under the rules of the Office of Public Defense Services. Thus a member must be an attorney who is a current active member of the Oregon State Bar. In addition a member must have an office in Marion County or West Salem.

7. What is the process for applying for membership?

An Oregon Attorney, or someone who will be an Oregon Attorney in the near future, may apply for membership by sending a resume to the MCAD office with cover letter asking to become a member. In the past the Board has appointed a "hiring" committee composed of Dick Cowan, Olcott Thompson, and Steve Gorham to interview the candidate. The committee makes a recommendation to the Board and the person becomes a member if they receive a majority vote of the Board.

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

This information still needs to be compiled and will be supplied when it has been. MCAD has approximately 50 members of various lengths of service to MCAD. Some members are brand new and some have been members since the beginning of the organization in November of 1993.

9. To what extent do consortium attorneys specialize in criminal and juvenile defense? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

Each consortium attorney decides whether or not to specialize in criminal defense. There is no limit to an attorney's practice that can be consortium related. The vast majority of consortium members who do the everyday work of the consortium "specialize" in indigent defense. In the previous contract with statewide indigent defense that included stipends the percentage of our members work in the contract was spelled out more or less

specifically and if necessary can be referred to if exact percentages of criminal defense is necessary.

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

In the past, word of mouth, or in 2000 advertising, has led to a sufficient number of individuals, applying for membership to meet MCAD's needs for new members. If one looks at the current roster of MCAD members and compares it to the first MCAD member roster, one will notice that there has been sufficient turnover of MCAD membership to keep MCAD membership sufficiently stocked with "new" attorneys. Thus the mix of new members and experienced members is almost ideal. Enough new members for new ideas and enough experienced members to supply the new members with training and history to do quality indigent defense work in Marion County.

If this ever becomes a problem for MCAD as it was in 2000, MCAD will advertise for new membership by communicating this need with the Oregon Law Schools, in particular Willamette because it is here in Salem; the local and state bar association bulletins, OCLA and Oregon newspapers.

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

New members are provided with the materials attached to this Answer as well as the New Member information sheet (Att-5). In addition, new members are provided with a MCAD's computer billing system (Boojum). They are also advised as to who in the consortium they can contact if they have any questions. In general, the office manager orients the new member on billing and administrative matters; the computer expert orients the new member on the computer billing system, and the Executive Director orients the new member on these matters and on the criminal justice system in Marion County.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

MCAD encourages new members to observe Marion County Court procedures and to call any MCAD member with questions. The Executive Director and others are always available for this advice. MCAD has a formal mentoring system that is described in the Attorney Manual which is attached.

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

The method of assigning cases is set forth in the MCAD-Commission Contract as well as the documents that are attached to this answer. For the normal criminal case, MCAD has

an Attorney of the Day system with exceptions. We have a misdemeanor, felony, SED, and Spanish speaking misdemeanor, Attorney of the Day lists. An MCAD attorney signs up as one of these Attorneys of the Day. Normally an attorney can sign up for the list that they qualify for, once every month and a half. Attorneys of the day can be substituted and/or traded amongst the membership. All defendants which appear at the criminal arraignment Court (at the Marion County Court Annex except for the SED calendar) are appointed the appropriate Attorney of the Day. In some cases the Attorney of the Day trades cases (defendants) that they are not qualified to do, or another MCAD attorney who is present is appointed. The default attorney to be chosen by a Marion County Court is the Attorney of the Day. In special cases the Court contacts the Executive Director for assignment of an attorney to be appointed. On average most MCAD attorneys are busy and have the caseload that they wish to have although all would prefer to have a higher hourly rate than is now provided. The fact that we are an integrated organization, leads to the fact that MCAD attorneys agree to change defendants when it is requested either by the Court, the Executive Director, or in the best interest of the defendant.

In Post Conviction and Habeas Corpus cases the MCAD office holds rotating lists of MCAD attorneys willing to be appointed. The Court calls the MCAD office for the name of the next available attorney and normally appoints this attorney. At times the Court requests additional names and these are submitted for appointment.

In Murder and Aggravated Murder cases the Court requests a list of available attorneys from the Executive Director and picks from said list who to appoint. Normally this list contains the next three names on the MCAD Murder or Aggravated Murder list. In exceptional cases the Court and the Executive Director consult as to the best attorney to appoint and then the Court appoints said attorney.

All attorneys are appointed based on their qualifications under the indigent defense qualification standards. When an attorney has sufficient experience to progress to more serious cases then they request to be on an additional rotation and or list. The Felony Attorney of the Day sometimes is split into a minor and major felony Attorney of the Day to ensure that qualified experienced attorneys are doing the major felonies.

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

Please see answer to Question 13. Yes, attorneys routinely meet clients within the timeframes set forth in the contract with PDSC.

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

Yes and no. It depends on the specific circumstances of the case; communication between the client, attorney and the Court; and the timing of the new case in relation to the old case. See also answer to number 13.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

MCAD, because of its structure does not normally have internal attorney conflicts. Each attorney and firm has its own procedure to determine whether that attorney or firm has a particular type of conflict. In most cases since most MCAD attorneys are either sole practitioners or members of small firms, conflicts individual to an attorney and a particular defendant are normally apparent immediately or relatively early in the case. The only conflicts that MCAD is normally concerned with, is multiple defendant cases and that is usually apparent at the first appearance. When apparent another MCAD attorney present is usually appointed for subsequent defendants in this type of case at the time of arraignment. Because MCAD is an hourly rate contractor, the financial impact of conflicts is minimal.

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

Yes, MCAD has regular monthly meetings, the third Tuesday of each month. In addition, one of these meetings, either in October or November is the mandatory annual meeting to elect Board members and conduct corporation business.

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

All of these mechanisms are used for regular communication among consortium members. MCAD has a bi weekly newsletter. The latest newsletter is attached as Att-6. MCAD has its own "pond" similar to the OCDLA "pond" list-serve.

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

Yes, there is both a formal and informal method. MCAD has a research and form bank attached to its web site. MCAD has a law clerk responsible to help members find this research and/or forms and of course the email list-serve and other communication between members helps in this sharing.

MCAD members freely share information and communicate with each other daily about criminal defense matters and indigent defense issues.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

The system is both formal and informal. Periodically, MCAD audits the amount of work based on attorney fee billings to determine the historic workload of its members. If concerns are generated by this audit the Executive Director acts to make sure that the attorney is not overloaded. In addition, informally, either because of observation of members, staff, or the Court and then communication with the Executive Director this issue is addressed.

MCAD members bill their completed cases every other week. These billings are reviewed internally by MCAD staff for accounting and systemic indigent defense issues. The Executive Director reviews above average “high” billings for the same issues. This review in addition to the above described review brings overwork issues to the attention of the Executive Director who addresses them individually with the MCAD member.

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation?

MCAD has a Quality Assurance Committee that is responsible specifically for the quality of representation. The process is described in the Attorney Manual attached.

In addition the also described mentoring system ensures quality representation.

There is also an informal system of quality assurance by the Executive Director based on concerns either of the Executive Director or communications by others (members, other attorneys, the Court, staff) with the Executive Director. The Executive Director evaluates these concerns and communicates appropriately with the member and others to address whatever concerns are expressed.

In addition, MCAD members bill their completed cases every other week. These billings are reviewed internally by MCAD staff for accounting and systemic indigent defense issues. The Executive Director reviews above average “high” billings and other billings that are brought to his attention by staff for the same issues. The standard for review is whether the substantive work performed was reasonable and necessary in the context of the defendant’s case and attorney’s representation. This review is another informal quality review. Quality issues often become apparent in this review and this review is conducted every other week and then addressed by the staff and Executive Director. For example, billings clearly indicate a standardized mechanistic practice that must be explained based on quality of representation.

One of the issues when one attempts to discuss quality representation is the definition of quality representation and how to deal with it. As the current Executive Director of the Office of Defense Services has expressed many times, what quality representation actually is, is a moving target that is almost impossible to define. To actually define quality representation; enact a set procedure to ensure it in every case and circumstance;

and give due process to the subject of any quality inquiry; would take all and more of anyone's time in the indigent defense system.

MCAD's goal is to give the best representation available under the circumstances and recourses available. MCAD has developed a flexible system both formal and informal, to ensure that this is accomplished.

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

If the definition of underperformance is an attorney who consistently does not give his or her clients quality representation, MCAD has various methods to address these problems. One method is the quality assurance process described above. One method is the formal and informal mentoring system in MCAD. Informal mentoring has been recommended and mandated for under performing members. In the past this has included members helping other members in specific cases through trial to make sure that the member "gets it" in how a case should be handled through trial. Counseling and training by the Executive Director or others is also offered.

Finally if quality is not improved and there appears to be little chance of improvement, MCAD has removed membership from these under performing attorneys after due process to the attorney to make sure the issue is quality issue and not some other political issue.

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law- or trial practice-related CLE credits per year?

MCAD encourages each member to take as much formal training as they deem necessary. This includes but is not limited to CLE's put on by the various providers in the State of Oregon. In particular MCAD encourages membership and attendance in any and all OCDLA programs. MCAD also provides CLE's periodically throughout the year on issues of importance to a criminal defense attorney. We do not require any minimum number or CLE credits outside of that required by the Oregon State Bar but encourage members to get as many criminal law related credits as they feel necessary to perform their representation of the indigent accused.

See also answer to No. 22.

24. Are attorneys required to report disciplinary actions by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

Yes MCAD members must report disciplinary actions by the bar to MCAD. MCAD does not keep a formal record of these reports.

25. What is the consortium's process for handling complaints from judges? From clients? From others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

Please see the quality assurance process described in the Attorney Manual. There is a formal and informal process described. The contact person for complaints is the Executive Director. Any complaints received in the MCAD office are referred to the Executive Director. Each judge in Marion County understands that they can refer complaints to the Executive Director. Most members of the Court community in Marion County know that MCAD is the exclusive indigent defense contractor except for civil commitments and juvenile matters in Marion County and the person who has a complaint either knows someone who refers them to MCAD or they themselves refer them to MCAD. Just recently, a Marion County Commissioner was referred to MCAD by the Trial Court Administrator's office in Marion County with a constituent's complaint about their court appointed attorney. The Executive Director handled this complaint.

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

Most of these issues are handled by the diversity CLE requirement of the Oregon State Bar which each MCAD member must take or they would not be a member of MCAD. MCAD has conducted immigration CLE's and has available on a formal and informal basis immigration advice by specialists either through the NRE process or by volunteer attorneys in the community.

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

No, except for the quality assurance process.

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

Yes.

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

MCAD provides the indigent criminal accused and others that qualify for appointed attorneys in Marion County quality legal services.

MCAD provides the judicial system in Marion County an entity to rely on to provide the management, planning and service that the Court system relies upon to do its every day work and functions.

MCAD provides the statewide indigent defense system a wealth of systemized experience in a hourly based system and a wealth of organized providers in a variety of indigent appointed case types to step into situations that are needed in the statewide indigent defense system.

It does all of the above well and to the betterment of Marion County and the State of Oregon as a whole.

MCAD was created to both protect the then current indigent defense providers in Marion County from arbitrary and capricious actions that had in the past been taken against them. In addition and more importantly MCAD was also created to provide a quality, efficient, and accountable system of indigent defense in Marion County. As a side bar to this creation, MCAD has been influential in providing statewide indigent defense a proving ground for systems that have helped statewide indigent defense further its goal of providing quality, efficient and accountable services to the State of Oregon and the defendants in criminal actions.

For Statewide indigent defense this has created an Extraordinary Expense Authorization (now the Non Routine Expense) system that was copied from the MCAD system to a statewide system. This has given the statewide system accountability and credibility when attacked by outside forces and provided to statewide indigent defense the ability to account to the Oregon State Legislature for the proper use of state resources.

The statewide system has also been able to clone the MCAD system in Yamhill County and possibly elsewhere, to ensure another method of providing quality, efficient and accountable indigent defense services.

In Marion County this has led to indigent criminal defense to have a place at the table at various groups that effect the criminal justice system in Marion County. If the criminal justice system is a three legged stool, the judiciary, the prosecution, and the defense; criminal defense in Marion County now has input because of MCAD's creation and the systems that have been established.

MCAD does well in providing not only this over all service to the criminal justice system as being a true player in the process but also gives quality and efficient service to its individual clients.

MCAD has systems in place that give consistency in application to the criminal justice system, the attorney members and the defendants. This system is not rigid and has enough flexibility to be extremely effective in every situation that occurs. In the criminal justice system this consistency and flexibility is tested in emergency situations almost daily.

MCAD also provides to Marion County defendants and statewide indigent defense a hourly rate system based on payment for actual work done on a case. This is done in an accountable and efficient manner. This provides statewide indigent defense an

alternative method of service delivery that also provides statewide indigent defense statistical information that is invaluable for current and future indigent defense planning.

MCAD also provides Marion County Petitioners and statewide indigent defense and petitioners a wealth of experience in Post Conviction and Habeas corpus matters that would not exist if MCAD did not exist.

MCAD also provides to its members the protection, pride of membership, and power of the group to allow them to do their job without outside political or other interference.

MCAD also provides to its members and the criminal justice system billing and financial accountability and quality monitoring in both real and near real time.

By any standard, MCAD provides quality, efficient criminal defense services to the indigent accused in Marion County. MCAD's service delivery system matches the quality, efficiency and accountability of any service delivery system in the State of Oregon given the resources that are provided to it.

the average and exceptional representation provided by MCAD members to criminal defendants against any county system in the State of Oregon. I certainly believe that indigent defense could not provide the same quality service in Marion County with the same resources that are actually provided under any other system that could be developed and implemented in Marion County. That is not to say that MCAD members cannot improve. One can always incrementally and individually strive to improve oneself and the work that our members do.

To say this in another way, I believe that if one chose to compare MCAD's representation of the indigent accused against any other current actual system with the same resources available, based on any set standard, that MCAD's representation would equal or exceed that other group or system.

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

See answer to 29.

At this time it is best to leave areas of improvement for others to suggest. That is not to say that MCAD and its members cannot improve. One can always incrementally and individually strive to improve oneself and the work that we do. Given the resources provided improvement might need to be left to this type of individual improvement. Given more resources, especially in the hourly rate and the lessening of caseloads (read more time to work on less cases) could not help but improve the system.

More resources to expand training or fund a full time trainer would also at least theoretically improve quality.

Submitted by Steven H. Gorham, Executive Director, MCAD on July 14, 2005.

ARTICLES OF INCORPORATION

Marion County Association of Defenders, Ltd. (MCAD)

The undersigned natural persons of the age of eighteen years or more acting as incorporators under the Oregon Nonprofit Corporations Act, adopt the following Article of Incorporation:

ARTICLE I

The name of this corporation is Marion County Association of Defenders, Limited, and its duration shall be perpetual.

ARTICLE II

This corporation is a mutual benefit corporation.

ARTICLE III

The address of the corporation's initial registered office and the initial registered agent at the same location are:

Steven H. Gorham
341 State Street, 97301

ARTICLE IV

The alternate corporate mailing address shall be that of the principal office; notice may be mailed to that address until the principal office has been designated in its annual report.

ARTICLE V

The names and addresses of the incorporators are:

Steven H. Gorham, 341 State Street, Salem, Oregon 97301
Steven L. Krasik, 341 State Street, Salem, Oregon 97301
Lee H. Peterson, 494 State Street, Suite 210, Salem, Oregon 97301

ARTICLE VI

This corporation shall have members.

ARTICLE VII

Upon dissolution of the corporation, after payment of all liabilities, remaining assets, if any, shall be disposed of exclusively to organizations organized and operated exclusively for charitable, educational, religious or scientific purposes which are qualified as exempt organizations under the Internal Revenue Code, Section 501(c) (3) or the corresponding provision of any future code as the Board of Directors shall determine.

Any such assets not so disposed of shall be disposed of by the Circuit Court of the State of Oregon for the County of Marion, to such organizations as said Court shall determine which are organized and operated exclusively for the purposes described in the next preceding paragraph of this Article VII.

ARTICLE VIII

There will be nine (9) initial Directors who will be elected at the incorporation meeting.

ARTICLE IX

The purpose for which this corporation is organized is to provide legal counsel and representation to persons certified by the State of Oregon to be indigent and to qualify for Court-appointed legal representation under the laws of this State and/or the Constitution of the United States. Additionally, this corporation is organized to engage any other lawful activities; provided, however, a substantial portion of this corporation's activities shall not be for profit nor for political purposes.

This corporation is organized exclusively for charitable or educational purposes within the meaning of Section 501(c)(3) of the internal revenue code or the corresponding provision of any future such code.

ARTICLE X

This corporation shall be governed by the Board of Directors in accordance with the Bylaws and the Oregon Nonprofit Corporation Act, as the same exists or may hereafter be amended.

ARTICLE XI

The Corporation's Board of Directors shall consist of nine (9) directors. All Directors shall be active members of the Oregon State Bar in good standing except that the Executive Director who shall be appointed by the existing Directors may (but need not be) a person who is not a member of the Oregon State Bar. Each Director shall serve a term of three years and for a period thereafter until such time as that Director's

successor has been appointed; provided, however, the initial Directors shall derive terms as set forth in the following schedule:

<u>Director</u>	<u>Term</u>
1	1 year
2	1 year
3	1 year
4	2 years
5	2 years
6	2 years
7	3 years
8	3 years
9	3 years

Directors shall be elected by members at large, with each member having one vote per vacancy. Votes may not be pooled nor is cumulative voting permitted.

Initial directors shall be elected by a plurality of votes cast by members for that specific vacancy; vote pooling and cumulative voting shall not be used.

Succeeding directors shall be elected by a two-thirds majority of votes cast for that specific vacancy. Provided, however, where more than two candidates are offered for a single vacancy, a plurality of votes may be used to eliminate all candidates until there are two candidates remaining after which a two-thirds majority shall be required to elect the successful candidate. Vote pooling and cumulative voting shall not be used.

The executive Director may be removed for cause by vote of two-thirds of the membership.

ARTICLE XII

No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to its directors, trustees, officers, or other persons, except that the corporation shall be authorized and empowered to provide reasonable compensation for the services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IX.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in or intervene in (including the propagation or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on

- (a) by a corporation exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law, or
- (b) By a corporation, contributions to which are deductible under Section 170 (c)(2) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law.

ARTICLE XIII

The corporation shall indemnify each of its directors and uncompensated officers to the fullest extent permissible under the Oregon Nonprofit Corporation Act, as the same exists or may hereafter be amended, against expense, liability, and loss (including, without limitation, attorney fees) incurred or suffered by such person by reason of or arising from the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, and such indemnification shall continue as to a person who has ceased to be a director, officer, partner, trustee, employee, or agent and shall inure to the benefit or the person's heirs, executors, and administrators. The corporation may, by act of the Board of Directors, provide indemnification to employees and agents of the corporation who are not directors or uncompensated officers with the same scope and effect as the indemnification provided in this Article XIII to such uncompensated officers. The indemnification provided in this Article shall not be exclusive of any other rights to which any such person may be entitled under any statute, bylaw, agreement, resolution, or otherwise.

ARTICLE XIV

To the fullest extent permitted under the Oregon Nonprofit Organization Act, as it now exists or may hereafter be amended, a director, or uncompensated officer of the corporation shall not be liable to the corporation for monetary damages for conduct as a director or uncompensated officer. The repeal of or amendment to this article XIV shall not adversely affect any rights or protection of a director or uncompensated officer of the corporation existing at the time of such repeal or amendment.

ARTICLE XV

These Articles of Incorporation shall be amended only by an affirmative vote of two-thirds of the active membership.

The undersigned incorporators declare under penalty of perjury that they have examined the foregoing and to the best of their knowledge and belief, it is true, correct, and complete.

Original Incorporator

CORPORATE BYLAWS
Of
MARION COUNTY ASSOCIATION OF DEFENDERS, LTD.

ARTICLE I. OFFICES

The principal office of the corporation in the State of Oregon shall be located in the City of Salem, County of Marion.

The registered office of the corporation required by Oregon Nonprofit Corporation Act to be maintained in the State of Oregon may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II. BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by its Board of Directors.

Section 2. Number, Tenure, and Qualifications. The number of directors of the corporation shall be nine. Each director shall hold office for the term stated in the Articles of Incorporation or until the director's death, resignation, or removal from office in the manner hereinafter provided.

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw on the third Tuesday in October at 9:00 a.m. at the principal office of the corporation, unless said meeting is reset by the Board.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Executive Director, the Chairperson, or any three directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place for holding any special meeting of the Board of Directors called by them.

Section 5. Notice; Waiver. Notice of any special meeting shall be given at least 48 hours prior thereto by written notice delivered personally or mailed to each director at the director's business address. If mailed, such notice shall be deemed to be delivered 48 hours after it is deposited in the United States mail so addressed, with postage prepaid. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director objects at the beginning of the meeting or promptly upon arrival to holding the meeting or transacting business at the meeting because the meeting is not lawfully called or convened and does not thereafter vote for or assent to any action taken at the meeting. A written waiver of notice of a meeting signed by the director or directors entitled to such notice, whether before or after the time stated therein, which specifies the meeting for which notice is waived and which is filed with the minutes or corporate records, shall be equivalent to the giving of such notices.

Section 6. Quorum. A majority of the number of directors fixed by Section 2 of this Article II shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but, if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. Except to the extent a greater number is required by law, the articles of incorporation, or elsewhere in these bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. Vacancies. Any vacancy created by reason of term expiration shall be filled in accordance with the articles of incorporation. Any vacancy occurring by reason of death, resignation, or removal shall be filled by the Board of Directors. Such director shall be appointed for the unexpired term of the predecessor in office. Any directorship to be filled by reason of any increase in the number of directors shall be filled by the affirmative vote of a majority of the directors present at any meeting, even though less than a quorum of the Board is present at such meeting. The Board of Directors, by the vote of a majority of the directors then in office, may declare vacant the office of a director who fails to attend two out of four consecutive meetings of the Board and who, prior to such meetings, shall have failed to notify the Executive Director or the Secretary of the director's inability to attend and the reasons thereof.

Section 9. Removal of Directors. A director may be removed at a meeting expressly called for that purpose by a two-thirds vote of the membership.

Section 10. Action by Directors without Meeting. Any action required to be taken at a meeting of the directors, or any other action which may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the directors, and such consents are included in the minutes or filed with the corporate records reflecting the action taken.

Section 11. Telephonic Meetings. Meetings of the Board of Directors, or of any committee designated by the Board of Directors, may be held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting.

ARTICLE III. OFFICERS

Section 1. Number. There shall be four officers: The Chairperson of the Board of Directors, the Executive Director, the Secretary and the Treasurer.

Section 2. Appointments, Elections, and Terms of Office.

- (a) The Chairperson of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (b) The Treasurer of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (c) The Secretary of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (d) The Executive Director of the corporation shall be appointed by the Board of Directors for a term which shall last as long as the Executive Director's employment as executive director.

Section 3. Removal. Any officer or Executive Director elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of the corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Chairperson of the Board. The Chairperson of the Board shall preside over meetings of the Board of Directors.

Section 6. Executive Director.

(a) The Executive Director shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the corporation. The executive director may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, any contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or executed; and in general the Executive Director shall perform all duties incident to the office of Executive Director and such other duties as may be prescribed by the Board of Directors from time to time.

(b) The Board of Directors shall establish a written position description for the position of Executive Director. The Board of Directors shall also establish a written list of criteria for evaluating the performance of the Executive Director. The Board of Directors shall evaluate the performance of the Executive Director on a yearly basis in writing. The position description, criteria and evaluations shall be available upon request for inspection by any member.

Section 7. Secretary. The Secretary shall:

(a) keep the minutes of the Board of Directors meetings in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law;

(c) be custodian of the corporate records; and

(d) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 8. Treasurer. The Treasurer shall:

- (a) have charge and custody of and be responsible for all funds of the corporation, receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article V of the bylaws; and
- (b) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors.

Section 9. Salaries. Neither the Chairperson of the Board nor the other directors shall receive any salary for the work they do on the Board, but nothing in these bylaws shall preclude any director from serving the corporation in another capacity and receiving compensation for these services.

ARTICLE IV. MEMBERS

Section 1. Voting. Each member shall have one vote.

Section 2. Members. Initial membership shall be limited to those persons listed on a membership roster dated November 2, 1993, subscribed by Steven H. Gorham as amended at the initial corporate meeting of November 2, 1993.

Section 3. Admission to Membership.

(1) Persons other than those identified in Article IV, Section 2 wishing to become members must:

- (a) be eligible to serve as appointed counsel in an Oregon District Court under the provisions of ORS 151.430(3) as implemented by rules promulgated by the Indigent Defense Services Division of the Oregon Judicial Department;
- (b) serve a probationary period of one year;
- (c) after receiving input from the active membership, receive a majority vote of the Board of Directors voting in the election for new members.

(2) Membership will be open periodically upon a majority vote of the Board of Directors.

(3) General meetings of members shall be held the third Tuesday of each month at the Marion County courthouse.

(4) Special meetings of the membership may be called by the Chairperson, the Executive Director or by petition of thirty members.

(5) Annual meetings of the membership shall be held each year in October or November to vote on any vacant Board of Director position(s) and on any other appropriate matters.

(6) A simple majority of members of the active membership shall

constitute a quorum for the transaction of business at any general, annual, or special meeting of the members.

In addition to the above definition an active member of MCAD is further defined as a member who has taken an appointment through MCAD in the past six months.

ARTICLE V. CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

ARTICLE VI. AMENDMENTS

These bylaws or any portion hereof may be amended by the membership by a two-thirds vote of those members present conducted at a meeting where the notice to all members of the meeting contains the proposed bylaw amendment.

Marion County Association of Defenders, Ltd.
(MCAD)

ATTORNEY MANUAL
POLICIES AND PROCEDURES

Modified July 13, 2005.

This manual is designed to mirror the policies and procedures set forth by the Oregon Judicial Department's Indigent Defense Payment Policies and Procedures as they apply to work done by MCAD attorneys. Unless expressly addressed in this manual, these policies and procedures are subject to the authority of the Judicial Department's Policy Statement.

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1.0 MARION COUNTY ASSOCIATION OF DEFENDERS, LTD. (MCAD)

A. AUTHORITY

Marion County Association of Defenders, Ltd. (MCAD) is a non-profit organization incorporated on November 12, 1993 and organized for the purpose of providing legal representation of persons deemed by the State of Oregon to be indigent and eligible for court appointed counsel within the boundaries of Marion County. MCAD contracts with the State Court Administrator (SCA), Indigent Defense Services Division (IDS), and operates under the authority of the Oregon Judicial Department (OJD).

B. ORGANIZATION

MCAD has a Board of Directors with nine members elected by and from the current membership. The Board has regular monthly meetings and schedules additional meetings as needed. Board Meetings are generally held on the first Thursday of every month at 5:15 PM at the MCAD corporate office. Board Meetings are open to the membership to attend confirmation of the actual location and times are available through the MCAD office. The initial Board of Directors had terms from one to three years. As these terms expired, new board members were elected for three-year terms. Elections for any vacant board position(s) occur at the annual mandatory members meeting held in October or November of each year. The Board of Directors elects the officers of the corporation for one-year terms, immediately following the annual members meeting. The officers consist of a Chairperson, a Treasurer, and a Secretary.

MCAD's corporate office is located at 130 High Street SE, Salem, Oregon 97301. MCAD currently has 6 employees, consisting of an Executive Director, a Computer Consultant, an Office Manager, two Office Assistants and a part-time Law Clerk. The Executive Director and Computer Consultant are currently active attorney members of the Association and are also part-time managerial employees of the corporation.

The organization has numerous committees consisting of Board members and active members who volunteer to complete committee tasks and assignments. The committees report to the Board of Directors. Members are encouraged to be active and participate on these committees. Current operational committees include the Quality Assurance Committee, the Fee Review/Appeal Committee, the Policies and Procedures Committee and the Education Committee. Ad hoc or other permanent committees are formed at the direction of the Board of Directors, when needed, such as the Contract Negotiation Committee.

C. MEMBER QUALIFICATION STANDARDS

All MCAD attorneys must meet the qualification standards for court appointed counsel to represent indigent persons as set forth by the current Oregon Judicial Department's Policy Statement. MCAD attorneys shall exercise their independent professional judgment in providing effective assistance of counsel for each appointed defendant, as outlined in the MCAD attorney contract and the policies and procedures described herein. **(See "Appointment of Counsel for Indigent Persons", Section #3.0 A)**

D. MEMBERSHIP

MCAD is a consortium of attorneys that requires membership to provide legal representation for indigent clients. All members operate under signed contract agreements with MCAD. Members are participating in MCAD at various full-time equivalents (FTE's) ranging from full-time to part-time or are temporarily inactive by their own choice. New members must be be

voted in by a majority of the Board of Directors All new members are required to develop and complete a personal mentoring program.

E. LEAVE OF ABSENCE

MCAD members may elect to take a six-month leave of absence at any time and for any reason. A leave of absence is renewable one time for an additional six months. The request for leave must be in writing giving an effective date and received by the MCAD office not less than 30 days prior to the effective date. Members may return from a leave of absence at any time, with written notice received by the MCAD office prior to their return. Members are responsible to ensure that all cases they are appointed to at the time the leave is requested are properly handled. Members may either fulfill all their current appointment obligations, or take necessary steps to ensure that their current appointments are taken over by other members, either by substitution of counsel or formally withdrawing from all cases. Members are required to immediately submit their billing statements on all their cases, as they are disposed or as the member withdraws. The MCAD office must receive written notification if a member going on a leave of absence is unable to close and bill on all their cases within 60 days.

F. MEMBERSHIP MEETINGS

MCAD has regular monthly membership meetings preset for the third Tuesday of each month at noon at the courthouse Jury Assembly Room. Members receive information and updates on the Board of Directors Meetings, Committee Meetings, Court and Jail Meetings, Contract Issues, Billing Issues, Member Announcements, Guest Speaker presentations and free Continuing Legal Education (CLE) programs. Members are encouraged to be active and present at these monthly meeting.

The Attorney-of-the-Day calendars for the signing up of court dates are circulated at these meetings. Members not present for choosing court dates are contacted by telephone after the meeting to sign-up in rotational order to fill in the calendars. It is not mandatory to sign-up for court dates; members may choose to skip rotations at any time, although replacement dates are not guaranteed. Contact the MCAD office with your requests to change or cancel your court dates. The MCAD office will ask that you attempt to trade your date first, but then follow a process for filling in open dates. MCAD requests as much notice as possible to find replacements. Members unable to provide the complete coverage that the attorney-of-the-day function requires should consider taking another date. For example, if you are unable to be present for the 8:30 AM start or if you have a previous appointment scheduled downtown mid-morning, you should not sign-up for that date.

MCAD has one **mandatory annual meeting** held in October or November each year. The entire membership is gathered to take care of corporate and other business such as voting on issues, election of Board of Directors, and any other business that requires the membership to be present.

G. MEMBERSHIP TERMINATION

1.) Members may voluntarily terminate their membership and void their contract with MCAD at any time for any reason. The voluntary termination shall become effective upon receipt of written notice by the MCAD office or as requested within the written notification. Members are responsible to ensure that all cases they are appointed to at the time of termination are properly handled. Members must either fulfill their current obligations, or take steps to ensure that their current appointments are taken over by other members, either by substitution of counsel or formally withdrawing from all cases. Members are required to immediately submit their billing statements on all their disposed or withdrawn cases. The MCAD office must receive written notification if a member terminating their membership is unable to close and bill on all their cases within 60 days.

2.) MCAD may terminate and/or suspend a member immediately or concurrently, if the member is terminated and/or suspended by an action of the Oregon State Bar. Members terminated and/or suspended by the Oregon State Bar, or members precluded by order of a court, must cease to represent appointed clients immediately or within the restriction of the termination/suspension dates.

2.) For good cause shown, the MCAD Executive Director, after consulting with the Chair of the Board of Directors may suspend a member temporarily. A suspension may be full (suspension of all current and future cases) or partial at the discretion of the Executive Director. Notice of the suspension shall be provided to the member as soon as practicable. Said notice may be oral or in writing but if oral it must be followed by written notice as soon as practicable to the Attorney's office.

A suspension may be appealed to the Board of Directors. Notice of an appeal must be in writing by the member and must be taken within 30 days of being notified. The Board of Directors shall hear the appeal as soon as practicable but in no case later than 14 days after the Notice of Appeal unless agreed to by the member and the Board.

3) In addition to the above process for suspending or terminating a member, tThe MCAD Board of Directors, with the recommendation of the Quality Assurance Committee, and having, and having provided the member prior notice and an opportunity to be heard, may take any of the following actions:

- a.) Give member notice to comply within a reasonable time.
- b.) Mandate member's participation in a Quality Assurance Mentor Program.
- c.) Suspend member from receiving case appointments until further notice.
- d.) Terminate member's contract with MCAD immediately.
- e.) Implement any other appropriate corrective course of action.

4.) The MCAD member's duty of performance imposed by their contract with MCAD terminates upon the member's death or substantial disability.

H. COMPLAINTS OR CLAIMS AGAINST MEMBERS

Members must immediately notify MCAD in writing of the existence, substance, and if applicable the results of any non-frivolous complaints and/or malpractice claims made or filed against them. Members do not have to notify MCAD of any frivolous complaints. A frivolous complaint is defined as a complaint that either does not require a written response or if a bar complaint; one that has not gone beyond bar counsel's initial review, unless this has occurred as a result of an appeal of bar counsel's determination that this was a frivolous complaint.

I. QUALITY ASSURANCE COMPLAINTS AND PROCEDURES

MCAD feels that quality assurance is an important part of the consortium's function and has established a Quality Assurance Committee (hereafter in this section, Committee) to ensure that members provide quality, effective, adequate, and efficient representation to Marion County indigents.

The following process shall be used when quality assurance concerns are expressed about a member. It is the intent of this process to mirror the due process procedures (in a less formal and time consuming manner) contained in the Oregon State Bar's disciplinary process and to provide a due process forum for the member and the person filing the complaint (hereafter in this section, complainant). This process is not a disciplinary process. Disciplinary complaints

shall be addressed to and by the Oregon State Bar. MCAD has decided not to enact a disciplinary process. This process is intended to help our members provide the best quality of service possible under the circumstances. The goal of this process is to help each member provide quality, effective, adequate, and efficient representation to Marion County indigents.

Any response to a complaint shall be directed towards corrective action to help the subject member provide better service to our clients. All investigation and investigative reports are confidential except for those persons or bodies contained therein.

1.) INFORMAL COMPLAINT:

An oral complaint may be made directly to the MCAD Executive Director. The Executive Director shall investigate the complaint and discuss the issues with the individuals involved. In all cases, the complaint will be discussed with the Complainant and the Member. After investigation of the informal complaint, the Executive Director shall inform the Member and Complainant of the findings and proposed resolution and the Complainant's option to make a formal complaint, if the resolution is unacceptable to the Complainant.

2.) FORMAL COMPLAINT PROCEDURE:

A formal complaint must be in writing, signed by the Complainant and must be submitted to the MCAD Office. A complaint must contain a statement of the facts and circumstances leading to the complaint.

The MCAD Office must forward the written formal complaint to the Committee for review within five working days of receipt and shall forward a copy to the MCAD Executive Director. The Committee shall evaluate the information contained in the complaint within fifteen days of receipt by the Committee.

Any formal complaint may be referred to the Executive Director for disposition as an informal complaint at the discretion of the Committee. If the Committee determines that the facts alleged in the written complaint do not raise a quality assurance matter, the Committee shall notify the Complainant and the complaint shall be dismissed. This action cannot be appealed.

If the Committee determines that the facts alleged in the complaint raise a quality assurance matter, the Committee shall appoint an MCAD member attorney or other qualified person to investigate the complaint (hereinafter in this section, Investigator) and shall notify the Member and Complainant in writing immediately. This notice shall include a copy of:

- a.) The complaint.
- b.) A copy of the Quality Assurance Complaint Procedure.
- c.) The name of the Investigator.

Upon receipt of the complaint, the Member shall submit a written response to the Investigator within 14 days. One extension of time to respond of up to 14 days may be granted as a matter of right. Further Member requests for extensions of time to respond must be in writing and addressed to the Investigator. Member requests for an extension of time to file a response may be granted at the discretion of the Investigator and may be granted by the Investigator only with the written consent of the Complainant or consent of the Committee.

3.) INVESTIGATOR:

a.) Appointment: The Committee will appoint an MCAD member or other qualified person who does not have a conflict of interest either with the Complainant, the Member, or the issue of the complaint, as the Investigator. The Complainant or the Member

may inform the Quality Assurance Committee in writing within seven days of notification of any objection to the proposed Investigator. The Committee shall decide if it should appoint a new Investigator and shall notify the Complainant and Member immediately. The Committee's decision concerning the appointment of a new Investigator shall not be appealable.

b.) Duties: The Investigator shall make an independent investigation of the complaint using the information provided by the Complainant and the Member and any other information that he or she deems relevant. This independent investigation may include consultation with the parties, consultation with others who know about the facts of the complaint, or any other sources of information.

The Investigator's report shall be submitted to the Committee not less than 60 days after the appointment of the Investigator and shall include findings of fact. Any extension for filing the Investigator's report may be granted by the Committee only with the written consent of the Member and the Complainant.

The Committee shall review the Investigator's report and by majority vote resolve the complaint and notify the Complainant and the Member of its decision and recommended resolution. Any response to a complaint shall be directed toward corrective action to help the Member provide better service to his or her clients.

4.) RESOLUTION APPEAL PROCEDURES:

If either the Complainant or the Member are not satisfied with the Committee's resolution, the unsatisfied party may appeal to the MCAD Board of Directors by mailing a written request for appeal to the Board Chair within 14 days of receipt of the Committee's decision. The MCAD Board Chair shall immediately inform the Member, the Complainant and the Investigator of the appeal. Within 14 days of receipt of the MCAD Board Chair's notice of request for appeal the Member and Complainant may submit in writing any additional comments that are relevant to the appeal. The MCAD Board of Directors will address this appeal at its next regularly scheduled meeting or as soon as possible. The decision of the Board shall be final as to the Quality Assurance Complaint and resolution. The MCAD Board Chair shall notify the parties of this decision.

5.) MEMBER COMPLIANCE:

In the event any Member fails to cooperate with the investigation of a Formal Complaint, one or more representatives of the Committee shall meet with the MCAD Board of Directors at the next regularly scheduled Board meeting to inform the Board. After consideration of the facts and circumstances of the Member's refusal, the MCAD Board may, by majority vote, implement any such corrective action the Board deems appropriate so long as that corrective action is consistent with the policies and procedures for Member discipline adopted by the MCAD Board of Directors.

The MCAD Board Chair shall inform the Member attorney of the Board's decision within five days of the Board meeting. The Member attorney has five days to request a hearing. Such request must be delivered to the Board Chair and the hearing shall be held at the next regularly scheduled Board meeting. The proposed action by the MCAD Board shall be suspended during the pendency of the appeal hearing. The decision of the MCAD Board after such hearing shall not be appealable.

6.) CONFIDENTIALITY:

The MCAD Board of Directors shall be informed of the receipt of any Formal Complaint, **the nature of the**

complaint, the appointment of an Investigator, and the procedural status of the complaint. **The Board may be provided a copy of the written complaint upon request of the Board Chair. If the Board is provided a copy of the written complaint this document shall be kept confidential by the Board.** Except as stated herein, Quality Assurance Committee files are confidential and may not be furnished to any party without the express written consent of the Member. Appeal as outlined above of any Quality Assurance Committee decision, noncompliance with the Quality Assurance Procedures set out herein and/or filing suit based upon any Committee or Board action as outlined above shall act as consent to release such Member's file to the MCAD Board of Directors.

J. ARBITRATION

Any disagreements between MCAD and the member attorney shall be decided either informally or by binding arbitration, if an informal agreement cannot be made.

- 1.) Arbitration is mandatory.
- 2.) Arbitration will proceed under UTCR 13.100 then existing or its equivalent.
- 3.) Parties will agree on a single arbitrator from a list provided by both parties. Should the parties be unable to agree on a single arbitrator, each party will choose one representative and these two representatives shall choose the arbitrator.
- 4.) The decision of the arbitrator shall be subject to the State Contract.
- 5.) The costs of said arbitration shall be borne by equally by the parties. Each party shall be responsible for its own attorney fees if any. No attorney fees shall be awarded by the arbitrator and if awarded they shall not be enforceable. No prevailing party fees or costs shall be awarded by the arbitrator and if awarded they shall not be enforceable

K. MEMBER DUES, FEES, AND ASSESSMENTS

Subject to a Board of Directors vote, implementation of reasonable dues, fees, or assessments may be levied against the members of MCAD.

L. MEMBER LEVIES AND GARNISHMENTS

The MCAD office is obligated to respond to any notices of levies and garnishments of its members. If the office receives such notices, the affected member will be notified and provided with copies of such notices. Members are required to respond to the agency serving the notice and are expected to fulfill their obligations in this respect. The MCAD office will handle such matters in a confidential and timely manner.

2.0 CONTRACT CASELOAD COVERAGE

A. INCLUDED IN THE CONTRACT

MCAD provides 100 percent coverage of the indigent defense appointments in Marion County for the following case types:

- 1.) Misdemeanor and Felony criminal cases.
- 2.) Misdemeanor and Felony Probation Violation proceedings.
- 3.) Post Conviction Relief and Habeas Corpus cases.
- 4.) Contempt proceedings.
- 5.) Extradition proceedings.
- 6.) Death Penalty, which includes:
 - a.) Original trial level cases,
 - b.) Re-sentencing and re-trials,
 - c.) Post Conviction Relief from sentence of death, and
 - d.) Habeas Corpus proceedings arising from a sentence of death.
- 7.) Juvenile Murder and Aggravated Murder either filed or adjudicated in Adult Court or remanded to Circuit Court.

B. EXCLUDED FROM THE CONTRACT

- 1.) Civil Commitments.
- 2.) Juvenile Cases (except as expressly included above).
- 3.) Appeals on Criminal Cases, Post Convictions, and Habeas Corpus.

C. CONTRACT FEE SCHEDULE

- 1.) Criminal cases will be paid at \$50.00 per hour.
- 2.) Habeas Corpus and Post Conviction cases will be paid at \$60.00 per hour.
- 3.) Ballot Measure 11 Criminal cases will be paid at \$650.00 per hour. Cases that begin as BM11 cases and are indicted, as non-BM11 cases, will be paid at \$50.00 per hour unless the attorney worked on the case to obtain the result. A written statement justifying the \$60.00 per hour rate might be required if it is not clear from the billing that the increased hourly rate applies.
- 4.) Juvenile Aggravated Murder and Murder cases will be paid at \$60.00 per hour.
- 5.) Aggravated Murder original trial level cases including Post Conviction and Habeas Corpus cases where the petitioner was sentenced to death or true life \$75.00 an hour for both lead counsel and co-counsel. Co-counsel at this increased rate requires pre approval from MCAD.
- 6.) contempt cases involving non-payment of support resulting from a domestic relations case (SED), \$55.00 an hour.

If you have any doubt about the hourly rate of pay for any particular case that you have been appointed to, you should contact the MCAD office at the beginning of the case to discuss the applicable hourly rate.

3.0 APPOINTMENT OF COUNSEL FOR INDIGENT PERSONS

Appointment of counsel is subject to ORS 135.050, 135.055, 151.430 to 151.480, the Attorney MCAD Contract, and to the MCAD Indigent Defense Contract. The courts appoint counsel from the MCAD member attorneys qualified to handle the particular case(s) under the qualification standards SCA and MCAD have adopted.

A. QUALIFICATION STANDARDS FOR APPOINTED COUNSEL

Pursuant to ORS 151.430(3), SCA and MCAD have adopted the current qualification standards for counsel appointed to represent indigent persons at state expense. Volume 1, Chapter 13, Section 1, OJD Policy Statement is a 37-page document that outlines the qualifications. This policy statement is available for review at the MCAD office.

MCAD attorneys must submit a new "Certificate of Attorney Qualification" to the MCAD office each time a "Request For Proposal" is submitted to SCA, when requested by the MCAD office and/or when their qualifications change for any reason. MCAD attorneys must file new certificates annually with SCA and with the particular courts for case types outside the MCAD Contract, or for counties other than Marion when they wish to be appointed to cases in those counties. **(See Section 16, Exhibit # 1)**

B. APPOINTMENT AGREEMENT

By accepting an appointment to represent an indigent person, counsel agrees to abide by the payment policies and procedures in this policy statement. The Executive Director has the discretion to allow specific exceptions to the attorney fee schedule. (For example \$55.00 per hour for Aggravated Murder Cases.) Members requesting an exception to the attorney fees schedule, must request it in writing and justify the request.

C. APPOINTMENT OF COUNSEL

Appointments made under an indigent defense services contract are subject to that contract, pursuant to ORS 151.460. These appointments are called "contract appointments" or "contract cases". The individual member attorneys are held responsible for the case(s) to which they are assigned and are compensated for their services through MCAD. Contract attorneys appointed to case(s) outside the contract are called "assigned appointments" and the attorneys are compensated by billing the appropriate Court, County or through SCA.

D. APPOINTMENT OF CO-COUNSEL

The courts have the sole discretion to appoint co-counsel when the court finds that the appointment is reasonable and necessary considering both the circumstances of the case and lead counsel's circumstances and needs. Lead counsel must move the court to appoint co-counsel and must file a supporting affidavit that explains why the appointment is reasonable and necessary, including any overall anticipated cost savings.

As a general policy, co-counsel is discouraged except in:

- 1.) Capital cases, or
- 2.) Complex or lengthy murder or serious felony cases when:
 - a.) Qualified lead counsel would not be able to take the case unless co-counsel were appointed, or

- b.) No lead counsel is available within the area, and appointment of co-counsel would help local counsel obtain experience to qualify as lead counsel for future appointments of this type.

MCAD requires a copy of the appointing order when the courts have approved co-counsel. Counsel and co-counsel must familiarize themselves with the MCAD policies and procedures for processing payments in such cases. In general, there can be no duplicative time billed by the attorneys and the attorneys billing statements must cover the same period of time and be submitted to MCAD for processing within the same billing batch.

3.5 APPOINTMENT ROTATIONS

MCAD attorneys will only accept those indigent defense court appointments that they are qualified and certified to accept. Appointments are received on a rotational basis as defined below:

A. FELONY AND MISDEMEANOR TRIAL COURT CASES

For all Trial Court cases including Felonies, Misdemeanors, DUII/DWSS, Probation Violations, Contempt's, Extradition's, and VRO's, the Attorney-of-the-Day rotation is utilized. MCAD attorneys are given the opportunity to sign-up for Felony and Misdemeanor Court dates to receive the indigent defense court appointments for that date. Monthly calendars with the name(s) of the attorney-of-the-day are provided to the court annex staff and they are notified of any changes that occur.

Members sign-up for their court dates and therefore should be available. It is understandable that at times scheduling changes or problems occur. MCAD requests that when it is necessary to change your dates you attempt to trade dates with another qualified MCAD attorney and notify the MCAD office. MCAD will notify the courts of the changes in attorney-of-the-day. If you are unable to trade dates with another attorney, then notify the MCAD office with as much advance time as possible. The MCAD office has a procedure for replacement or fill-in attorney dates.

B. SPANISH SPEAKING MISDEMEANOR TRIAL COURT CASES

A Spanish-speaking Misdemeanor Court attorney is present in the courtroom each day in addition to the Misdemeanor and Felony Court attorneys-of-the-day. They only receive appointments to Misdemeanor Court cases where the defendant's primary language is Spanish. The Spanish speaking Misdemeanor Court attorneys sign-up for court dates on a separate rotation and they are ineligible to sign-up for regular Misdemeanor Court days. However, in the event of extenuating circumstances, the MCAD office may request that a Spanish speaking attorney fill-in when no other members are available.

C. SUPPORT ENFORCEMENT (SED) CASES

A group of member attorneys provide the coverage for receiving appointments in support enforcement cases. These members sign-up on a rotational basis for specific Mondays throughout the year to receive appointments to the Support Enforcement cases.

D. POST CONVICTION RELIEF AND HABEAS CORPUS CASES

Appointments to Post Conviction Relief and Habeas Corpus cases are handled by assigning the next member attorney's name from the MCAD list. The process is that the court's clerk or judicial assistant calls the MCAD office when an attorney is needed for an appointment. The courts notify both the member attorney and the MCAD office with a copy of the appointing order for each appointment and/or substitution. The judge assigned to the case must first approve any changes or substitutions of counsel.

*APPEAL OF POST CONVICTION RELIEF AND HABEAS CORPUS CASES

MCAD attorneys are encouraged to handle their clients' appeals of Post Convictions and Habeas Corpus cases by having themselves appointed and completing the necessary paperwork. If a member is not willing to handle their clients' appeal, then they should call the MCAD office for the name of the next appellate attorney willing to be appointed. **It is the**

responsibility of the MCAD trial attorney to file the Notice of Appeal in Post Conviction and Habeas Corpus cases along with a motion and order to prepare transcripts and waive the fees, without prior agreement of another responsible person. Please note that appellate level cases are **not included** in the MCAD contract. Appellate level billing statements are submitted to the Court of Appeals for payment following the Court of Appeals payment policies and procedures. MCAD only manages the list of attorney names willing to do appeals.

E. MURDER CASES

The courts or other responsible parties normally notify the MCAD office when an arraignment on a murder charge is forthcoming. MCAD contacts the next member from the current murder rotation to see if they are willing and able to take the case. If, for some reason, the attorney is unwilling or unable to take the case, the next member on the rotation is contacted. This process is repeated until there is an attorney available to be present in court for the arraignment. MCAD then notifies the court of the attorney's name and the attorney is appointed at the arraignment proceeding. The Court appoints the MCAD attorney in these cases. The court may request the next name in the murder rotation.

Counsel contacted by MCAD may visit their prospective client any time they feel it is appropriate and should visit as soon as possible. By agreement with the Marion County Courts, the Marion County Jail shall not refuse visitation by counsel anytime later than noon the day before the arraignment, even if the formal appointment has not yet been made.

Counsel contacted to represent a murder client may pass one time on an appointment to a particular case and still remain active in the particular rotation. This is a minor pass.

Counsel may also pass on an appointment to a particular case and request to be active in the next round for an appointment in the particular rotation. This is a major pass.

F. AGGRAVATED MURDER CASES

The courts or other responsible parties normally notify the MCAD office when an arraignment on an aggravated murder charge is forthcoming. However, the assigned Judge in the Aggravated Murder case appoints a member attorney from the MCAD Aggravated Murder rotation. The MCAD office will provide the current aggravated murder list for courts to choose an attorney for the case and will assist the court in contacting the members' office.

Counsel contacted by MCAD or the courts may visit their prospective client any time they feel it is appropriate and should visit as soon as possible. By agreement with the Marion County Courts, the Marion County Jail shall not refuse visitation by counsel anytime later than noon the day before the arraignment, even if the formal appointment has not yet been made.

4.0 TRIAL COURT BILLING

MCAD is responsible for processing the billing statements on the case types listed in Section 2.0 (A) under "Contract Caseload Coverage". ORS 135.055(4) requires counsel, upon completion of all case related services to submit their billing statement of all reasonable fees and expenses, supported with the necessary pre-approvals, invoices and receipts. Contained within the "MCAD Attorney Contract" is an agreement between the Attorney, MCAD and the State of Oregon that all billings submitted either in writing or by electronic means are automatically certified to be true and accurate. The MCAD office reviews, verifies, and processes the billing statements for payment to the member attorneys and their Sub-Providers.

BILLING STATEMENTS SUBMITTED TO MCAD **MUST INCLUDE** THE FOLLOWING:

A. MCAD BILL HARDCOPY: To meet statutory requirements, MCAD developed the Bill Hardcopy, which replaces the State Court Administrator's Fee Statement/Certification Form. **(See Section 16, Exhibit #2)** All Attorney billing statements requesting payment of attorney fees, out-of-pocket expenses, and non routine expenses (NRE) must be submitted to the MCAD office using this form, or if billing electronically, using a compatible format to the Bill Hardcopy. Electronic Billing is mandatory unless otherwise approved by the Executive Director. It is necessary to have all applicable boxes and lines filled in with the complete and correct case information. Make sure to use the MCAD published codes for the Appointment Types, ORS #'s with extensions, Charge Names, Withdrawal Reasons and Dispositions. **(See Section 16, Exhibit #5)** Incomplete billing forms or missing case information may cause the billing statement to be held-up or returned to the attorney for correction and/or completion before processing by MCAD.

*CERTIFICATION: The new "MCAD Attorney Contract" has been revised to include an agreement between the Attorney, MCAD and the State of Oregon. It contains an agreement that all billings submitted by electronic means are automatically certified to be true, accurate, and that the attorney will not accept or receive other direct or indirect compensation for these services. If applicable, the attorney is also certifying that the sub-provider billing statement is true, accurate, and correct when submitted along with the attorney billing.

B. ATTORNEY TIME AND EXPENSE DETAIL: Attorneys must submit supporting information for the total hours submitted on the billing statements. The attorney time and expense detail is a chronological listing of the dates of services, a description of services, and time expended on each service listed in tenths of an hour. In addition, this detail must clearly differentiate between the time spent "In-Court" and the time spent "Out-of-Court". **(See Section 16, Exhibit # 3)**

*SUPPORTING DOCUMENTATION: The MCAD attorney must have and keep supporting information to back-up the attorney time and expense detail where appropriate. Example #1: If the MCAD attorney keeps contemporaneous time-slips such as a separate document or as writing in the file, this must be retained for audit verification purposes. Example #2: If the MCAD attorney time detail indicates that a Motion to Suppress with memorandum was produced, this must be kept for audit verification.

BILLING STATEMENTS MAY ALSO INCLUDE THE FOLLOWING:

C. OUT-OF-POCKET (O-O-P) CASE EXPENSES: Case expenses such as photocopies, postage, telephone, facsimile, travel, subpoena service, records, some transcripts, clerks, associates and other miscellaneous expenses are reimbursable to member attorneys. If the total cost of any one expense is \$25.00 or more, the expense requires submission of a receipt. If the total cost of any one expense is over \$25.00, the expense requires a pre-authorization utilizing the Extraordinary Expense Authorization process. (NRE)

D. MCAD Non Routine Expense AUTHORIZATION (NRE): Attorneys requiring the services of any sub-provider (i.e. Interpreter, Investigator, Evaluator, Expert or Out-of-Pocket Expenses over \$75.00) must obtain **PRE-APPROVAL** from the MCAD office **BEFORE** engaging the services of the sub-provider or the expenditure of any funds. NRE requests may be faxed, mailed or delivered to the MCAD office. The "Non Routine Expense Authorization" must be properly completed with the appropriate client and case details and any explanations or descriptions of work to be performed. All case details and information provided to MCAD for expense approval shall be kept confidential. **(See Section 16, Exhibit #4)**

The completed NRE, with the approval information filled in at the bottom, needs to be on file at both the attorney's office and at MCAD's office. **A copy of the approved NRE must be given to the sub-provider as their work order or authority to perform the services requested. Please note that Sub-providers will only be paid for the total amount of hours pre-approved by the EEA on file at the MCAD office, except in extraordinary circumstances and under the procedure set forth in the paragraph below.**

The routine NRE requests like Interpreter, Investigator and Clerk for ten hours or less are quickly approved. Unusual requests may require more time to approve, or may require a written or verbal explanation. MCAD occasionally needs to talk with IDS regarding some requests and there are instances when the attorney and the Executive Director must discuss the request in order to receive an approval. Every effort is made to approve your requests by the quickest means possible.

Increases to NRE's need to be indicated and tracked on the original NRE. To request additional hours or funds on a particular case, simply date and write an explanation to justify the additional request. All additional increase requests are reviewed and approved by the Executive Director, so a detailed explanation should be submitted. It may also be necessary to discuss these additional requests with the Executive Director.

In extraordinary cases, an NRE may be approved and paid after the expense is incurred. When the submitted NRE did not cover the actual amount of the expense or when the NRE process was not used before the expense was made it may still be paid. If the request complies with the indigent defense policies and procedures and the total amount is still reasonable and necessary. However, this post-authorization will only be accepted with written explanation by the attorney, detailing the exigent or extraordinary circumstances that existed requiring the expense to be incurred before receiving authorization. This written explanation is necessary to justify the after-the-fact approval or increases and provide a reasonable audit trail.

Billing statements that are submitted for payment that are "not pre-approved" or are for "amounts above" the pre-approvals will require this written explanation from the member before they can be processed. The lack of planning and following the pre-approval process will delay payment at least one billing cycle due to the extra paperwork that must be done by the MCAD office.

The completed NRE and the sub-provider billing must be included with the attorney's billing statement when the case is completed and submitted for payment. If an NRE was completed and approved but not needed, it must still be included with the attorney billing statement in order to be removed from MCAD's accounts payable files.

E. SUB-PROVIDER BILLING STATEMENTS: Pre-authorized sub-providers must submit their billing statements to the hiring attorney when their work is completed, when their billing is requested, or when the case is completed. Sub-providers may not submit their billing statements directly to the MCAD office. The sub-provider billing statement must provide the name of the client, the name of the hiring attorney, detail indicating the date(s) of service(s), time expended performing service(s) in tenths of an hour, the hourly rate, and the total amount requested for the billing statement.

Sub-providers billing for hours over what has been pre-authorized on the NRE will only be paid for the hours that are pre-authorized except in extraordinary circumstances as outlined in Section 4.0 (D). Sub-providers must always be aware of their approval amount/time. It is the responsibility of the hiring attorney to provide the sub-providers with a copy of the approved NRE.

In limited situations, and with pre-approval, the sub-provider may have their billing statement processed prior to the case being completed (**See "Interim Billing", Section #13.0**)

F. RECEIPTS FOR CASE EXPENSES: Any individual out-of-pocket expense that totals \$25.00 or more must be accompanied with a receipt to be reimbursed. This applies to both Attorney and Sub-Provider expenditures. Expenses expected to be more than \$25.00 requires a pre-authorization using the Non Routine Expense Authorization (NRE) process.

In the absence of a receipt, the attorney or sub-provider must state on a separate piece of paper:

- 1.) What the expense was for.
- 2.) What the rate and total amount of the expense was.
- 3.) Why there is not a receipt.

The attorney or sub-provider must sign and date this separate piece of paper and submit it with the billing statement to MCAD. The attorney or sub-provider must keep reasonable underlying records in case MCAD, the court, or SCA requires further documentation.

4.5 ELECTRONIC BILLING SYSTEM (ELECTROBOOJUM)

A computerized billing system is available to members to prepare the MCAD billing statements at no cost to the members. Please call the MCAD office to request and inquire about the "ElectroBoojum". Members are encouraged to utilize the billing system; it has been designed to make billing much less time consuming than preparing the MCAD Bill Hardcopy manually. There are built-in tables and integrity checks that help with choosing the correct MCAD codes and charge details. There is a calendar feature that provides members with knowledge of all hours billed or unbilled on any single calendar date, along with many other helpful features.

ElectroBoojum also enables members to electronically prepare the billing statements. **Those members using ElectroBoojum are required to submit their bills electronically.** The MCAD office encourages electronic billing because it saves an enormous amount of key-entry time. It is still helpful to receive hardcopies of the billing statements billed electronically.

ELECTROBOOJUM Helpful Hints:

- 1.) Do not use punctuation (dashes, slashes, and periods etc.) when entering unique ID numbers, ORS numbers and docket numbers.
- 2.) Double-check the Unique ID for the correct year of the appointment. You cannot always accept the default Unique ID number given by the computer.
- 3.) Double-check the ORS numbers/extensions that pop up as you start to enter the number. You cannot always accept the first choice offered by the computer. The ORS numbers are in "table order" and the correct number and extension needs to be selected. This applies to charge names as well. Ensure that you are selecting the appropriate charge name and level.
- 4.) Always enter the first time-slip choosing the official "Appointed Date" because this date defaults to date appointed box on the Bill Hardcopy page. For Habeas Corpus and Post Conviction cases, this first time-slip should be entered as 0.0 time and backdated to correspond to the date the judge signed the order appointing counsel.
- 5.) Use a separate diskette for each calendar date that you do billing. Diskettes cannot be uploaded when there are billings transferred on multiple days. Use multiple diskettes for multiple billing dates, the diskettes are reformatted and returned to you with your paychecks.
- 6.) Be aware that sub-provider expenses and some out-of-pocket expenses will need to be entered on the "Bill Hardcopy" view of the computerized bills prior to printing/transferring them. If necessary the F-9 Key will recalculate the billing to include these additions on the Bill Hardcopy.
- 7.) If you discover an error after printing/transferring a bill, do not correct it by hand. Use the "Un-bill" feature of the billing system; fix the error and print/transfer the bill again. **MCAD strongly recommends that all corrections and changes that occur (particularly with respect to adjusted hours and dollars adjustments) be made on your billing system. This is advisable for audit verification purposes.**

5.0 TIMELINES FOR BILLING STATEMENTS

A. BILLING CYCLES, CUT-OFF, AND PAYMENT TIMELINES

MCAD processes approximately two billing cycles a month, with an average of over 300 bills per billing cycle. Every other week the attorneys have a cut-off date for submitting billing statements. Billing statements received after 5 PM on cut-off dates are held over for processing in the next batch. The MCAD office produces one electronic billing from the individual billing statements received prior to the 5 PM cut-off. This electronic billing is submitted to Indigent Defense, who in turn submits a payment request to the Accounts Payable of the State of Oregon, Judicial Department. Every other Wednesday (opposite Wednesday cut-off deadlines) will be the day that checks get distributed for the prior cut-off submission day. This means that Attorney and Sub-Provider payments for a particular cut-off date will be disbursed three weeks after that cut-off date. Thus, every Wednesday will either be a cut-off day or a payday. In extraordinary circumstances, this schedule may not be able to be followed. MCAD will do everything possible to inform members if there will be a problem meeting this schedule.

Also, a couple of times a year, this schedule may not be met due to special projects that must be completed. MCAD shall inform the membership of any schedule changes as soon as possible, but no later than one month prior to the planned change in the schedule.

The MCAD office produces the individual checks to the members and the sub-providers after it receives a telephone call from the Accounts Payable of the Department of Justice that the payment is available. If for some reason the State is unable to process the MCAD electronic billing, the payment timelines under the above schedule may be delayed and the MCAD office will inform the members as soon as possible.

The MCAD office provides a reference calendar for each year indicating the cut-off dates to the membership. Members are notified in advance of any changes to these cut-off dates.

B. TIMELY SUBMISSION OF BILLING STATEMENTS

MCAD attorneys are encouraged to submit their billings statements in a timely manner to the MCAD office. However they should not be submitted prior to the dispositions being reported and a judgment being received. Billing statements must be submitted to the MCAD office for processing within sixty (60) days after the last court appearance on the case. With the exception of Habeas Corpus and Post Conviction cases, which may be submitted once the Attorney is confident of the pending disposition.

Cases should not be billed too soon, nor too late. If the case is billed too soon and requires any further Attorney involvement, there will not be any supplemental billings approved. For example: A defendant pleads and is sentenced on a cut off date and the attorney submits the bill on the same cut off date. The next day, an amended judgment is submitted because of a mistake in the original judgment. No supplemental billing will be allowed for the time that the attorney spent in reviewing or helping acquire the amended judgment. It is important for the attorney to use judgment in deciding the appropriate time to submit a bill.

Billing statements that are received later than sixty days after the last court appearance will not be processed for payment, without a letter of explanation regarding why the billing was not presented within 60 days. Upon review of this explanation, the Executive Director will decide whether or not to process the billing statement.

The maximum number of billings that can be processed for an individual attorney in a bill batch is 26. The attorney must submit all of the attorney time and case expenses relating to

each client's case(s) at one time at the end of the case(s). The attorney is responsible for gathering and submitting the billing statements of any sub-providers with whom they contracted with at the time of billing.

C. DELAYS IN PROCESSING BILLING STATEMENTS

Occasionally billings may not be processed within the billing cycle for which they were submitted. There are several reasons this may happen. These include:

- 1.) Billings held up for Fee Review (**See "Fee Review Process", Section #15.0**).
- 2.) Billings without pre-approved NRE's or above the pre-approved amounts.
- 3.) Billings that the MCAD payment process cannot verify details.
- 4.) Billings that are illegible, incorrect, or incomplete.
- 5.) Billings received later than 5 PM on cut-off dates.

5.5 COMMON ERRORS ON BILLINGS STATEMENTS

The MCAD office makes every effort to accurately process all the attorney-billing statements received from members. The attorneys' offices can help correct some of the "common errors, omissions and problems" by:

- a.) Ensuring that the Unique ID Number has not been used previously.
- b.) Matching the year of the ID Number to the year of the appointment.
- c.) Obtaining and using client's full legal names (first, middle, last).
- d.) Verifying and using client's correct date of birth.
- e.) Accurately indicating the true appointment date in the first time-slip.
- f.) Using **only** the published codes from the "MCAD Codes Lists".
- g.) Listing all charges and counts appointed to on separate lines. With the exception of infractions and violations.
- h.) Ensuring that all ORS numbers have the proper MCAD sub-section extension and level codes.
- i.) Reporting the appropriate and correct dispositions for all charges.
- j.) Accurately separating and totaling in and out of court functions.
- k.) Attaching/creating receipts for individual out-of-pocket expenses totaling \$25.00 or more.
- l.) Including all Extraordinary Expense Authorizations (NRE's) and all Sub-Provider invoices.

The MCAD office verifies and processes the attorney billing statements making adjustments, additions, and corrections as needed. A photocopy of each billing statement with major changes, additions, and adjusted totals are provided for you along with your paychecks. These copies should be kept with your files as your record of how they were reported to Indigent Defense for audit verification purposes and they are an excellent way for you and/or your staff to learn from reoccurring errors. Remember that by signing the MCAD Attorney Contract, MCAD attorneys have certified that the information submitted for billing purposes is true, accurate, and correct. **MCAD strongly recommends that all corrections and changes that occur (particularly with respect to hours and dollars adjustments) be made on your billing system. This is advisable for audit verification purposes.**

6.0 BILLING PREPARATION AND TRAINING

A. BILLING TO PREPARE AND REVIEW STATEMENTS

For cases appointed to on or after January 1, 1998, Attorneys may include a reasonable amount of attorney time to prepare and review the billing statements. Please consult the MCAD office to review the appropriate guidelines to accomplish this.

B. BILLING PREPARATION TRAINING

The MCAD office encourages attorneys and billing personnel to feel free to contact us, to ask questions, and to gain helpful hints on completing the MCAD Billing statements. The MCAD office will gladly set an appointment to offer you and your billing staff personalized training. Due to the constant billing cycles, the office may not be able to immediately schedule with you, but every other week there is a small window of opportunity for a training appointment.

7.0 MCAD CASE EXPENSE GUIDELINES

Reimbursable expenses must be both reasonable and necessary to the preparation, investigation, or presentation of the indigent person's case subject to review by the Executive Director and/or the Fee Review Committee.

MCAD will only pay for legal services related to a specific appointment. MCAD will not compensate any attorney or sub provider time spent for representing indigents in cases that they are not appointed to or managing their offices and careers except with respect to any negotiated contractual inclusions. For example, an MCAD attorney is appointed to represent an individual in a Robbery in the First Degree charge. During this representation, the client is served with divorce papers. While there is nothing to prevent the attorney from giving advice to the client or representing the client in the divorce matter, any advice or representation must be done either pro bono or any compensation for this representation must come from other sources; not from State/MCAD indigent defense funds.

At the present time, MCAD does provides compensation for specific category, non-case specific related expenses through Stipends reimbursements which have been negotiated and are included in the State Contract.

A. MCAD GUIDELINE AMOUNTS

All guideline amounts are maximum amounts. Note that the guideline amounts are not equivalent to a pre-approved cost and are not a substitute for pre-authorization.

Appointed counsel must obtain needed services by the least expensive means available and within the MCAD guideline amount, unless the MCAD Executive Director approves a more expensive means as reasonable and necessary. Attorneys must discontinue those services no later than when the case is completed.

MCAD Attorneys must provide the pre-approved NRE and any relevant portions of the guidelines, including total dollar amounts approved and procedures for billing; to the prospective sub-providers before incurring any costs for services to be paid from indigent defense funds through the MCAD Office. When additional funds are needed above the original approved amount, the original NRE must be used to request an increase. The NRE and the Sub-provider billing statement must indicate the appropriate audit trails.

Example: An NRE is requested and approved. The Sub-provider is contacted and hired. The Sub-provider must be given a copy of the approved NRE as their "work order". The Sub-provider performs the work necessary, accurately tracking the dates and their time in tenths of an hour. If the Sub-provider finds that they are close to their approved cap of hours or dollars, they contact the attorney to request **additional pre-authorization**. The attorney **must use the original NRE** to describe the additional work to be performed and request an additional cap of hours or dollars. After MCAD approves the additional request, the Sub-provider must be given a copy of the increased approved NRE. When the work is completed the Sub-provider submits a billing statement to the attorney. The Sub-provider's NRE and billing statement are entered on the MCAD Attorney Bill Hardcopy and are submitted for processing and payment along with the attorney billing statements.

If an approved Sub-provider has not performed any work, the NRE must still be submitted along with the Attorney billing statement so that it will be removed from the MCAD's accounts payable files.

B. RECEIPTS FOR CASE EXPENSES

Receipts are required for individual out-of-pocket expenses over \$25.00. If a receipt is not available, attach a signed and dated explanation stating:

- 1.) What the expense was for.
- 2.) The rate and total amount of the expense.
- 3.) To whom the expense was paid.
- 4.) And why there is no receipt available.

Both the Attorney and the Sub-Providers must provide receipts for expenses over \$25.00 and must maintain reasonable underlying records in case further documentation is requested by MCAD or by SCA.

7.5 TYPES OF EXPENSES

General expense categories include overhead expenses, out-of-pocket expenses, and extraordinary expenses.

A. OVERHEAD EXPENSES

Overhead, including services performed by an employee or an independent contractor, is not reimbursable, except in very limited circumstances with MCAD's pre-approval.

NON-REIMBURSABLE OVERHEAD includes, but is not limited to:

- 1.) Travel, including parking, to and from court for appearances within the county where counsel's office is located or within 60 miles of counsel's office, whichever is less.
- 2.) Secretarial services.
- 3.) Word-processing.
- 4.) Rent and utilities.
- 5.) Office equipment and supplies.
- 6.) Library materials.
- 7.) Law Clerk, Associate and paraprofessional services unless pre-authorized.

B. OUT-OF-POCKET (**O-O-P**) EXPENSES

MCAD attorneys may be reimbursed for actual out-of-pocket costs for the following items within the limits described below. Receipts and pre-approval are required for any single expense category totaling more than \$25.00.

1.) **(POST) Postage:**

Reimbursed at actual (not estimated) costs of first class mail. Express mail or messenger service can be reimbursed only if the attorney could not have avoided the extra expense through better planning or if the attorney could show that it was reasonable, necessary, or less expensive than regular first class mail.

2.) **(TELE) Telephone Charges:**

Reimbursed at actual (not estimated) costs of long distance telephone charges and local collect call charges from indigent clients in jail, prison, hospital, or other similar institutions.

3.) **(COPY) Photocopy:**

In-office, actual costs not to exceed \$.05 per page; by outside vendor other than state court, actual costs not to exceed \$.10 per page; by state court, actual costs not to exceed \$.25 per page, plus necessary certification cost. (Photocopying of large projects expected to be more than \$25.00 must be pre-authorized utilizing an NRE.)

4.) **(TRAV) Travel/Mileage:**

Reimbursed at \$.21 per mile for necessary travel other than travel within the county to court appearances (See Overhead, Section) and for sub-providers such as Investigators outside the normal course of business travel for the office location or provider's type of work.

Travel that must be accomplished by air needs to be pre-approved through MCAD and arranged through the SCA, as the SCA can obtain discounted rates on air travel. If you need to travel by air or need to have a witness travel to Salem by air, you must utilize the NRE process and contact the MCAD office to help arrange/detail this expense.

5.) **(CLERK) Law Clerk:**

Reimbursed at up to \$15.00 per hour for hours pre-authorized utilizing the NRE process to perform specific duties and tasks related to an individual case. Clerk time must be included within the attorney time and expense detail, by date and in tenths of an hour, similar to the attorney time detail.

ElectroBoojum users enter the date the work was performed, enter Clerk and a short description of work performed such as research etc. and the time spent such as 1.3 and then enter the total expense of the time multiplied by the hourly rate for each task.

For those not using ElectroBoojum, please provide a separate accounting of the clerk time and expenses similar to the attorney time detail. Record clerk's time by date, in tenths of an hour, along with a description of work performed and the total reimbursements requested. Members must retain supporting documentation for hours worked by clerks in the applicable files at the attorney's office that must be made available for audit verification purposes, if requested by MCAD or SCA

6.) **(FAX) Facsimile:**

Reimbursed at actual costs of facsimile charges not to exceed \$0.50 per page. Individual receipts are necessary for each facsimile reimbursement. Multiple page documents should be handled by the least expensive means possible. If another delivery method, such as mail or express mail would be less expensive it should be considered first.

7.) **(TRANS) Transcripts:**

In some cases, it is necessary to have a full or partial transcript prepared. The Executive Director can approve this expense if reasonable and necessary **except in Post Conviction cases. The absolute maximum amount that can be approved and reimbursed for transcript preparation is \$2.50 per page.** No appearance or other fee may be paid for the transcript preparation. The maximum amount that can be reimbursed for a photocopy of a transcribed proceeding is \$0.25 per page. Please note that transcripts needed for Post Conviction cases are still handled through the pre-MCAD procedure requiring a Motion, Order, and Affidavit to the Post Conviction Court. MCAD does not have the authority to approve these transcript expenses.

8.) **(RECORDS) Records & Reports:**

In some cases, it is necessary to obtain copies of records and reports such as medical, hospitalization, police, probation, counseling or court files. Pre-authorization is necessary utilizing the NRE process for any cost of records or reports expected to be more than \$25.00. When you are not sure what the total expense will be, you should obtain a pre-approval before requesting the documents.

9.) **(DISC) Discovery:**

Reimbursed at actual cost of copying discovery by the least expensive means possible not to exceed \$.05 per page in-house and not to exceed \$.10 by outside vendor. Photocopying of large amounts of discovery and any copying expected to be over \$25.00 must be pre-authorized utilizing the NRE process. Premiums charged by vendors for expedited copies will not be paid if counsel could have reasonably avoided these costs.

10.) **(CLR) Computerized Legal Research:**

Reimbursed for actual on-line usage and only to the extent counsel shows in supporting documents that the cost, including attorney fees, is less than the cost of the same research done manually. Pre-authorization is necessary utilizing the NRE process for any cost of computerized Legal Research expected to be more than \$25.00.

11.) **(SERV) Service of Process:**

In criminal proceedings, counsel must use the least expensive means possible. Flat fee process servers should be utilized as much as possible. If it is necessary to use your investigator for this service, it should be handled by utilizing the least expensive means possible. ORS 21.410 (1) (a) provides that no fee shall be charged to the state by any process server for civil cases in which the party requesting service has counsel appointed at state expense. Pre-authorization is necessary utilizing the NRE process for any cost of Service of Process expected to be more than \$25.00.

12.) **(ASSOC) Associate Work:**

Associate work may be reimbursed at \$40.00 per hour for hours pre-authorized utilizing the NRE process to perform specific allowable functions or tasks related to an individual case. Associate time must be included within the attorney time and expense detail, by date and in tenths of an hour, similar to the attorney time detail. Members must retain supporting documentation for hours worked by Associates in the applicable files at the attorney's office that must be made available for audit verification purposes, if requested by MCAD or SCA.

13.) **(MISC) Other Out-of-Pocket Expenses:**

MCAD will pay other out-of-pocket expenses similar to the above or in excess of the limits stated above utilizing the NRE process, if the expenses are reasonable and necessary. If counsel is uncertain as to whether the expense will be reimbursed, contact the MCAD office to check on it before incurring the expense and to determine if pre-authorization is required. Generally, an inquiry should be made for any individual expense rising above \$25.00.

C. Non Routine EXPENSES

MCAD will only reimburse member attorneys and their sub-providers for extraordinary indigent defense expenses if:

- 1.) MCAD has pre-authorized the expense utilizing the NRE process.
- 2.) The expense is within the guidelines and the approved amount.
- 3.) MCAD has properly approved a deviation from the guidelines.
- 4.) In extraordinary cases, an NRE may be approved after the expense is incurred. In cases when the submitted NRE did not cover the actual amount of the expense or when the NRE process was not used before the expense was made, if the request complies with the indigent defense policies and procedures and the total amount is still reasonable and necessary. However, this post-authorization will only be accepted with written explanation by the attorney detailing the exigent or extraordinary circumstances that existed requiring the expense to be incurred before requesting authorization. This written explanation is necessary to justify the after-the-fact approval or increases and provide a reasonable audit trail.

Billing statements that are submitted for payment that are "not pre-approved" or are for "amounts above" the pre-approvals will require this written explanation from the member before they can be processed. The lack of planning and following the pre-approval process will delay payment at least one billing cycle due to the extra paperwork that must be done by the MCAD office.

- 5.) Non Routine Expense authorization decisions made by the Executive Director may be appealed using the same policies and procedures as a Fee Review Appeal. **(See Section 1.0 D)**

Extraordinary Expenses include, but are not limited to:

- 1.) **(INTERP)** Interpreter Services.
- 2.) **(INVEST)** Investigator Services.
- 3.) **(EVAL)** Psychiatric/Medical Evaluations.
- 4.) **(EXPERT)** Expert Fees and **(WIT FEE)** Witness Expenses.
- 5.) **(TRANS)** Transcripts/**(COPY)** Photocopies/**(MISC)** Audio or Video Tapes.
- 6.) **(RECORDS)** Records/Reports from Outside Sources.
- 7.) **(TRAV)** Extended Travel/Lodging Expenses.
- 8.) Extraordinary Expenses may also include any **(O-O-P)** Out-of-Pocket Expenses such as **(CLERK)** clerk or **(ASSOC)** associate time that has been pre-authorized as an expense, can be incurred outside of overhead costs.

8.0 SPECIFIC GUIDELINES FOR Non Routine EXPENSES

All the services listed below require pre-approval by utilizing the MCAD Extraordinary Expense Authorization (NRE) process. All payments for these services must be processed through the MCAD Office. At no time, are Sub-providers to be paid by MCAD attorneys. These payments must be properly accounted for and tracked for 1099 Contractor tax purposes and reporting to SCA. **(See Section 16, Exhibit # 4) You must try to find a Sub-provider at or below the rates listed in these guidelines. If the attorney is unable to do so, the attorney may request a deviation from these rates but must indicate that they have tried to find a Sub-provider at these rates and/or why a Sub-provider who charges greater than these rates is necessary.**

A. (INTERP) INTERPRETER SERVICES

Language Interpretation Services are not to exceed \$25.00 per hour (\$32.50 per hour for Court Certified Interpreters). MCAD attorneys are responsible for arranging for interpretation services within the guideline rate for their out-of-court meetings such as office appointments and jail visits. If counsel requires an interpreter to be present at any in-court proceeding for the defense purposes only, then the attorney must make the arrangements. The courts arrange for interpreters and specialty interpretation services for in-court needs. For example: During a jury trial the Court shall arrange for the interpreter for Court functions and the defense attorney shall arrange for the interpreter to be with the Defendant. For specialty interpretation services, such as American Sign Language or other uncommon language interpretation, MCAD has the authority to approve a guideline rate variance.

B. (INVEST) INVESTIGATOR SERVICES

Investigation Services are not to exceed \$25.00 per hour. Investigators are required to be licensed by the Oregon Board of Investigators (OBI). MCAD Attorneys are responsible for deciding which of their cases require the services of an investigator and which OBI Investigator to hire. The investigator must receive a copy of the NRE authorizing the investigative hours along with clear and concise investigative goals and direction. If the investigation is going to take more hours than what has been pre-authorized, the attorney must request additional authorization of time by providing more information on the tasks to be completed. These pre-authorizations are very important and MCAD will only pay the total hours pre-approved on the NRE that is filed in the MCAD office.

C. (EVAL) MEDICAL EVALUATORS

When the attorney is requesting authorization for funds to hire medical experts a reason should be stated or a desired result explained on the extraordinary expense authorization form.

- 1.) PSYCHIATRISTS, PSYCHOLOGISTS, PHYSICIANS EVALUATIONS are limited to:
 - a.) Examination: not to exceed \$300.00
 - b.) Report: not to exceed \$75.00
 - c.) Consultation with Attorney: not to exceed \$75.00 for one hour
 - d.) Testimony: not to exceed \$60.00 per hour.
- 2.) MEDICAL EXPERTS STANDBY FEES:

MCAD will pay standby fees for medical experts only when the court or opposing counsel is responsible for incurring the standby expense. For example, the trial court refuses to take testimony out of order or grants opposing counsels belated

request for a continuance over appointed counsel's objection after the expert is on standby.

3.) MISSED MEDICAL OR PSYCHOLOGICAL APPOINTMENTS:

The party, counsels, or court responsible for the missed appointment is responsible to pay for it. MCAD will pay for a missed appointment only:

- a.) When an indigent person with appointed counsel is responsible for missing an appointment because of illness, injury, lack of capacity, or other good reason which prevented the timely cancellation of the appointment, and is not attributable to another party, to counsel, or to the court.
- b.) When the indigent person requesting the appointment was personally responsible for the missed appointment and cannot show good cause; however, MCAD will not pay for a second or a later appointment for the same purpose.

The person seeking payment from indigent defense funds has the burden to establish that the indigent person was responsible for the missed appointment.

D. **(EXPERT)** FORENSIC SERVICES

Counsel should consult first with the state crime lab and the state medical examiner to determine whether counsel requires extensive independent forensic services. The State Court Administrator's Office has a contract with Intermountain Forensics and Intermountain Forensic billings are sent directly to SCA. The attorney is still required to obtain pre-authorization for expert forensic investigation; the MCAD office must have the case details on file.

MCAD will pay up to \$75.00 per hour for forensic services, including but not limited to:

- 1.) Out-of-court testing and examination (of blood, bullets, hair, etc.);
- 2.) Testimony in-court.

The hourly fee includes all overhead expenses, including secretarial services and routine travel within 60 miles of the provider's office.

E. **(EXPERT)** HANDWRITING ANALYSIS

MCAD will pay up to \$150.00 per hour for handwriting analysis.

F. **(POLY)** POLYGRAPH TESTING

Polygraph examination and report not to exceed \$400.00. MCAD will authorize polygraph services sparingly and only when the service is necessary to an adequate trial defense or negotiated disposition. MCAD will not pay polygraph expenses for testing the truthfulness of communications between an indigent client and his or her appointed counsel.

G. **(CLERK)** LAW CLERK, LEGAL ASSISTANT, PARALEGAL

MCAD will reimburse counsel for law clerk, legal assistants, or paralegal services when pre-authorization is obtained as an out-of-pocket expense, not to exceed \$15.00 per hour. Paraprofessionals include law clerks, legal assistants, and trial assistants. Counsel may

request reimbursement only as an out-of-pocket case expense. The attorney must provide the paraprofessionals time records by dates, time reported in tenths of an hour, and description of work performed in order to be reimbursed.

9.0 INTERIM BILLING

A. IN GENERAL

Interim billing involves many extra steps throughout the billing process. The attorneys, sub-providers, and the MCAD office all must handle these billings differently and it is generally discouraged except in certain circumstances where it is appropriate.

MCAD may approve an Interim Billing for:

- 1.) Sub-providers who have completed their work on a case and the case is ongoing (+3 months);
- 2.) The attorney and all sub-providers, if the case is complicated, and ongoing (+ 6 months);
- 3.) The attorney and all sub-providers, for ongoing SED contempt cases (+6 months/+\$200.00);
- 4.) The attorney and all sub-providers, for murder and aggravated murder cases (quarterly); or
- 5.) Partial payments when the billing statement is being held/reviewed by the Executive Director.

B. PRE-APPROVAL TO INTERIM BILL REQUIRED

Pre-approval from the MCAD office is required in order to submit an Interim Billing. Approvals to Interim Bill must be pre-planned, requested, and approved in advance. Approval will not be given on cut-off days and billing statements received without pre-approval will not be processed within the current batch. The MCAD office completes an "Interim Billing Authorization Form" which requires information about the case much like an Extraordinary Expense Authorization. Then there are some specific questions about the case(s), such as, when were you appointed to the case(s), what is the next major event in the case(s), and how many hours have been worked on the case(s)? Depending upon the answers to these types of questions, approval to interim bill is received or denied.

However, even with pre-approvals of Interim Billings, there is no guarantee that they will be processed within the bill batch for which they were received. Every effort will be made to attempt to process these bills but it will depend upon the MCAD office workload, timelines and volume of regular billing statements received. Regular bills have a priority over interim bills.

C. INCLUDED ON THE INTERIM BILLING

The attorney must bill for all the case time and expenses incurred within a specific time frame on the interim billing. This means that any sub-providers or out-of-pocket case expenses from the date of appointment up to a specific date must be included. The attorney and any sub-providers decide on a cut-off date, such as the end of a 6-month period or the end of a quarter and bill all the time and expenses up to and including that specific date.

D. RECEIPTS ON ALL OUT-OF-POCKET CASE EXPENSES

When interim billing on a case the likelihood of going over the \$25.00 expense amounts that require receipts is common. It is therefore necessary to provide receipts for all out-of-pocket case expenses that are incurred by the attorneys and their sub-providers on each interim billing of the case.

E. INTERIM BILLING BILL HARDCOPY FORMAT

For interim bills, there are a couple of differences when completing the Bill Hardcopy:

- a.) Each Interim Bill must have the same Unique ID number.
- b.) Each Interim Bill must reflect the original appointment date.
- c.) There should not be a date in the Final Date field until the final billing.
- d.) The disposition on all charges should be "INTR" until the final billing.
- e.) Charges are listed with CSS numbers only until the final billing then the CHS is entered if appropriate.

10.0 SUPPLEMENTAL BILLING

A. IN GENERAL

There are certain instances when it is necessary and appropriate to request a supplemental billing. This usually occurs when there is a major oversight or error in the billing process or at the request of the courts when further work on a case is necessary. Attorneys are encouraged to avoid unnecessary supplemental billings due to the extra steps that are involved to process this type of billing.

MCAD may approve a supplemental billing when:

- a.) A major omission or error such as neglecting to pay a sub-provider occurs.
- b.) With pre-approval, substantial time and expense has been logged after billing the case.
- c.) The courts request additional work on the case(s).

B. PRE-APPROVAL TO SUPPLEMENTAL BILL REQUIRED

Pre-approval from the MCAD office is required in order to submit a Supplemental Billing. Approval to Supplemental Bill must be pre-planned, requested, and approved in advance. Approval to Supplemental bill will not be given on cut-off days and billing statements received without pre-approval will not be processed within the current batch. The MCAD office completes a "Supplemental Billing Authorization Form" which requires information about the case much like an Extraordinary Expense Authorization. Then there are some specific questions about the case(s), such as, what is the reason for the supplemental billing request, when did you previously bill the case(s), and how many hours have been worked on the case(s)? Depending upon the answers to these types of questions, approval to Supplemental bill is received or denied.

However, even with pre-approvals of Supplemental Billings, there is no guarantee that they will be processed within the bill batch for which they were received. Every effort will be made to attempt to process these bills but it will depend upon the MCAD office workloads, timelines and volume of regular billing statements received. Regular bills have a priority over supplemental bills.

C. INCLUDED ON THE SUPPLEMENTAL BILLING

Attorneys complete the billing statement using the same Unique ID number and case details as previously submitted/corrected. The attorney needs to ensure that there are no overlapping times or expenses on any supplemental billings. The billing statement must contain only the time and expenses not previously submitted or paid.

D. RECEIPTS ON ALL OUT-OF-POCKET CASE EXPENSES

When supplemental billing on a case, the likelihood of having gone over the \$25.00 amounts that require receipts are common. It is therefore necessary to provide receipts for all out-of-pocket case expenses that are incurred by the attorneys and their sub-providers on each supplemental billing of the case.

E. SUPPLEMENTAL BILLING BILL HARDCOPY FORMAT

For supplemental bills, there are a couple of differences when completing the Bill Hardcopy:

- a.) Each Supplemental bill must have the same Unique ID number as the original bill
- b.) Each Supplemental bill must reflect the original appointment date.
- c.) The disposition on all charges is "SUPP".

11.0 REVIEW OF ATTORNEY BILLING STATEMENTS

A. IN GENERAL

One of the functions of the MCAD office is to provide an initial review of the attorney billing statements for reasonableness. The process begins on cut-off dates, with a verification of the time and expense calculations to compare the total fees requested with the standard weighted average deviation for the different case types. Billing statements received with total fee requests above the standard average deviations are isolated within two or three working days and given to the Executive Director for further review.

B. EXECUTIVE DIRECTOR FEE REVIEW

The Executive Director reviews any billing statements that exceed the standard averages for that particular case type by \$50.00 or more. Upon this initial review, the Executive Director may approve the fees as reasonable and necessary and the billing statement is processed within the same batch.

If an attorney believes that a particular billing statement is likely to be in excess of the standard average deviation, they are encouraged to submit a letter or memo along with the billing statement. The attorney should provide an explanation as to why the time expended or the expenses incurred were reasonable and necessary. If the information submitted is sufficient explanation, the Executive Director may approve the fees as reasonable and necessary and the billing statement is processed within the same batch.

If the Executive Director has any questions or concerns about the billing statement revealed by this review or not explained in an attached letter or memo, then the billing statement is withheld from the current batch. A Fee Review Letter is sent to the attorney requesting that the Executive Director and the attorney discuss the particular case and the billing statement details.

Upon receipt of a Fee Review letter, the attorney has two options:

- 1.) Contact the Executive Director in person or by phone to discuss the case. While members may contact the Executive Director in person or by phone the best process is to submit a letter or memo to MCAD as set forth in 2, below.
- 2.) Submit to MCAD a letter or memo outlining any pertinent details. This letter must include information so that the Executive Director can decide whether the time and expenses spent on the case are reasonable and necessary. This must include facts concerning the case, the attorney's time and expenses and how they relate to each other. It may include case strategy and theory. An attempt to develop a defense may or may not be reasonable and necessary given the type of case, the law, and the facts.

Please note that all case details and information provided to MCAD for expense approval or fee review shall be kept confidential.

C. SAMPLE FEE REVIEW MEMOS

The following are examples of fee review memos that provide the necessary and appropriate information:

Example 1: Criminal Case

“This was an unusual case because of the factual issues and the mental capacity of John. John is mentally retarded. He resides in a group home situation that is run by Mrs. Doe. I represented John in 1993 on an indecency charge in the Municipal Court on a limited fee basis. That charge was successfully defended.

In 1994, John was accused of exposing himself to two young girls near Hood Street. I was court appointed and sought to resolve the case by some sort of plea without too much consequence to John who has very limited understanding. He does work at Goodwill and he gets around. I forgot to mention that John is 63 years old. While we were negotiating, John was accused of sexually touching a peer who worked at Goodwill with him. Our investigation showed that this was either a mutual expression of affection by two consenting mentally handicapped adults or John was enticed by the “victim” to make advances. At any rate, Judge A because of her sensitivity to the retarded, kept this case when she became a Circuit Court judge and with her help I got the DA to not challenge a psychological report by Dr. C who is not on the DA list. We got a favorable result that included the treatment that Dr. C recommended and that John was already doing and eliminated any chance of jail, which the DA tried to do.

The short answer then is that this was a complicated misdemeanor with two separate incidents of alleged sexual crimes which included a psychological report and that ended up in victory and took the time and the effort that is listed on my billing.”

Example 2: Criminal Case

“Jack was accused of attacking two aids in the Oregon State Hospital. Jack was there on a prior Psychiatric Security Review Board (PSRB) case from Portland. His PSRB jurisdiction ended and then he became a civil commitment. While on this commitment he was on the telephone and was ordered off by a female aid. This upset Jack. He knew it upset him so he went to ask the aid and nurse who were hiding in the nurse’s station for some medication to calm him down. They blew him off so this got him madder and he jumped on top of the nurse. Jack is a big man. This broke one of her vertebrae although she did not know this until she went to the hospital on her own power. The aid came to her aid and Jack hit her. During this out of control time he said something that made them believe he was trying to kill them.

Jack unfortunately is still severely mentally ill. He was and is unable to aid and assist. I had Dr. S do an evaluation that I attended and tape-recorded. I believe that because I was there, Dr. S agreed that Jack could not aid and assist. He kept calling Dr. S by a different name even though Dr. S kept telling him his right name.

All of the above took the time that this case did and this is why it is over the cut off amount.”

Example 3: Criminal Case

Mr. Z was charged with sexual abuse in the first degree, and charged under Ballot Measure 11. He was facing 75 months in prison under a ballot measure 11 sentence. Mr. Z agreed that he was guilty of something, but not to the degree to warrant a 75-

month sentence without the possibility of good time or parole. Based on that, Mr. Z wanted to take the case to trial.

Since the case was scheduled for trial, all necessary trial preparation and investigation was conducted. On the day before trial (a Friday), the district attorney offered a deal wherein defendant would plead to attempted sexual abuse in the first degree, a non-ballot measure 11 crime, agree to a sentence of 46-50 months, and he would be eligible for good time and credit for time served. I spent considerable time over that weekend discussing matters with the defendant, and he agreed to accept the deal. A change of plea and sentencing occurred on Monday; the date set for trial.

Example 4: Criminal Case

This letter is to explain my fee statement in the above-referenced matter. I was appointed to represent Sam on a charge of Robbery in the Second Degree and miscellaneous misdemeanors. Sam went into a convenience store, put his hand into his pocket, and gave the teller a note saying, "Give me all the money out of the till." The clerk replied, "Is this a joke?" To which Sam replied, "No, man, I need the money." The clerk gave Mr. Sam \$81.00. Sam had been in that store many, many times before. The clerk knew his name. Mr. Sam was not wearing a disguise. Upon his arrest, Sam gave the SPD Detective a full and complete confession corroborating the clerk's story. In sum, we had nothing for trial. So we sought sentencing under ORS 137.712 (SB 1049).

Sentencing was originally set for July 12, 1999, but after arguments, Judge G asked both parties to submit written memorandum of law. We returned on July 19, 1999, but the court had not reviewed the memorandum thoroughly so we were set-over to August 4, 1999. Today we appeared for sentencing, and the Judge sentenced Sam under Ballot Measure 11 to 70 months DOC. However, the good news is that the Judge may have committed reversible error requiring re-sentencing by denying Sam his right of allocution.

Example 5: Criminal Case

Mr. Y pleaded no contest on the day of trial. He changed his mind several times in the course of his case, including backing down on a plea offer on the eve of trial with another attorney, for whom I substituted. He did have a couple of issues worth researching (proof of the value of goods; state of mind), but the case was still a lock for the State. Considerable time was spent in negotiating a very good deal (work center, continue-the p/v on an Assault IV conviction, no contest, and statutory plea), as well as just dealing with my client. Since he still had not made up his mind by the day of trial, I went through all the preparation I normally would do. All the time was necessary and reasonable to obtain a favorable outcome.

Example 6: Habeas Corpus case

"This was an unusual Habeas Corpus case because of the legal issues involved. The major issues were the interplay of Corrections and the Parole Board. Mr. B attempted to discharge his sentence but was released two days before his good time date even though he refused parole. Corrections does this so that the person is on parole and they can keep them on the string. If the client is ever revoked then all of their previously granted good time is eliminated and they are put back in the institution until they have served their sentence again two-days before their new good time date. The cycle continues. Full employment of corrections and parole officers combined with the feeling the society is better off interfering with the individual's lives after they have done 99 % of their time. This is one of Paralegal Y's pet ideas. The problem is that these

inmates are always released after the habeas is filed and then it gets dismissed for mootness. This was the same but in this case before we got to the actual dismissal I filed a memo on the issue and a reply as to why the case was not moot.

Thus it took more time than normal because of the research and writing and contact with Paralegal Y”.

Example 7: Post Conviction case

“X was charged with Kidnapping, UUMV, Reckless Driving and Attempting to Elude in Lane County. He was and is mentally ill. He currently is in partial remission and under the jurisdiction of the PSRB. He has not been released from the Oregon State Hospital (OSH) and the hospital currently has no plans to release him because he is unsuccessful in getting sex offender treatment because he does not view himself as being a sex offender. In all likelihood he is not a sex offender.

On the streets of Eugene he saw a woman and thought that she was in danger even though she was just talking with her friends. He went over to her, grabbed her arm and forced her towards the car that he had just stolen. When she screamed, he let go and ran away. The police did a chase and eventually did catch him. During the interviews with the Police he was talked into admitting that he did this for some sexual purpose. He was found guilty but insane of Kidnapping in the First Degree after a stipulated facts trial. The remaining charges were dismissed. He was sent to OSH. Because of his interview with the police, he has been labeled a sex offender at OSH and thus has to go through more programs, even though he had not been charged with or had a history of sexual offenses.

This was his major complaint although we could not do much about this except the normal Post Conviction. The PC took some extra time because we needed to get the transcript and Mr. X kept calling all the time and being unclear in his letters and telephone contact because of his mental illness. Judge Y did his threats about what the result would be if he granted the PC but Mr. X was fixated to get out of OSH. He did not. The case is currently on appeal. The main reason that it took the extra time is the client’s mental illness and dealing with him and OSH.

Example 8: Post Conviction case

Jane was accused of Custodial Interference in Clatsop County. I was originally appointed to represent her in Clatsop County because she was out of custody. This appointment came with the understanding that the case would be transferred to Marion County. I had to get the agreement of Josh Marquis (Clatsop DA) and the State which was not hard to do but took time. Jane was and is living in Bremerton, Washington and the communication was difficult. Several times I had to locate her and this took extra time.

The rest of any extra time on this case was mainly spent on understanding the underlying charge and getting ready for trial on the Post Conviction.

Jane and her husband were in controversy concerning their split up. She had taken the children and had moved to Washington to establish residency to start a divorce. At this time her husband got a restraining order against her with an accompanying custody order by lying to the Clatsop County Court. CSD then got involved and they both tricked her into giving the husband visitation in Astoria and when she showed up they arrested her for violating the custody order. She then started the divorce in Washington after she was released and got a custody order in Washington giving her

custody. The actual timing of these events was open to controversy during her criminal trial and did not really get any clearer in the Post Conviction. She could not understand how she could be guilty of a crime when her husband had lied to the Court to get custody. She figured that she should not be convicted and blamed her attorney for the conviction. This case went to a Court trial in front of a pro tem Judge C who felt that she was technically guilty because of the timing of the orders and she had to follow the order even though it might have been a fraudulently created order. When it came to sentencing the DA wanted jail and to his credit Judge C saw through that and only gave her probation. She still does not believe that she is guilty and wanted this off of her record and she was adamant throughout the case that she was right (and she might be).

D. SCHEDULED FEE REVIEW TIMES

The Executive Director is available to conduct fee reviews anytime that his schedule allows and that he is in his office. Members may contact the Executive Director directly to arrange a personal meeting or telephone appointment, or they may call the MCAD office to schedule a convenient time to contact the Executive Director. Fee reviews are not conducted on Friday afternoons.

During the fee review, the member and the Executive Director discuss the particular case(s) and the time spent on the case(s). The Executive Director produces a brief memo regarding this discussion of the case(s) and the billing statement is processed with any changes agreed to during this discussion. The Executive Director's memo is filed with a copy of the Fee Review letter and the billing statement. The billing statement is then processed within the current billing batch if at all possible.

If the supporting information is deemed insufficient, and/or the Executive Director does not agree that the time or expenses were reasonable and necessary, the Executive Director may propose an immediate resolution to the fee dispute. If agreed to by the member, the resolution will go into effect and the fee review will be resolved with no right of appeal.

If the member does not agree with the resolution, they may appeal to the fee review as outlined below. The Executive Director may adjust the fee and/or the expense to the amount he feels is reasonable and necessary and the adjusted billing statement is processed.

E. APPEAL OF A FEE REVIEW

If the member disagrees with the decision of the Executive Director, they may appeal the decision within ten business days of being informed of the Executive Director's decision. The member must submit a written request to the MCAD office indicating that they wish to appeal the Executive Director's decision to the Fee Review Committee.

The Fee Review Committee consists of two members of the Board of Directors and 2 member attorneys who will meet to review the particular billing statement. The Executive Director and the member may appear before the Fee Review committee either in writing or in person and submit any information relevant to the decisions to be made by the Committee.

The Fee Review Committee will review all materials made available to decide whether or not the proposed fees and/or expenses are reasonable and necessary and comply with MCAD's and Indigent Defense's payment rules. The Fee Review Committee will make its decision as soon as possible and will inform the member and MCAD of its decision either verbally or in writing if necessary.

If the attorney disagrees with the decisions of both the Executive Director and the Fee Review Committee, they may appeal to the judge assigned to the case or if no judge has been assigned, to the Presiding Judge. An appeal to the Court may be done by filing a Motion, Affidavit, and Proposed Order for Payment of Fees and/or Expenses with the Court or by another method as directed by the Court. The member is obligated to immediately notify MCAD and/or the Executive Director of this appeal either verbally or in writing. The member is also obligated to immediately provide MCAD with copies of any paperwork submitted to the Courts in support of this appeal. The Executive Director may take appropriate steps to inform the Court of MCAD's position and shall notify the attorney of any action to be or that has been taken. Unless not authorized by law, rule, or MCAD's State Contract, MCAD shall pay any disputed fees and/or expenses that the Court or the Fee Review Committee orders as a result of the appeal. Once the Court's decision is made and the Order provided to MCAD, the bill, or approved remainder thereof, will be processed within the current billing cycle.

12.0 EXHIBITS ATTACHED TO MANUAL:

Exhibit <u>#1</u>	CERTIFICATION OF ATTORNEY QUALIFICATIONS
Exhibit <u>#2</u>	MCAD BILL HARDCOPY
Exhibit <u>#3</u>	SAMPLE TIME AND EXPENSE DETAIL
Exhibit <u>#4</u>	MCAD EXTRAORDINARY EXPENSE AUTHORIZATION (NRE)
Exhibit <u>#5</u>	MCAD SPECIFIC BILLING CODES
Exhibit <u>#6</u>	MCAD ALPHABETIC SORT - ORS NUMBERS AND CODES
Exhibit <u>#7</u>	MCAD NUMERIC SORT - ORS NUMBERS AND CODES

Marion County Association of Defenders, Ltd.

Position Description

POSITION TITLE: **EXECUTIVE DIRECTOR**

HOURS:	Part time - 30 Hours Per Week
LOCATION:	130 High Street S.E., Salem, Oregon 97301
EMPLOYEE:	Steven H. Gorham
REPORTS TO:	MCAD Board of Directors

The Marion County Association of Defenders, Ltd., (MCAD) is an Oregon Non Profit Corporation, established to provide indigent defense services to the criminally accused and indigent incarcerated in Marion County. MCAD is a consortium of attorneys joined together for this purpose.

SUMMARY: The Executive Director of MCAD is responsible for all aspects of the development and management of the corporation as well as overseeing the daily operations of the business office. The Executive Director is the Chief Executive Officer (CEO) of the corporation.

MAIN DUTIES AND RESPONSIBILITIES:

Historically, the Executive Director's duties involved the research, development and negotiation of a contractor's preliminary agreement with Indigent Defense Services Division (IDS) of the State Court Administrators Office (SCA). The initial planning of MCAD encompassed the development of the Corporate Bylaws, the Articles of Incorporation, and application for Tax Exempt Non-Profit status with the Internal Revenue Service for the purpose of effectively creating and maintaining the corporate entity. In addition, the systems for the payment, review, and operation of MCAD were either personally established by the Executive Director or under the direction of the Executive Director with the help of MCAD members and staff.

The duties and responsibilities have been and will continue to be adjusted and augmented from time to time, as MCAD's purpose, scope, issues, and obligations change.

The Executive Director acts as a liaison between the State Court system, Marion County Trial Courts, the Marion County Judges, the Office of Public Defense Services, the Public Defense Services Commission, MCAD

members and any other individuals and/or organizations interested in Marion County Indigent Defense services. The position requires the Director's attendance at different meetings, for the purpose of liaison, negotiating and handling different situations. The Executive Director must help solve problems, make changes, improve processes, policies and procedures dealing with indigent defense in Marion County and the State of Oregon.

The Executive Director is responsible for the corporations' business operations, as well as performing a wide variety of both organizational and operational tasks. Duties involve securing office space, hiring employees, providing training, overseeing employees, overseeing the development of the computer based and other operational systems, the holding of monthly Board of Directors meetings, monthly and annual membership meetings and to ensure that all corporation business requirements are fulfilled.

The Executive Director is responsible for the continuing contract between the State of Oregon and MCAD. These duties include continual consultation about contract issues with the Board of Directors and the State of Oregon. They also include either beginning negotiation and/or facilitating the negotiations of new contracts with the State of Oregon. This responsibility includes providing those interested with factual information, including statistical information to arrive at a fair contract between the State and MCAD.

The Executive Director is ultimately responsible for the effective functioning of MCAD's committees including the Quality Assurance Committee and the Education Committee. The Executive Director has certain direct responsibilities under the Quality Assurance Process to deal with informal and formal complaints against MCAD's members.

The Executive Director acts as a sounding board for member, court, staff and others who need a vehicle to air their concerns and the Executive Director attempts to resolve these concerns when appropriate.

The Executive Director is ultimately responsible to ensure that there are sufficient number of members to do the contract work.

Weekly duties include ultimate responsibility for the proper payment of the corporation's members, subproviders and creditors. This involves working within the timelines for processing billings to peruse and review billings that exceed established parameters for processing and payment.

The task involves careful scrutiny of the attorney timeslips, analyzing and comparing new billings of the same type from other attorneys, and reviewing attorney explanations to determine if the time expended is reasonable and necessary and therefore payable with the State of Oregon's Indigent Defense funds. The Executive Director determines which bills are processed or are deferred awaiting further explanation. The Executive Director personally communicates with member attorneys whose billings require further explanation or clarification, prepares memos regarding the unusual case particulars and determines any fee reductions, if necessary.

The Executive Director analyzes and approves all Non Routine (formerly Extraordinary Expense Authorizations) that exceed the in-office parameter for costs. It is often necessary for the Executive Director to contact the attorney making the request to discuss the need and benefit of the expense. These functions sometimes include helping the MCAD attorney find and fund the appropriate resources to properly defend their client.

The Executive Director works closely with the computer consultant and staff obtaining regular reports and statistics on membership billings to facilitate the fee review process and to monitor the contract expenditures and budgets. The Executive Director delegates tasks and duties to the computer consultant as required or requested. The Executive Director personally enters billing information onto spreadsheets to monitor the individual case type averages and other contract expenditures.

Monthly duties include preparing agendas, arranging and attending monthly Board of Directors and membership meetings, producing membership mailers to share information and keep the members current with changes and announcements.

QUALIFICATIONS: The Executive Director must be admitted to the Oregon Bar, have several years of legal experience in the area of criminal defense, and have knowledge of how Oregon's Indigent Defense system operates.

Revised 6/2005

MCAD NEW MEMBER INFORMATION SHEET

MCAD, the Marion County Association of Defenders, Ltd, is a non profit Oregon corporation which is the major indigent defense contractor for Marion County. MCAD is a consortium of independent member attorneys with offices in Marion County or the City of Salem. Membership is individual to a specific attorney, but members may be in any type of office arrangement as long as the member has an office in Marion County or the City of Salem. (Sole practitioners, partners or associates in large or small firms, or other office sharing arrangements are welcome, but just because a partner is a member does not mean that all of the partners or the firm are members) Members may take private clients in any areas of law that they so chose, including criminal matters in Marion County or elsewhere.

MCAD provides the Courts in Marion County with attorneys who do all types of appointed indigent defense work including all District and Circuit Court criminal cases, all Marion County Post Conviction cases, all Marion County Habeas Corpus cases, and all SED (support enforcement division) defendant cases. All Marion County criminal appointments from misdemeanors to Aggravated Murder cases must come to our membership, except in extraordinary circumstances. At this time, our contract does not extend to mental commitment or juvenile court criminal appointments although it does include juveniles who are charged in adult court.

We also provide various local and appellate courts with the names of our members who are willing to take appointments in many types of court appointed appellate work.

Attorneys are compensated at the statutory Court appointed rate of \$50.00. As an incentive to do certain types of work, our contract allows an appointed rate of \$60.00 in certain types of cases. Aggravated Murder cases are paid at \$75.00 per hour. Billings for closed cases are submitted every two weeks and usually paid within two weeks of submission. Out of pocket and non routine expenses (for example investigators, copying charges, law clerks) are paid in a similar manner by the state upon pre approval of the MCAD office.

At this time we allow our attorneys to volunteer to take appointments in the various listed areas. Because of workload and contract obligations, we at times force members to take appointments in areas that we do not have enough volunteers. In the past this has been done in the Post Conviction and Habeas Corpus cases. All attorneys must be qualified under the State Indigent Defense Qualification Rules to take the type of appointment that they accept.

We also provide to the Marion County Misdemeanor Court bilingual Spanish speaking attorneys for appointments to indigent defendants who primarily speak Spanish.

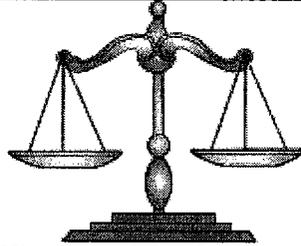
Normal criminal appointments are made on an attorney of the day basis in the Felony and Misdemeanor Courts. The attorney of the day receives all of the new appointments on their particular days. Each attorney can sign up for approximately a Felony and Misdemeanor court day every month. Appointments per attorney day run from a low of two to a high of 25 depending on the day.

We also have a Spanish speaking attorney of the day rotation in the Misdemeanor Court. This rotation should average one appointment day every week. Other appointments are made from rotating lists.

MCAD's contracts to do these services started in November of 1993 and run until December 31, 2005. It is likely that this contract or a modification of it will continue for another two year period, at least up until December 31, of 2007, although this is not guaranteed.

New members are on probation for one year. All new members are required to enroll in MCAD's mentoring program. This program provides members with a mentor of their choice upon the approval of the mentoring program to help integrate the member into the Marion County legal system. This program is individualized based on the experience and needs of the new member.

MCAD
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OCDLA Email Summary
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 From the Pond9

NOTICES:

MEMBER MEETING

The next Member's Meeting will be on
 July 19, 2005

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US SUPREME COURT

Note: The United States Supreme Court has ended its 2004 session. It will begin the 2005 session in October.

Rice v. Collins

Certiorari Granted: 06/28/05

No. 04-52

Court below: 348 F.3d 1082 (9th Cir. 2004)

Full text: <http://caselaw.lp.findlaw.com/data2/circs/9th/0156958p.pdf>

CRIMINAL PROCEDURE (Whether A Trial Court Judge's Findings are Sufficient When Assessing Attorney's Reasons For Striking a Minority Juror During Voir Dire)

The issue in this case is whether a trial court judge's ruling should be given deference when determining the truthfulness of an attorney's reasons for striking a juror.

Collins was convicted of possession of 0.1 grams of rock cocaine. Being his third felony conviction, he was sentenced to 25 years to life under California's "three strikes" law. At trial, the prosecutor made a peremptory challenge of one African American prospective juror. The trial court listened to the prosecutor's race-neutral reasons for using a peremptory strike against an African American prospective juror. After weighing the evidence and arguments for and against the peremptory challenge, the trial court judge concluded that prosecutor's reasons for making the strike were race-neutral. Collins filed a writ of habeas corpus with the California state appellate court. That court denied his writ of habeas corpus. Collins then filed for a writ of habeas corpus to the United States Court of Appeals for the Ninth Circuit (Court of Appeals) arguing that the trial court erred in granting the prosecutor's peremptory challenge. In reversing the lower court's decision, the Court of Appeals explained that the lower opinion completely disregarded evidence contradicting the trial judge's decision that the prosecutor was being truthful in her arguments for striking the juror in question. The Court of Appeals cites evidence that the prosecutor said the jurors in question were both young. The record reveals, however, that the juror was a grandmother. Furthermore, the prosecutor stated that she was also challenging the juror due to her gender, a ground which the trial judge immediately rejected as unconstitutional. Most importantly, however, the prosecutor stated that the juror displayed disrespect by rolling her eyes at a question which she was presented. The trial judge stated that he did not see the juror roll her eyes. Based upon these facts, the Court of Appeals held that state appellate court's characterization of prosecutor's proffered reason for striking African-American prospective were unreasonable determinations of the facts. [Summarized by Tobin Ernst.]

House v. Bell

Certiorari granted: 06/28/05

No. 04-8990

Court below: 386 F.3d 668 (6th Cir. 2004)

Full text: <http://caselaw.lp.findlaw.com/data2/circs/6th/006136p.pdf>

CRIMINAL PROCEDURE (Whether a State's Doctrine of Waiver May Bar Future Claims and Whether Establishment of Innocence May Revive Barred Claims)

The issue in this case is whether a state court's application of an objective waiver standard constitutes an adequate and independent procedural bar to another claim and whether petitioner's establishment of actual innocence is sufficient to revive barred claims.

Convicted of murder and sentenced to death, Paul House (House) unsuccessfully appealed his conviction and sentence. Claims of ineffective assistance of counsel were submitted, but not argued. House appealed to the Tennessee Court of Criminal Appeals alleging jury instruction errors. The Tennessee Supreme Court denied leave to appeal and the United States Supreme Court (the Court) denied certiorari. A second petition for post-conviction relief was filed and denied by the trial court. The Court of Criminal Appeals affirmed. The Tennessee Supreme Court remanded for reconsideration in light of a recent but later withdrawn opinion. The Court of Criminal Appeals remanded to the trial court for further consideration of a waiver issue, but the remand was stopped when the Tennessee Supreme Court re-instated the trial court's initial denial of House's second post-conviction relief. The

Tennessee Supreme Court then re-instated the trial court's original denial of House's relief. House filed a habeas corpus petition and the United States District Court for the Eastern District of Tennessee (District Court) granted the State's summary judgment motion for a majority of the claims. The district court denied habeas relief on House's remaining claim that the procedural default of his ineffective counsel claims was excused because he was able to establish his actual innocence. House then appealed to the United States Court of Appeals for the Sixth Circuit in regard to two issues. First, whether the state waiver rule was applied in a such a way as to provide an adequate and independent state ground that procedurally defaulted his ineffective assistance to counsel claims and second, whether House showing of actual innocence was sufficient to revive House's claims. The United States Court of Appeals determined that the state's determination of procedural default was proper and that House failed to establish actual innocence. [Summarized by Valerie Hedrick.]

9TH CIRCUIT

Fields v. Legacy Health System

No. 03-35386 (06/22/05)

Before Circuit Court Judges Graber, Gould, and Berzon

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5F428C53F518C12A882570270081FC1E/\\$file/0335386.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5F428C53F518C12A882570270081FC1E/$file/0335386.pdf?openelement)

CONSTITUTIONAL LAW / EQUAL PROTECTION AND DUE PROCESS / WRONGFUL DEATH STATUTE OF LIMITATIONS

Opinion (Gould): In 1994, Laura Fields had a Pap smear at Legacy Hospital in Portland (Legacy), Oregon. She was told the results were normal. In 1995, Laura Fields and her husband, George, moved to Washington along with their son. In 1996, she had another Pap smear and was informed that she had cervical cancer. Laura died in 2000, while still residing in Washington. As a personal representative of her estate, George Fields brought a diversity action in district court in Washington for wrongful death against Legacy for failing to diagnose Laura's cancer. He then filed an identical action in Oregon district court. Legacy moved to dismiss the Oregon action and the court granted the motion on the ground that it was barred by Oregon's statute of limitations and Oregon's statute of repose. The Washington court also applied Oregon law and dismissed the action. Fields appealed both dismissals and they were consolidated for the Ninth Circuit to review. The Ninth Circuit held that both the Washington and Oregon courts were correct in applying Oregon law because Oregon had the most significant contacts—the conduct causing the injury occurred in Oregon, Legacy is an Oregon corporation, and Laura Fields lived in Oregon at the time of the injury. The Ninth Circuit also reviewed Fields' argument that Oregon's wrongful death statutes of limitations and repose violate the equal protection and due process clause of the U.S. Constitution. Fields claimed these statutes discriminated against claimants whose decedents happen to live more than three years after discovering the injury and five years sustaining the injury causing death. The Ninth Circuit held that these statutes did not violate the U.S. Constitution because they had a rational basis. They helped to avoid stale claims and limit the costs of litigation and medical care. **AFFIRMED.** Concurrence by Gould. [Summarized by Mary Tollefson]

U.S. v. Camacho

No. 04-10078 (06/24/05)

Before Circuit Judges Thomas, Paez, and Burns, District Judge for the Southern District of California

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/152B63F1F22C43D98825702900806B74/\\$file/0410078.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/152B63F1F22C43D98825702900806B74/$file/0410078.pdf?openelement)

CONSTITUTIONAL LAW / FIFTH AMENDMENT / DOUBLE JEOPARDY

Opinion (Paez): Victor Camacho purchased a home theater system at the Travis Air Force Base Exchange; however, Camacho "left the Exchange with two." Camacho's squadron commander sanctioned Camacho, including suspension of privileges to use the Base Exchange, official reprimand, reduced performance scores, and required counseling. Subsequently, the Judge Advocate proceeded with criminal prosecution for the theft. Camacho pled not guilty and filed a motion to dismiss based on double jeopardy grounds. A magistrate judge denied the motion and the district court affirmed. Camacho appealed. The Ninth Circuit held that the double jeopardy clause does not apply when the initial punishment was based solely on the government's capacity as an employer, and not as a

sovereign. Camacho's supervisor reprimanded Camacho in manner that was no different from the type of punishment available to a private employer. The Ninth Circuit noted that Camacho presented a question of first impression, but the Ninth Circuit followed the policy established by several sister circuits. Therefore, the lower court correctly denied Camacho's motion to dismiss. AFFIRMED. [Summarized by Matt DeVore]

U.S. v. Nakai

No. 03-10485 (06/22/05)

Before Circuit Judges Reinhardt, Noonan, and Fernandez

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/BF1120C00CAF44358825702D00555858/\\$file/0310485.pdf?openement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/BF1120C00CAF44358825702D00555858/$file/0310485.pdf?openelement)

CRIMINAL LAW / APPEAL / TRANSFER, HEARSAY, JURY INSTRUCTION, MURDER

Opinion (Noonan): On August 17, 2001, Gregory Nakai and his two brothers, members of the Navajo tribe decided to "jack up" two men they had been selling beer to. The men were carjacked, robbed, kidnapped, severely beaten, ultimately shot to death, and their bodies were burned to cover the crime. One of the brothers informed the FBI of the murders in November. Nakai, who shot the driver five times, was convicted and sentenced to life imprisonment. On appeal, Nakai argued that the transfer of the trial from one district court to another deprived him of a fair representation of the community. The Ninth Circuit found that 14.1 percent of the venire were Native Americans and most were excluded because they didn't have phones on the reservation and so could not be reached. Second, Nakai's defense at trial had been voluntary intoxication, and Nakai argued that his brother's statements to the FBI agent about the amount of alcohol Nakai had consumed were improperly excluded at trial. The Ninth Circuit found the statements were inadmissible hearsay. Third, Nakai argued that the conspiracy instruction to the jury was improper, as Nakai was not charged with conspiracy. The Ninth Circuit found that the jury was instructed that it could find an agreement to commit carjacking, robbery, kidnapping, murder, and use of a firearm during a crime of violence and that the evidence established each of the crimes of which Nakai was convicted. Finally, Nakai argued that there was no proof that the driver was alive when he shot him. The Ninth circuit found that the jury could rationally conclude that Nakai "would not have wasted his bullets on a corpse." AFFIRMED. [Summarized by Amber Ames]

Bradley v. Henry

No. 04-15919 (06/22/05)

Before Circuit Judges Ferguson, Noonan, and Rymer

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/DB712C04C85EE8EA8825702700824056/\\$file/0415919.pdf?openement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/DB712C04C85EE8EA8825702700824056/$file/0415919.pdf?openement)

CRIMINAL LAW / HABEAS CORPUS / RIGHT TO CHOOSE COUNSEL / "CRITICAL STAGE"

Opinion (Noonan): In 1996, prosecutor's indicted Nicole Bradley for first degree murder, carjacking, possession of a short-barreled shotgun, and attempted robbery. Over the next two years, three different sets of attorneys represented Bradley. In 1998, without Bradley present, Cynthia Dunlevy, who was Bradley's attorney, and Chris Andrian attended an in-camera hearing where Dunlevy asked to withdraw because of conflicts with Bradley. The judge granted Dunlevy's request and appointed Andrian to represent Bradley. After the hearing, Bradley moved to remove Andrian as her attorney. The court refused that request, and a later request by Bradley to replace Andrian. At trial, a jury convicted Bradley of the first three counts of the indictment. Bradley appealed the conviction arguing her exclusion from the in-camera hearing and the denial of her motion to replace Andrian deprived her of the right to choose counsel. The state appellate court denied her appeal, and the California Supreme Court denied review. Bradley then filed a petition for a writ of habeas corpus alleging denial of her right to due process, a fair trial, and counsel of her choice. The district court denied the petition and Bradley appealed. The Ninth Circuit held the in-camera hearing was a "critical stage" in the trial, and Bradley had a fundamental right to be present for the hearing. Because of the seriousness of the charges, Bradley's exclusion from the in-camera hearing deprived her of her right to choose her own counsel. REVERSED AND REMANDED. Concurrence by Judge Ferguson. Dissent by Judge Rymer. [Summarized by David Wilson]

U.S. v. Barken

No. 03-50441 (06/27/05)

Before Circuit Judges D. Nelson, Graber, and Gibson, Senior Circuit Judge for the Eighth Circuit

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5EBB87757C223FA88825702D00560276/\\$file/0350441.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5EBB87757C223FA88825702D00560276/$file/0350441.pdf?openelement)

CRIMINAL PROCEDURE / FIFTH AMENDMENT DUE PROCESS / DELAY OF PROSECUTION

Opinion (Gibson): In 1997, Gary Donald Barken, president of Barken's Hard Chrome, dumped corrosive hazardous waste. Riverside County charged Barken with six felony counts for transporting and disposing of hazardous waste. Hard Chrome's corporate entity, Barken's Enterprises, pled guilty per a settlement agreement, in 1998, to a single count and was sentenced to probation and charged \$80,000. The federal government then indicted Barken on multiple counts relating to his prior acts, in 2002, approximately five days before the federal statute of limitations expired. A jury returned a guilty verdict on six of the counts. As a result, Barken received six concurrent 24-month sentences. Barken appealed to the Ninth Circuit and argued that the court should have dismissed the indictment against him due to the delay. The Ninth circuit noted that courts rarely dismiss indictments on the basis that the prosecution's delay constituted a Fifth Amendment due process violation. The Ninth Circuit determined that Barken failed to show that he suffered actual, non-speculative prejudice from the delay. Furthermore, the Ninth Circuit held that the statute of limitations typically provides adequate protection for a defendant's rights. Moreover, the Ninth Circuit refused to use the date of Barken's initial arrest, on state charges, as the measuring date for purposes of showing an unnecessary delay under the Federal Rules of Civil Procedure. Barken also argued that the district court incorrectly imposed the mandatory sentencing guidelines. In the midst of Barken's appeal, the Supreme Court clarified the sentencing regime. The Ninth Circuit found that the record did not indicate whether the district court would have imposed a different sentence if it had known the guidelines were merely advisory. **CONVICTIONS AFFIRMED; SENTENCE REMANDED.** [Summarized by Julia Smith]

U.S. v. Vo

No. 03-10699 (06/27/05)

Before Circuit Judges Beezer, Graber, and Bybee

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/E7AE5DF9FEADC9CC8825702D005575FE/\\$file/0310699.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/E7AE5DF9FEADC9CC8825702D005575FE/$file/0310699.pdf?openelement)

CRIMINAL PROCEDURE / SPEEDY TRIAL ACT, MARITAL COMMUNICATIONS PRIVILEGE, AND PRIOR CONVICTIONS

Opinion (Bybee): Rick Vo appealed his conviction on one count of aiding and abetting possession with intent to distribute methamphetamine by raising three claims. First, Vo claimed that the district court erred by denying his Speedy Trial Act motion to dismiss. Vo claimed that the dates between October 10 to October 21, which Vo sat in jail while a continuance of his detention hearing was being carried out, were not excludable. Second, Vo claimed that the district court violated his marital communications privilege by allowing his wife to testify about marital communications. Third, Vo claimed the district court improperly allowed evidence from a thirteen-year-old drug conviction to be admitted. The Ninth Circuit affirmed the district court's decision on all three claims on the following grounds: (1) Vo's Speedy Act Motion was properly denied, as the twelve days in question were excludable under the act (2) marital communications that concern joint criminal activity are not shielded. Furthermore, there is an exception when one spouse has not yet become a participant, but since Vo did not assert the privilege at trial, he waived it. (3) The district court also properly allowed evidence from a prior conviction, since evidence from a prior possession of sale of narcotics is relevant to issues of intent in prosecutions of current charges for similar crimes. **AFFIRMED.** [Summarized by Bill Niese]

U.S. v. Gonzalez

No. 04-10041 (06/22/05)

Before Circuit Judges D. Nelson, Kleinfeld, and Gould

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/EC21EC0341AFD64C8825702700822286/\\$file/0410041.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/EC21EC0341AFD64C8825702700822286/$file/0410041.pdf?openelement)

CRIMINAL PROCEDURE / SUPPRESSION OF EVIDENCE / APPLICATION FOR WIRETAP

Opinion (D. Nelson): During an investigation by the U.S. Government (Government) into illegal alien smuggling conducted by Gonzalez and his company Golden State Transportation (GST), the Government applied for a wiretap application for GST's headquarters. Based on an affidavit by U.S. Border Patrol, the district court granted the application. Defendants moved to require a hearing under *Franks v. Delaware* to suppress any conversations obtained as a result of the wiretap. The district court held that defendants had adequately alleged that the wiretap application had material misrepresentations and omissions, necessary for a *Franks* hearing, and also that the Government failed to prove necessity of the wiretap at GST's headquarters. The Ninth Circuit affirmed the district court holding that the defendants made a substantial showing of intent by the Government to omit or misrepresent in support of their motion for a *Franks* hearing. Additionally, the Ninth Circuit held that the government failed to meet the necessity requirement for the wire tap application because they did not show that normal investigative procedures were adequately utilized, that other procedures would not have succeeded, or that other procedures were too dangerous. Finally, the Ninth Circuit held that Gonzalez had standing to request the *Franks* hearing. AFFIRMED. [Summarized by Michael Elliott]

Hearns v. Terhune

No. 02-56302 (06/30/05)

Before Circuit Judges Hug Jr., Pregerson, and Berzon

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/C081FD240551936A8825702F007EC895/\\$file/0256302.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/C081FD240551936A8825702F007EC895/$file/0256302.pdf?openelement)

CONSTITUTIONAL LAW / 8TH AMENDMENT / CRUEL & UNUSUAL PUNISHMENT / CONDITIONS OF CONFINEMENT

Opinion (Pregerson): The State prison, as a result of prior violence, did not allow unsupervised Muslim prisoners in chapels. Hearns, a Muslim, was attacked by a group of Muslims in a prison chapel without supervision. Hearns was moved, for safety reasons, to the disciplinary segregation unit. The safety conditions in the segregation unit caused him to fear "serious health concerns," due to the lack of drinkable water in the yard and other unsanitary conditions. Hearns exhausted his administrative remedies and brought a 42 U.S.C. sec. 1983 claim on the grounds that his 8th Amendment rights were violated by the inhumane conditions in the segregation unit and a failure to protect in the chapel. The District Court dismissed with leave to amend for failure to state a claim, and then upon re-filing, the court again dismissed the 8th Amendment claim because the inhumane conditions were not sufficiently serious to meet the objective component and the failure to protect claim did not allege deliberate indifference by prison officials. The Ninth Circuit held that the failure to protect claim was sufficiently alleged because of the inference that the prison officials acted with deliberate indifference and disregarded the risk by failing to take reasonable measures to abate risk when prison officials knew of the prior violence that led to the supervised prison chapel policy. The Ninth Circuit held that the conditions of confinement claims were sufficiently serious because, among other things, prisons must provide for basic human necessities and allegations of one hundred plus degree weather without drinkable water was adequate to state a claim. REVERSED; AND REMANDED. [Summarized by Jim Webster]

U.S. v. Romo

No. 04-30131 (07/05/05)

Before Circuit Judges B. Fletcher, McKeown, and Gould

[http://www.ca9.uscourts.gov/ca9/newopinions.nsf/6D6D513F4C164FA4882570350051D1EB/\\$file/0430131.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/6D6D513F4C164FA4882570350051D1EB/$file/0430131.pdf?openelement)

CRIMINAL LAW / MOTION TO SUPPRESS / PSYCHOTHERAPIST-PATIENT PRIVILEGE

Opinion (McKeown): Romo, a prisoner at a correction facility, was convicted for threatening the President of the United States after he had confessed to the facility counselor and subsequently to a secret service agent. The facility counselor and the agent testified that Romo had written and sent a threatening letter to the President. The district court had earlier denied Romo's motion to suppress because the meeting between the counselor and Romo was "not a counseling, treatment, or therapy session." Romo appealed claiming that his confession was protected under the psychotherapist - patient privilege. The Ninth Circuit applied the *Jaffee* rule. Under *Jaffee*, to invoke the privilege, the defendant bears the burden of showing that 1) the counselor is a licensed psychotherapist, 2) his communications

to the counselor were confidential, and 3) the communications were made during the course of diagnosis or treatment. The Ninth Circuit concluded that the privilege applies only when a “therapist practices his craft, not whenever a therapist and a patient communicate.” Thus, the Ninth Circuit affirmed the district court’s ruling stating, “the meeting...did not occur during the course of diagnosis or treatment.” The Ninth Circuit also held that Romo’s communication with the secret service agent was “harmless” and that the prosecution had sufficient evidence. AFFIRMED. [Summarized by Rob Kavanaugh]

OREGON COURT OF APPEALS

State v. Brown

Case No.: A121813 <http://www.publications.ojd.state.or.us/A121813.htm>

AREA OF LAW: CRIMINAL LAW

HOLDING: (Opinion by Brewer, C. J.) A claim of error asserted for the first time on appeal is disregarded if the ends of justice will not be disserved by requiring petitioner to abide by terms of probation.

James Brown (Brown) was sentenced to three years enhanced bench probation with special conditions after being convicted for driving under the influence of intoxicants (DUII). Brown appealed, claiming that in order to impose the special conditions of his probation the trial court was required to find facts that, under *Blakely v. Washington* and *Apprendi v. New Jersey*, should have been proved to a jury beyond a reasonable doubt. Brown’s assignment of error was not preserved at trial, nonetheless, Brown asked the Court of Appeals to address the error as plain error. The court declined to use exercise its discretion to correct the unpreserved error because the gravity of the asserted error was slight, the ends of justice did not require reversal, and Brown did not face potentially unlawful incarceration. Affirmed. [Summarized by Kimberly Boswell.]

State v. Dinsmore

Case No.: A122052 <http://www.publications.ojd.state.or.us/A122052.htm>

AREA OF LAW: CRIMINAL LAW

HOLDING: (Opinion by Edmonds, P. J.) A court’s reinstatement of dismissed charges is improper without grand jury authorization.

In a plea bargain, Karen Dinsmore (Dinsmore) pleaded “no contest” to criminally negligent homicide (a lesser-included charge for second degree manslaughter), and the trial court dismissed charges of assault, DUII, and reckless driving. The Court of Appeals reversed the conviction on *Miranda* grounds. On remand, Dinsmore withdrew her plea; the trial court vacated its order dismissing the other charges, and the state reinstated its second degree manslaughter charge. Dinsmore was found guilty on all charges. Dinsmore appealed her conviction claiming that the trial court lacked authority to reinstate charges that had been dismissed and erred by admitting the results of a Breathalyzer test. The Court of Appeals held that revival of the dismissed charges was impermissible without grand jury authorization and because she was not afforded counsel before deciding to submit to a Breathalyzer test the results were inadmissible as to the manslaughter prosecution. Convictions for assault in the third degree, assault in the fourth degree, driving while under the influence of intoxicants, and reckless driving reversed; conviction for manslaughter in the second degree reversed and remanded for new trial. [Summarized by Kimberly Boswell.]

ARTICLE OF THE WEEK

Court issues stay of execution

Monday, July 11, 2005

JARRATT, Virginia (AP) -- The U.S. Supreme Court granted a last-minute stay of execution Monday for a man convicted of fatally stabbing the manager of a pool hall with a pair of scissors.

Robin Lovitt, 41, had been scheduled for execution at 9 p.m. Monday.

The stay will remain in place until the full court resumes in October. The court will then either hear Lovitt's appeal or allow Virginia to execute him.

Lovitt's attorneys and opponents of capital punishment have argued that the conviction should be reviewed because of questions surrounding the evidence.

Initial DNA tests of the bloody scissors could not conclusively link Lovitt to the 1998 slaying of Clayton Dicks, 44, during a pool hall robbery in Arlington.

A court clerk later destroyed most of the evidence, including the scissors, making additional DNA testing impossible.

The Virginia attorney general's office has maintained that DNA evidence was not critical to the conviction because of "very compelling, strong evidence," including eyewitness testimony.

"He was found guilty by 12 jurors, two trial judges, seven state justices, one federal district judge and three federal appellate judges," said Emily Lucier, spokeswoman for the state attorney general's office.

Lovitt's attorneys had sought a last-minute appeal from the high court and requested clemency from Gov. Mark R. Warner. Among those fighting the execution are former independent counsel Kenneth Starr.

Lovitt has steadfastly maintained his innocence and had remained hopeful about his ability to win a last-minute reprieve, his lawyers said.

The Supreme Court of Virginia in 2000 found no error by the trial court and affirmed Lovitt's conviction and death sentence. The following year, the U.S. Supreme Court refused to consider Lovitt's appeal.

The scissors were among items discarded in 2001 to free up space in the Arlington County Circuit Court's evidence room. In 2003, the Virginia Supreme Court rejected Lovitt's claim that his due process rights were violated. The justices ruled a court employee did not act in bad faith when he ordered the evidence destroyed.

In May, more concerns were raised after an independent audit found the state crime lab erred in critical testing in the case of another death row inmate, who was pardoned.

The audit prompted the governor to call for a scientific review of more than 160 cases handled by the lab. The review team last month concluded the lab properly handled the DNA evidence in Lovitt's case.

Lovitt would have been the first inmate executed in Virginia in 2005.

FROM THE POND

7/8/2005

[mcaadpond] [Fwd: one plea petition per case]

I have had defense attorneys use one plea petition for multiple files. Please advise them to just use one per case.

7/8/2005

[mcaadpond] [Fwd: Fw: Change in DUII Diversion Fees - Form Correction]

I received notice from the OSCA that the filing fee of \$267 listed on their form for DUII Diversion was incorrect. The fee is actually \$261. A new version of our form is posted on the database (link here: (Document link: Database 'MAR Documents', View 'By Category', Document 'DUII Diversion Petition; Statement of Eligibility; Plea Petition and Order; Motion for Extension of DUII Period and Order')). The new language reads:

- a. Pay the court a filing fee of \$261. You will also be required to pay a Unitary Assessment fee of \$97. If you cannot afford to pay these fees, tell the judge. Some or all of these fees may be waived, depending on your financial situation. The court may allow you to make payments over time.
- b. The court will give you the name and address of a diagnostic agency. You agree to contact this agency and undergo an evaluation to determine the extent of any alcohol or drug abuse problem you may have. You will be referred to a treatment program if the agency finds treatment to be necessary. The cost of the evaluation is \$150. You must pay this amount directly to the agency that performs the diagnostic assessment.

7/15/2005

[mcaadpond] [Fwd: July 15, 2005]

Courtroom B will be closed all day on Friday July 15, 2005. Everything that is currently scheduled for Courtroom B will be moved into Courtroom A

6/30/2005

[Ocdlapond] Habeas Question

Assume the following facts: Youth under the age of 15 is accused of aggravated murder and conspiracy to commit the same in 1998.

Youth is remanded pursuant to ORS 419C.352 to adult court where youth is then indicted for same crimes. Remand is appealed and affirmed in 2000.

Youth then enters plea to aggravated murder and conspiracy to commit aggravated murder in 2000. Adult court sentences youth to life with 30-year minimum, but eligible for second look after 15 years at which hearing the government will remain silent on the aggravated murder charge and 120 months (straight guideline sentence w/o departure either way) on the conspiracy charge. The 120 months runs concurrently to the murder sentence.

No appeal is taken. No PCR is filed. Prisoner now files a Petition for HB, alleging an illegal sentence. Leaving aside the substantive issues of whether the sentence is, in fact, illegal for the moment, is this procedurally possible? I think that prisoner is toast for not having exercised and exhausted rights of appeal and PCR. Can the Petition be heard anyway?

Response:

It depends on why the sentence is illegal, doesn't it? If it's illegal because the DOC or whoever is misinterpreting the judgment, then client doesn't lose for the reason you specify.

If it's illegal for a reason that would be cognizable on direct appeal, D loses unless his failure to appeal is the result of inadequate assistance or some such for which he can now PCR, which would require that he have a basis equitably to toll the limitations period. As I dimly recall, the statute on tolling is oddly worded, and, if the two-year period was tolled at all, then there is no limitations period under the statute. I might remember that wrong, and even if I'm right there might be latches-type problems.

If the sentence is illegal for a reason that would be cognizable in PCR, then D loses unless he can PCR now, which depends on the facts, especially why he didn't PCR within the SOL.

You don't say if you're talking about state or federal habeas. I dimly recall that, in federal habeas, relief from the one-year SOL is available if the client is actually innocent, which I think includes innocence as it relates to a specific term in the judgment or sentence. In that case, client might be "actually innocent" of any offense justifying his sentence, if the sentence is in fact illegal and the state could never have made it legal, i.e., it's illegal according to the true underlying facts in addition to the terms of the plea bargain.

Response:

Habeas is not a substitute remedy for those who failed to seek post-conviction relief. *See, e.g., McClure v. Maass.*

Response:

This is quite the way I see it. The sentence appears to be illegal because, at least as I read the statute, a person cannot be convicted of both conspiracy and the completed offense (ORS 161.485). Even if there is a way past that limitation, conspiracy is a non-waivable offense and D should have been remanded back to the juvenile court for disposition on that offense. Neither of those being the result of DOC interpretation, they should have been handled on direct appeal or through PCR. There may be facts that would toll the SOL for PCR filing but I think that the test must be in that process, not in habeas. It is a state habeas proceeding, btw.

7/1/2005

[Ocdlapond] New law affecting jury lists

On 6/29/05, the Gov signed HB 2281 (A-engrossed) which changes how presiding judges control local jury systems. Local presiding judges no longer have authority to "prescribe a selection system or device" and all authority is now pretty much vested in the State Court Administrator. (Section 4 of HB 2281).

The presiding judge CAN now authorize the use of juror ID numbers instead of names, "when to do so would promote the efficiency of the selection process..."

Also, the SCA can now use lists obtained from any person or public body, to make up the master jury lists. I assume this means that private/corporate list compilers (since corporations are technically speaking "persons") or whoever can give the SCA lists to use after they've been "cleansed."

Perhaps the most interesting part of this new law is that the SCA now has authority to "make adjustments to the master jury list" including (but not limited to) "removing the names of persons who are deceased, permanently ineligible for jury service or permanently excused from jury service...."

I will be auditing the adjustments, and objecting to the masking of prospective juror IDs on the grounds of "efficiencies." I encourage others to do so as well.

The Bill was categorized as an "emergency" so it will go into effect asap, I think.

7/11/2005

[Ocdlapond] Blakely-fix legislation

You may have heard that the so-called "Blakely-fix" bill, Senate Bill 528, has passed both the Senate and the House. The Governor signed it last Thursday, July 7. Jennelle and I will be discussing this bill at some length at next month's NACDL-OCOLA CLE. But there is some information about it that I want to get out now.

Because the bill has an emergency clause, *it is now the law* and has been the law for four days. You can see the bill at: http://www.leg.state.or.us/bills_laws/home.htm. That page will give you a choice between HTML and PDF versions. If you're planning on cutting and pasting from the bill, you can do that only from the HTML version. Otherwise I recommend opening the PDF version, because it's easier to read (although to do that, you must have Adobe Reader on your PC).

With SB 528 now on the books, there now is statutory authority for jury trials, using the reasonable-doubt standard, on at least some types of aggravated departure factors. Greg Silver and I have consolidated cases in the OSC addressing the question of whether the pre-SB 528 scheme authorized jury trials on aggravating factors. *State v. Sawatzky*; *State v. Upton*. The cases now are scheduled for arguments on Sept. 9. It is possible that the state now may move to remand either or both cases to the respective trial courts for determinations on whether and the extent to which SB 528 affects the cases.

Beyond authorizing jury trials using the reasonable-doubt standard for certain types of aggravating factors, SB 528 does a couple of interesting things. Its apparently novel feature is that it distinguishes between offense-specific and offender-specific aggravating factors. The former are based on facts pertaining to the crime. The latter are based on facts pertaining to the criminal. Under the bill, offense-specific factors presumably are tried during the guilt phase. Offender-specific factors are tried during the penalty phase (assuming there is one, i.e., assuming the defendant is found guilty of the underlying crimes). The bill also requires application of the evidence code during the state's case on aggravating factors. It allows a defendant to waive jury on aggravating factors, but only on an "all or none" basis. That is, he can't pick and choose which factors to try to the jury, and which factors to try to the bench.

In addition to its emergency clause, the bill has a sunset clause. The bill expires on Jan. 2, 2008. That is the day after the 2007 Legislature's enactments usually will take effect. This will give the 2007 Legislature the chance to examine the present system. I find the sunset clause more than a little ominous. When asked what he thought about SB 528, Steve Doell of Crime Victims United said it was the best they could get "for now."

As I've mentioned in earlier emails, the bill also has retroactivity clauses. Both clauses apply the bill to crimes committed before the bill's July 7 effective date. The first clause pertains to cases that have never been sentenced. The second clause pertains to cases that the appellate courts reversed and remanded for resentencing.

In defense of ex post facto challenges to these retroactivity clauses, the state will argue that even assuming that the law in effect when defendants committed their crimes mandated bench trials on aggravating factors using less than the reasonable-doubt standard, by its terms the pre-SB 528 law otherwise authorized aggravated departures. Because of that, the state will argue, the law in effect at the times of defendants' crimes gave them "fair warning" of aggravated departures, so applying SB 528's procedure to them retroactively is not ex post facto. See, e.g., *Dobbert v. Florida*, 432 US 282 (1977); *State v. Perez*, 119 Or App 436, rev den 317 Or 272 (1993).

But for most defendants there are two ways to try to defeat this "fair warning" defense to ex post facto claims. First, if a defendant committed his crime after certain points in the "Apprendi time line," he can argue that the "fair warning" dissipated, because the Apprendi-type case law obliterated the "fair warning." The points along the time line are:

1. March 24, 1999, when the USSC decided Apprendi's predecessor, *Jones v. US*.
2. June 26, 2000, when the USSC decided *Apprendi v. NJ*.
3. June 24, 2002, when the USSC decided *Ring v. Ariz.*
4. June 24, 2004, when the USSC decided *Blakely v. Wash.*
5. September 8, 2004, when the Ore. COA decided *State v. Sawatzky*.
6. October 13, 2004, when the Ore. COA decided *State v. Warren*.
7. December 16, 2004, when the OSC decided *State v. Dilts II*.

The more of these time points after which a defendant committed his crime, the stronger his argument that *the case law* told him that he could not get an aggravated departure despite what the statutes said before SB 528. Therefore, a defendant would argue that *because of the case law*, he had no "fair warning" about the possibility of an aggravated departure. Notwithstanding cases such as *Dobberts* and *Perez*, applying SB 528 to him would be ex post facto.

The second way to try to defeat the state's defense to an ex post facto challenge is one that can be used regardless of the date of the defendant's crime. As originally written, the guidelines mandated bench trials on all departure factors—mitigating and aggravating. See, e.g. *State v. Mack*, 108 Or App 643 (1991), rev den 313 Or 300 (1992).

SB 528 only modifies the departure scheme to allow jury trials on *aggravating* factors. Insofar as *mitigating* factors are concerned, SB 528 leaves intact cases such as Mack.

This means that under the post-SB 528 system, the state can present special verdict instructions on aggravating factors, but the defendant cannot present such instructions on mitigating factors. Unless the courts are willing to rewrite the post-SB 528 departure scheme to allow jury trials on *mitigating* factors, the defense can argue that retroactive application of the new one-sided scheme is ex post facto. See *State v. Fugate*, 332 Or 195 (2001) (where legislation repealed statutory exclusionary rule that only benefited defendants, retroactive application of repeal was ex post facto). See also *Carmell v. Texas*, 529 US 513 (2000).

There's much more to be said about post-SB 528 attacks on aggravated departures. But as Dave Groom might say, all of that will be divulged "in the fullness of time."

Response:

Based on the language of Blakely referring to unanimous jury decisions, in order to be a true "Blakely fix", shouldn't the jury decision on the aggravating factors be by unanimous verdict (as opposed to the 10-2 requirement for conviction)? And if that true, wouldn't it follow that after conviction--if the jury is polled and less than 12 vote to convict--the subsequent aggravating issues question/portion is moot? In other words Blakely specifically uses "unanimous verdict" language; this bill is the Blakely fix so a unanimous jury verdict must be required for the aggravating factors; if less than the full 12 votes to convict, there can be no unanimous verdict on the aggravating factors, so no ability to go forward with the "fix"? Or have I overlooked the obvious?

Appendix B

APPENDIX B

Questionnaire for Consortia Administrators and Boards

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.
2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for “lay” or “community” board members?
3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a “plan for succession” to insure an orderly transition from one administrator to the next?
4. What percentage of the administrator’s overall workload is related to consortium matters? Is there a formal limit to the percentage?
5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?
6. What are the requirements for membership in the consortium?
7. What is the process for applying for membership?
8. How long has each of the attorneys been a part of the consortium?
9. To what extent do consortium attorneys specialize in criminal and juvenile defense? In public defense? Is there a limit on the percentage of an attorney’s practice that can be consortium related?
10. How do you insure that new attorneys can become part of the consortium?
11. What materials and orientation are provided to new consortium members?
12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.
13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?
15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?
16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?
17. Do consortium members meet regularly as a group? If so, how frequently?
18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?
19. Is there a mechanism for sharing research or forms?
20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?
21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation?
22. How do you address problems of underperformance by attorneys?
23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law- or trial practice-related CLE credits per year?
24. Are attorneys required to report disciplinary actions by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?
25. What is the consortium's process for handling complaints from judges? From clients? From others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?
26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?
27. Do you have a system in place which allows clients to evaluate the quality of services received from consortium attorneys?

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?
29. What are some of the things your consortium does especially well? Please describe.
30. Are there any areas in which you think improvement is needed? Please describe.

Richard W. Condon, P.C.

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3387 Center Street NE
Salem, Oregon 97301

RECEIVED JUN 20 2005

Richard W. Condon

Telephone: (503) 581-6452
Facsimile: (503) 371-3616

June 20, 2005

Shelley Dillon
Public Defense Services Commission
1320 Capitol Street NE, Suite 190
Salem, Oregon 97303

Dear Shelley:

Please find enclosed responses to the questions you earlier transmitted to us for your review prior to our meeting on Wednesday. I hope these are helpful to you in preparing for the meeting.

I have also enclosed resumes for each of the JAC members.

Sincerely,



Richard W. Condon

RWC:paj
Enc.
cc: JAC Members

Richard W. Condon, P.C.

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June 20, 2005

Responses to Questions

Question 1

Currently, we do not have formal by-laws or written operating procedures. For the past several months, our consortium members have discussed this issue and we have reviewed different options. We have a subcommittee that is assigned to propose the type of entity, proposed by-laws and individual contractor agreements. This committee has consulted with a business attorney and accountant to assist us in addressing these issues. We have drafted a set of operating by-laws and they are being reviewed by our consortium members. We anticipate the by-laws being in place by July 30, 2005.

Question 2

Presently, we do not have a board of directors, however, we have a good idea of the individuals who will constitute the board. We cannot formally establish the actual board membership until we have addressed the issues discussed in question 1. That does not mean we have operated without a decision making process in the past. We have used an informal structure to address consortium issues and this informal structure consists of the senior members of the consortium reaching decisions by consensus. To date, our consortium has made decisions by consensus, however, we acknowledge that consensus may not always be possible in the future. As our consortium expands, we realize that we need a more formal structure to conduct consortium business.

All consortium members meet once a week to discuss issues relating to the consortium and the juvenile justice system.. Frequently, the entire group or subcommittees meet more often to discuss issues that require additional time and attention. We anticipate having at least two non-consortium members on the board. We have tentatively discussed and identified one of those directors. Again we anticipate this being in place by July 30, 2005.

After we have established the board, we expect the board will meet weekly or biweekly. These meetings will be in addition to the consortium's regular weekly meetings. Issues expected to be handled by the board include all major business issues for the consortium, including but not limited to: hiring, mentoring, performance review, conflict issues, division of workload, committee assignments, and other needs as they arise. Board membership terms have not been

decided at this point.

Question 3

Presently, we do not have an executive director. For several years Richard Condon has served in this capacity - particularly with respect to contract issues. Once we have established the board, we anticipate Dick will continue in this role and perhaps as executive director. He is not compensated otherwise and we do not anticipate this changing in the near future.

To date, various members of the consortium have been involved in the management of issues that periodically arise. We view the management issues as being a shared responsibility. At given times, different members have been assigned to serve on juvenile court improvement projects, internal committees for recruitment, mentoring, performance issues, contract negotiations, and training issues. Additionally, most of our members have been involved in leadership roles within the bar and community. Due to this shared management philosophy and level of experience, we feel we could select one of our members to succeed Dick in the future. (Of course we also work to ensure that Dick gets plenty of exercise and eats a balanced diet).

Clearly, the advent of the board of directors will change the consortium's management style, but we hope to maintain our philosophy of shared management responsibility.

We have a part-time administrative assistant. She is responsible for tracking case counts and sending initial case counting forms to members. At the end of each month, each member is required to report case counts to her and she sends total case count figures to the Office of Public Defender Services (OPDS). She is an independent contractor and not otherwise employed by any other JAC member.

Question 4

It is a relatively small percentage and there is no formal limit. As the consortium grows, and the board is implemented, more of this work and responsibility will shift to the board.

Question 5

To date we have responded to all administrative issues in a timely fashion. We plan to have the board handle significant administrative functions and do not anticipate that individual attorney's trial schedules will impair the board's ability to address those functions.

Question 6

We have no formal criteria for membership, but we have a committee that developed a set of qualities that we believe are important to become successful in doing juvenile court work in Marion County. We try to recruit individuals who are well respected in the legal community, have a commitment to juvenile issues and are community service minded. We look for

individuals who relish the opportunity to become involved in consortium and juvenile justice issues.

We added two new members at the beginning of this year. Our current plan is to add three more attorneys in the next 30-60 days. Our intention is to add members that are younger attorneys, but individuals with life experience, as well as experience with children and children's issues. We hope to also add members that would bring cultural diversity to our group - including bilingual capabilities.

The judiciary in our county consistently tells us that our group is well respected. Above all else, we strive to recruit new members that will continue to enhance that reputation and feel we have been successful in doing so in the past.

Question 7

To date we have had no "application process". Our group has discussed staffing level needs, composed a recruitment committee, and approached individual members of the bar to determine their interest level and ability to do consortium work. We have consulted with members of the judiciary, including the juvenile court and presiding judge for suggestions. In particular, we have sought input from the bench about younger members in the local bar who would be appropriate for our consortium. It is unlikely that we would recruit a potential member without receiving positive feedback from the bench regarding an individual's experience and competence. We place a strong emphasis on individuals' ability to deal with a sometimes difficult clientele.

Question 8

Our most experienced members represent the remaining group of attorneys selected by Judge Norblad to perform juvenile work when he presided at the juvenile court. Over the years, we consistently added new members to handle an increased caseload. The Juvenile Advocacy Consortium (JAC) was founded in response to Indigent Defense Services' change to the "contact" process in the early 1990s.

We have a wide range of experience in members - from 30+ years to a few months. Please see the attached materials which include resumes for each member.

Question 9

We all specialize in juvenile defense. However, our consortium also consists of members who have expertise in additional areas of law. In particular, we find that experience in criminal defense and family law is of great benefit to our clients. Our members all have an interest in childhood development and we are constantly attempting to increase our knowledge in this area. Several of our members are Marion County Association of Defenders (MCAD) members. The MCAD/JAC members handle the 15 year-old Ballot Measure 11 cases because those kids are

held at the juvenile detention center. The ability to handle both criminal and juvenile cases has proved important in negotiating these cases and convincing the state to resolve many of these cases by transferring the case to juvenile court on a non-Ballot Measure 11 juvenile petition.

We also have members that either have done or currently do indigent work for the tribes. Those members' expertise on ICWA issues is an important resource for our consortium. Additionally, we have members with appellate expertise - particularly on juvenile cases. Lastly, several consortium members have expertise in doing adoption and guardianship work..

The majority of every members' practice is juvenile defense, but all members do private retained work as well. There is no formal limit on consortium work v. outside work.

Question 10

To date, the ever-expanding caseload has created the need to add attorneys. We do not expect that to change. The number of juvenile cases in Marion County dramatically increased in the last few years. The abuse of methamphetamine in Marion County and a conscious effort by law enforcement and the district attorney's office to more aggressively prosecute cases and file juvenile petitions has mostly contributed to the increased caseload. We have added attorneys but still need to do so to handle the caseload expansion.

We continue to value and seek demonstrated experience and competence, and feel that this is the best way to keep personnel management issues at manageable levels.

Question 11

New members are provided with a copy of the consortium contract, materials recently generated dealing with the Adoption and Safe Families Act, Juvenile Department procedures related to INS holds, sex offender registration law changes, the Indian Child Welfare Act, and other materials discussed by the group's members from time to time.

Each new member is assigned a mentor to meet with regularly during their first 6-12 months in the group. Practice tip issues are discussed at weekly meetings of the group.

Members in the group share forms and office procedures, and access domestic relations forms from the Marion County Court website. Additionally, there are many forms routinely used that are available at the juvenile court. New members are expected to review these forms and become familiar with the circumstances in which the various forms are used.

Question 12

Please see answer above. Members are required to attend weekly meetings, which are an opportunity to bring questions or concerns to the group, as well as to "staff" cases or legal issues. New members are enrolled in the National Association of Counsel for Children, and encouraged

to attend OSB and OCDLA CLEs regarding juvenile law.

Question 13

In general, we all receive an equal number of cases as assigned by court staff. However, new members are assigned fewer and not given an increased caseload until they can demonstrate proficiency with the existing caseload. Recently, we have brought in a new member to do only delinquency cases, and anticipate doing the same with new and less experienced members in the future. We will increase the new members' caseload as they adjust to the work load. We would also like to see these new members at some point in the future begin doing dependency cases, and, ultimately, termination of parental rights cases.

Question 14

Currently, we are notified of our appointment in three ways. First, the court puts an appointment order in our mailbox at juvenile court. Second, we get a fax within 24-48 hours by our administrative assistant. Third, the court directs clients to contact us immediately to schedule an appointment.

Beginning July 1, 2005, the appointment process will change on dependency cases. We had a subcommittee that studied the shelter care process and visited Multnomah County to view their procedures and interview different parties in the juvenile court process. Our subcommittee then made a proposal to our court where we would be present at initial shelter care hearings and represent parties at the first court appearance. Under this system we should actually be notified of our appointment before the individual goes to court.

Question 15

Yes. As a group we discourage the practice of attorneys withdrawing from cases unless an actual conflict demands it. We work hard to resolve disputes with clients - which often is difficult due to personality issues common in this caseload. We believe the caliber of attorneys in our groups allows us to minimize the instances where a withdrawal occurs due to a disgruntled client.

Question 16

Each attorney is responsible for their own conflict checks. Conflict checks are done immediately upon notice of an assignment. Generally, cases are re-assigned within 48 hours.

Question 17

Yes - we meet for lunch every Monday and often meet more frequently if issues arise that demand more attention. We also schedule a yearly weekend retreat just for consortium members to do planning and discuss management and other issues.

Question 18

We all have email and communicate in that manner. We have also set up a computer system and fax system at our juvenile court attorney room. Additionally, we have a mail box system at juvenile court which is used to distribute important memos, new legal cases, notice of CLEs and other information pertinent to consortium members. We all keep laminated wallet sized cards with all consortium members' office and personal cell phone numbers.

Question 19

Yes. We distribute forms and memos at weekly meetings and electronically.

Question 20

We get monthly and quarterly reports that detail our case counts. If an individual attorney's case counts are less than the average amount, then that attorney will sign up for additional assignment days with the court. If an attorney is overly burdened we make the same adjustments by signing up for fewer days with the court.

Question 21

Periodically, we check with judges to determine if there are any concerns from the bench. We contact district attorneys, DHS officials and probation officers regarding performance issues - particularly, with new members. We have almost daily contact among the group and know and discuss performance concerns.

Question 22

This issue rarely occurs. However, we have addressed the issue in the past by discussing the issues with the individual and have the individual work with a mentor. Then we regularly review the performance issues with the attorney, mentor, judges, caseworkers and district attorneys. If the performance issues continue then we make it clear that the attorney will not be included in the bidding for the next contract period.

Question 23

We don't have any specific requirements other than those required by the OSB. However, we encourage attorneys to attend CLES by OCDLA (criminal and juvenile seminars), OSB (criminal and juvenile law annual seminars) and the National Association of Counsel for Children annual conference. For the last several years at least one of our members (and usually several) have attended each of these seminars. We then discuss any new issues at our weekly meeting.

Question 24

To our knowledge no attorney has been disciplined by the Oregon State Bar. If such a process was initiated by the OSB, we as a group would undoubtedly be aware of the proceeding.

Question 25

We have only had one complaint from a judge and it was handled pursuant to the process set out in Question 22. The attorney is no longer a member of the consortium. There is no one designated person to receive complaints and this is an area which we will address in establishing a more formal structure.

Question 26

All members have attended various CLE sessions on these topics and we have had discussions about the topic among the group. We have no formalized process other than the requirements set forth by the OSB.

Question 27

No formalized process currently exists. This is a difficult goal to achieve and we are open to suggestions.

Question 28

Yes. Our court is very active in implementing procedures and programs to improve the juvenile court system. We have regular meetings with the court and other participants in the juvenile justice system (Juvenile Court Operations Committee). We have several members attend these meetings. Periodically, the court will create ad-hoc committees and our members will participate on those committees. For instance, the court created a committee to establish a family drug court and two of our members volunteered for that committee. The family drug court is not yet functioning, but those attorneys attended a series of meetings, as well as attending training programs in Toledo and Baltimore with the local court team.

The Marion County Juvenile court is a busy court. We have experienced many process and structural changes under the guidance of Judge Pamela Abernethy. We actively participated in planning for these changes. We consider ourselves significant players in always striving to improve the juvenile justice system in Marion County.

Additionally, our members have been involved in local and state bar organizations, community groups, and have been involved in the legislative process at the county and state level. Lastly, we have several members who have served as pro tem judges in various courts.

Question 29

First, we have a commitment to children, families and our community. We seek to include members in our consortium that understand that attorneys have a special responsibility to work to improve our community that goes beyond zealously representing individual clients. We all have a sense of community involvement and the need to look beyond individual cases in order to improve the lives of children and families. We often contribute financially to charitable causes - i.e. Campaign for Equal Justice, foster programs for kids, the HOST programs - among others.

Second, we collaborate well with each other. We rely on each other for support - both in terms of legal strategy and moral support. The cohesiveness of the group is definitely something we strive to achieve because the work can often be depressing and frustrating.

Third, we believe we have a good ability to resolve cases that can be resolved, but zealously litigate case where resolution is not possible. We think we have a good reputation with the court and district attorneys for resolving cases. However, we litigate cases that cannot be resolved. For instance, one of our members has successfully obtained reversals on three termination cases in the last three years.

Fourth, we are able to manage clients well. We have a very low percentage of cases where attorneys are changed due to conflicts with their clients.

Question 30

We need to create a structure that will provide continuity for the future. We need to recruit younger members and develop their skills to the point where they can eventually handle full case loads.

BIOGRAPHY

JEFF J. CARTER

FAMILY

Born on May 24th 1956, Jeff is the youngest of four children to Herbert W. Carter and Goldie L. Carter. Herb Carter practiced law in Salem, Oregon for over 30 years before he died in August of 1982. Goldie Carter remarried and is now residing in Florence, Oregon. Jeff has been a life long resident of Salem.

EDUCATION

Jeff was educated in Salem public schools, graduating from North Salem High School in 1974. He received a Bachelor of Science Degree from Southern Oregon State College in 1979 and received his Law degree from Willamette University in 1982.

EMPLOYMENT

During his college years, Jeff worked as a farm laborer and at the local canneries. During the 1977 and 1979 legislatures, Jeff worked as a Legislative Assistant for two legislators in the House of Representatives.

After receiving his Law Degree, Jeff went to work as an Associate at the Salem law firm of Burt, Swanson, Lathen, Alexander, and McCann. In 1990, Jeff opened his own law practice in Salem as a sole practitioner where he currently maintains a general trial practice in the law office his father built in early 70's.

LEGAL ORGANIZATIONS

Jeff became a member of the Oregon State Bar in 1982 and was admitted to practice in the United States District Court for the District of Oregon in 1984. He is also currently a member of Marion County Bar Association and the Oregon Trial Lawyers Association.

Jeff was elected the President of the Oregon State Bar in 1996-1997 and was elected and served on the Board of Governors of the Oregon State Bar from 1994-1997. He is also a former board member of Marion-Polk Legal Services - a non-profit organization dedicated to providing legal representation to the poor in Marion and Polk Counties.

Other legal organizations include:

- Board member Oregon Legal Services Corporation — a non-profit organization dedicated to providing legal representation to the poor throughout the state of Oregon.
- Board member Campaign for Equal Justice — a non-profit fund raising organization that distributes funds generated to other organizations throughout the state of Oregon that provide legal services to the poor.
- Member of the Statewide Joint Bench-Bar Committee for New Judgeships — the committee is charged with the tasks of investigating the use of Referees as opposed to statutory judicial positions and report back to the legislature in the 1999 legislative session. Appointed by the Oregon State Bar and Chief Justice Wallace P. Carson, Jr. The Committee will also review applications submitted by the different judicial districts throughout the state and report the Committee's recommendation to the 1999 legislature.
- Member of the Oregon Law Commission — Appointed by the Oregon State Bar for a three year term. The legislatively created commission is charged with the responsibility of providing a continuous substantive law revision program that will report back to the legislature.
- Access to Justice Conference Committee Chair

JUDICIAL EXPERIENCE

- Judge; Salem Municipal Court Judge Pro Tem.

PUBLIC AND COMMUNITY SERVICE

- Member and past president of the Capitol Lions Club in Salem, Oregon.
- Salem Chamber of Commerce
- Board member of Spruce Villa Inc., a non-profit corporation that operates several homes, vocational programs and semi-independent programs for the developmentally disabled.
- Chair of the Northeast Neighborhood Association in 1987.

OTHER COMMUNITY GROUPS/MEMBERSHIPS

- National Federation Independent Business; The Historic Elsinore Theatre; Mid-Valley Woman's Crisis Service, North Santiam Historical Society;

INTERESTS AND HOBBIES

Jeff is an avid snow skier and fisherman. He dabbles in restoring antique cars and recently rebuilt an older model Harley Davidson motorcycle. He has a strong interest in area history.

RESUME OF PHILLIP WISEMAN
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Education

Mercer Island High School	1974
University of Washington B.A.	1979
Willamette University College of Law	1994
Numerous postgraduate seminars and education programs; Primarily in two areas:	1994 to present
a) Childhood development/Brain development	
b) Juvenile law practice	

Work

1. Amtrak, Seattle, WA – Sleeping Car Porter	1977 – 1979
2. Harborview Medical Center, Seattle, WA – Assistant Administrator	1980 – 1982
3. Nordstrom, Seattle, WA – Advertising Copy Writer	1985 – 1987
4. Hillis Clark Martin Peterson, Seattle, WA – Legal Assistant	1987 – 1991
5. Marion County District Attorney’s Office – Clerk	1992 – 1994
6. Beckfield & Wiseman, LLP, Salem, OR Partner in two-person law firm, specializing in all areas of civil law. Started doing full time Juvenile Court Practice in January 1998.	1996 – 2003
7. Wiseman Law, Salem, OR Solo Practice, specializing in Juvenile Law from 1998 to present	November 2003

Organizations

Oregon State Bar	1995 to present
Federal Bar	2003 to present
OTLA	2000 to present
ATLA	1996 to present
Juvenile Advocacy Consortium	1998 to present
Member of Marion County Public Safety Committee	2003 to present
Member of Marion County Judicial Review Board	2003 to present

Personal

I have four children, ages 22, 15, 10 and 5 years, and I am a full time family guy outside of my law practice. Doing typical volunteer work, coaching, school and raising my children.

Carla M. French

Ferder, Casebeer & French, LLP
515 High Street SE; P. O. Box 843
Salem, OR 97301
(503)399-9097/(503)585-9197
cfrench@ferder.com

Professional Experience

Ferder, Casebeer & French, LLP, - Partner - 11 years
Ferder, Brandt & Casebeer, LLP, Law clerk
State of Oregon, Judicial Department -
Judicial Assistant and Law Clerk

Practice Areas

Personal Injury
Criminal Defense
Juvenile Law
Corporate Law

Admitted to Practice

Oregon State Bar
U. S. District Court - District of Oregon
9th Circuit Court of Appeals

Affiliations

Oregon State Bar
Marion County Bar Association
Marion County Bar Board of Directors
Oregon Paralyzed Veterans Advisory Board
American Bar Association
Oregon Criminal Defense Lawyers Association
National Criminal Defense Lawyers Association
Oregon Women Lawyers

Judicial Appointments

Marion County Circuit Judge Pro Tem

Education

High School Diploma, McNary High School
Bachelor of Science, Cum Laude, Linfield College, Major: Business and Economics
Doctor of Jurisprudence, Willamette University

Resume
John W. Jensen

Personal:

DOB: June 7, 1944
Home Address:
1638 Onyx Street NW
Salem, Oregon 97304
Phone: (503) 581-6905

Office Address:
3387 Center Street NE
Salem, Oregon 97301
Phone: (503) 391-0391

Married, with three adult children

Education:

Albert Lea, Minnesota High School: 1962
St. Olaf College, Northfield, Minnesota: 1966
University of Minnesota Law School: 1969

Employment:

Marion County Deputy District Attorney: 1969-1974
Private Practice: 1974-Present
General practice emphasizing family law including domestic relations, adoptions,
and juvenile law.
Blair, MacDonald et al: 1976-1994
Sole Practice: 1994-Present

Professional:

Oregon State Bar: 1969-Present

United States Supreme Court: 1986

United States District Court Oregon: 1985

Marion County Bar Association: 1969-Present

Juvenile Court Experience:

Deputy District Attorney assigned to juvenile court: 1972-74

Juvenile Court Indigent Defense: 1974-Present

Juvenile Advocacy Consortium: Founding Member 1993

Community:

Cascade Council Boy Scouts Board of Directors: 1982

Salem Exchange Club: 1987-2002

First Presbyterian Church elder: 1998-2003

LINDSAY R. PARTRIDGE
Attorney at Law
2985 River Road S.
P.O. Box 4195
Salem, OR 97302-8195
(503)375-9920/Fax (503)581-7112
e-mail - partridgelaw@msn.com

EMPLOYMENT

- 1998-present Judge, pro tem, Salem Municipal Court, Salem, Oregon
- 1994-present Attorney at Law - Lindsay R. Partridge, P.C., Salem, Oregon (solo practitioner). Emphasis in criminal defense and juvenile law
- 1991-1994 Attorney at Law - Kaino, Jones & Partridge, P.C., Salem, Oregon (partner)
- 1989-1990 Administrative Analyst - State of Oregon Judicial Department - Trial Court Programs Division
- 1987-1989 Head Resident, Willamette University
- 1988 Law Clerk - Zeigler, Cloudy, King & Peterson, Ketchikan, Alaska
- 1985 Intern - State Senator Jeannette Hamby

EDUCATION AND TRAINING

- 1989 J.D., Willamette University College of Law, Salem, Oregon (cum laude)
- 1986 B.S., Willamette University, Salem Oregon (cum laude). Major in Political Science, minors in Economics and Speech Communication
- 1982 Lebanon Union High School, Lebanon, Oregon

LICENSING AND CREDENTIALS

- 1992 Admitted United States Federal District Court
1989 Admitted Oregon State Bar

MEMBERSHIPS

Oregon State Bar Association

**Member of Criminal Law and Juvenile Law Sections
Criminal Law Section Board of Directors
2000-present (Chair 2004)
Marion County Bar Association
1999-2004 (President 2003)
Marion County Association of Defenders
1994-97 Board of Directors
Marion County Public Safety Coordinating Council
Oregon Criminal Defense Lawyers Association (life member)
Willamette Valley Inns of Court
Marion County Juvenile Advocacy Consortium
Marion County Juvenile Court Family Drug Court Steering Committee
Marion County Juvenile Court Dependency Improvement Group
Criminal Justice Advisory Committee
2003-present**

STUDENT ORGANIZATIONS

**1988-89 Associate Editor, Willamette Law Review, Willamette College of Law
1987-88 Staff Member Willamette Law Review, Willamette College of Law
1985-86 Vice-President, Student Body Willamette University**

PUBLICATIONS

**Lindsay R. Partridge, "Making The Grade: Can Student Drug Testing Programs in Public Schools Pass a Legal Challenge?" 25 Willamette Law Review 165 (Winter 1989)
Lindsay R. Partridge, "Developments in the Law: Workers' Compensation Reform" 24 Willamette Law Review 341 (Spring 1988)**

FAMILY

**Married to Sherri L. Partridge - Salem Hospital and West Valley Hospital Foundations
and one daughter - Lucy**

Tahra Sinks

ATTORNEY AT LAW

TELEPHONE

VOICE: 503-363-5588

FACSIMILE: 503-363-5585

MAILING ADDRESS

PO BOX 1114

SALEM, OREGON 97308

OFFICE

1443 COMMERCIAL ST SE

SALEM, OREGON 97302

E-MAIL

TSINKS@COMCAST.NET

PROFESSIONAL

ATTORNEY IN PRIVATE PRACTICE

Juvenile / Dependency / Criminal / Adoptions / Domestic Relations
Salem, Oregon. 2000-present. Private client plus tribal and government contract work specializing in juvenile advocacy, which includes delinquencies, dependency proceedings, terminations of parental rights. Also criminal defense, child support enforcement and domestic relations cases in the Mid-Willamette Valley. Persuasive and resourceful with strong negotiating skills; trial and out-of-court settlements. Child custody consultant for Marion County. Previously partner in firm of *Alway Craig & Sinks*, also in Salem, Oregon. Current and previous contracts with:

- Marion County Juvenile Advocacy Consortium
- Marion County Association of Defenders
- Polk County
- Confederated Tribes of the Grand Ronde

MARION COUNTY DISTRICT ATTORNEY

Juvenile Section / Misdemeanor Section / Child Support Section
Salem, Oregon. 1998-2000. Court certified law clerk prosecutor with felony and misdemeanor trial work in juvenile court; misdemeanor cases in Circuit Court.

EDUCATION

UNIVERSITY OF OREGON SCHOOL OF LAW

Eugene, Oregon -- J.D., 2000

Criminal and juvenile law emphasis. Dean's Student Advisory Committee. Women's Law Forum conference coordinator.

Alternative Dispute Resolution Forum. University of Oregon Law School Community Service Award.

WILLAMETTE UNIVERSITY

Salem, Oregon -- B.S., 1996

Double major Spanish and Psychology, with honors including Noel F. Kaestner Award to top graduating psychology student.

President, Psi-Chi pre-law fraternity. Teaching assistant.

Minor in environmental science.

LA UNIVERSIDAD de IDIOMAS de BENITO JUAREZ

Oaxaca, Mexico -- 1994

Spanish linguistics and Mexican culture / exchange program.

LEGAL AFFILIATIONS & SERVICE

Oregon Bar Association, Marion County chapter

Oregon Criminal Defense Lawyers Association

Marion County Association of Defenders, board member

Marion County Domestic Violence Task Force

Oregon Criminal Justice Commission - Blakely v. Washington

criminal sentencing workgroup appointee

Tahra Sinks

PAGE 2

RESEARCH & PRESENTATIONS

JUVENILES AND MIRANDA RIGHTS

Performed research on Miranda and application to juveniles with Margie Paris for inclusion in second edition of her textbook, "Constitutional Criminal Procedure." (Foundation Press Inc., NY)

TIME MANAGEMENT

Presenter at conferences in Portland and Salem sponsored by the Oregon Bar Association and Willamette University School of Law.

CAREER EXPERIENCE

COBB STREET CHILDREN'S LEARNING CENTER

Roseburg, Oregon -- 1996-1997

Taught Spanish and Hispanic culture to children in grades pre-K to 8.

WILLAMETTE UNIVERSITY

Salem, Oregon -- 1994-1996

Psychology department tutor and teaching assistant. First-ever undergraduate to teach classes in psychology department. Emphasis on dual diagnosis, substance abuse and dependency, dysfunctional family dynamics.

U.S. VETERANS' AFFAIRS MEDICAL CENTER

Roseburg, Oregon -- 1995

First-ever undergraduate staff intern at inpatient substance abuse and addiction unit. Supervised cases, led group therapy. Led seminars for staff on time and stress management.

HILLCREST YOUTH CORRECTIONAL FACILITY

Salem, Oregon -- 1994-1995

Counselor intern for juvenile sex offender unit. Co-facilitated group sessions.

CIVIC SERVICE & BOARDS

Boys & Girls Aid Society - Cherry Branch, senior board member
Morningside Elementary School - Local School Advisory Committee
YMCA of Marion and Polk Counties, parent club
Salem United Soccer Club, volunteer
South Salem Little League, volunteer
Greater Douglas YMCA (Roseburg, Ore.) - volunteer

MISCELLANY

BUSH ELEMENTARY PROJECT

Salem, Oregon -- 1993-1995

Created and coordinated bilingual aide program in conjunction with Willamette University Community Outreach Program. Worked one-on-one with Hispanic students.

Todd C. McCann

Address	<u>Work</u>	
	1795 Commercial Street, Salem, Oregon 97302	(503) 566-2822
Education	<u>Willamette University College of Law</u>	Salem, Oregon
	Juris Doctorate	May, 1993
	Certificate in Dispute Resolution	
	<u>California State University</u>	Fresno, California
	Bachelor of Science, Business Administration	May, 1986
Employment	<u>Todd C. McCann, P.C.</u>	Salem, Oregon
	Practice emphasis on juvenile law.	1995 to Present
	<u>Burt, Swanson, Lathen, Alexander, & McCann, P.C.</u>	Salem, Oregon
	Associate	1995 to 1998
	Practice emphasis on criminal, personal injury and employment law. Active representation in Federal Court and all State Courts.	
	<u>Chris L. Lillegard P.C.</u>	Dallas, Oregon
	Associate	1993 to 1995
	Employer was State contractor of Public Defender services for Polk County, Oregon. Practice consisted of a high volume of criminal litigation, including major felony trials, mental commitment hearings, juvenile hearings, and extradition proceedings.	
Organizations	<u>Oregon State Bar</u>	Salem, Oregon
	Bar Number 93357	September, 1993
	<u>National Association of Counsel for Children</u>	
		2000 to Present
	<u>American Bar Association, Child Law Section</u>	
		2000 to Present
	<u>Oregon Criminal Defense Lawyers Association</u>	
		1993 to Present
	<u>Marion and Polk County Bar Associations</u>	
		1994 to Present
	<u>Willamette Valley American Inns of Court</u>	
		1996 to 2003
<u>OSB House of Delegates</u>		
	2000 to 2002	
<u>OSB Local Professional Responsibility Committee</u>		
	2000 to 2001	
<u>OSB Medical Profession Joint Committee</u>		
Chairman, 2001	2000 to 2001	
<u>Marion County Bar Association Board of Directors</u>		
	2004 to Present	

Craig R. Rockwell
Attorney at Law

Rockwell, Cowan & Habekost
1496 Commercial Street NE
Salem, Oregon 97303
(503) 585-3351

Education:

- Willamette University College of Law School, JD 1973
- University of California, BA History 1970

Legal Work History:

- Private Practice 1973-Present
 - Associated with Hattie B. Kremen
 - Associated with Joseph Guimond
 - Associated with Eric R. Johansen
 - Associated with Robert J. Thorbeck
 - Partner, Rockwell, Cowan & Habekost

Legal and Volunteer Activities:

- Marion County Bar Association Judicial Screening Committee
- White Oaks (Drug and Alcohol Treatment Facility) Board Member
- Instructor for Naturalization classes
- MCAD Board Member

Jeanne West Craig
P.O. Box 2810, Salem, Oregon 97308
(503) 588-2587

Employment

PRIVATE PRACTICE

Sole practitioner, April 1989 to Present

General practice of law with emphasis in domestic relations, juvenile and mediation.

Education

CHEMEKETA COMMUNITY COLLEGE

Associate Degree in Corrections

WESTERN OREGON UNIVERSITY

B. S. – Major Administration of Justice/Psychology

WILLAMETTE UNIVERSITY

Juris Doctor, 1988

Training

Advanced training business, family divorce, mediation.

Certificate in Dispute Resolution, Willamette University College of Law.

Continuing Legal Education

Professional Organizations/Past and Present

Mary Leonard Law Society

Oregon Mediation Association

Willamette Valley Inns of Court

Family Law Section – Oregon State Bar

Oregon Women Lawyers

Director – Salem-Keizer School Board

NACC

Marion County Bar Association

Awards

Recipient of Marion County Bar Carson award.

Volunteer Service

- Juvenile Facilities Task Force
- Judges Classroom Law project
- Marion County Courts – Domestic Violence Council
- Marion County Commission on Dispute Resolution
- Willamette Valley – Oregon Women Lawyers Mentor
- Speaker – Juvenile Judges Conference 1999

DORA L. LUTZ
Attorney at Law
348 Leslie Street SE
Salem, Oregon 97301
(503) 585-9202
(503) 585-9232 (fax)

RESUME

Education:

Bachelor of Arts - Willamette University - 1979
Doctor of Jurisprudence - Willamette University - 1984

Legal Experience:

Member of Oregon State Bar since 1984
1988 - 1993: associate attorney - O'Neill, Evans, Swogger & Cowan, Salem, OR
January 1994 - present: sole practitioner, attorney

Practice is primarily devoted to Marion County juvenile appointed cases. Other areas of practice are limited to retained family law including adoptions, guardianships, intervenor and retained juvenile.

Representation of children and parents in Marion County Juvenile Court has been continuously provided since 1989.

Richard W. Condon, P.C.

Attorney at Law
3387 Center Street NE
Salem, OR 97301

Phone 503.581.6452/Fax 503.371.3616/Mobile 503.930.8482

Email: rwcondon@quik.com

Professional Employment:

- 1980 – present R.W. Condon, PC: Family Law practice, with an emphasis on juvenile matters law
- 1978 – 1980 Associate Attorney, General Practice, Allen & Vick, Salem, Oregon
- 1977 – 1978 Law Clerk (research and writing), J.P. Harris II, Attorney at Law, Salem, Oregon
- 1976 – 1977 Law Clerk (research and writing), William C. Crothers, Attorney at Law, Salem, Oregon
-

Other Professional Experience:

- 1993 Founding member of the Juvenile Advocacy Consortium
- 1988 – 1994 Circuit Judge Pro Tempore, Marion County

Education:

- 1978 J.D., Willamette University
- 1975 B.A., Law and Society, University of California at Santa Barbara
- 1969 Graduated Saratoga High School, Saratoga, California

Professional Organizations: Current Membership

Oregon State Bar (Family and Juvenile Law Section), United States District Court, Oregon
Marion County Bar Association, National Association of Counsel for Children

Personal:

I am married with two sons aged 18 and 15. I am an active supporter of their school and extra curricular activities.

Martin C. Habekost, P.C.

Attorney at Law

P.O. Box 725

Salem, Oregon 97308-0725

503-378-0405

Experience:

ROCKWELL, COWAN & HABEKOST: Salem, Oregon. 2003-Present
Partner. Provide legal counsel to private and indigent adults and minors in criminal matters.

O'NEILL, EVANS, COWAN & HABEKOST: Salem, Oregon 2000-2003
Partner. Provide legal counsel to private and indigent adults in criminal and civil matters.

MARTIN C. HABEKOST, P.C.: Salem, Oregon 1996-2000
Solo practitioner. Provide legal counsel to private and indigent adults in criminal and civil matters.

O'NEILL, EVANS, SWOGGER & COWAN: Salem, Oregon 1990-1996
Associate. Provide legal counsel to private and indigent adults in criminal and civil matters.

Education:

WILLAMETTE UNIVERSITY, College of Law: Salem, Oregon.
J.D. - 1990

LOMA LINDA UNIVERSITY: Riverside, California
M.A. - English/Writing - 1987

LOMA LINDA UNIVERSITY: Riverside, California
B.A. - English - 1986

Bar Admission & Activities:

Member: Oregon State Bar - 1990 - Present

Member: Marion County Association of Defenders (MCAD Board Member)

Member: Marion County Bar Association (MCBA Board Member)

Attachment 3

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

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DEPENDENCY AND CIVIL COMMITMENT CASES (Chapters 1-4 of OSB Task Force
Report adopted by the Board of Governors September 25, 1996, remainder of report
(generally, appendices and annotations) not reproduced)

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

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

STANDARD I: OBJECTIVE

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

STANDARD II: ATTORNEY CASELOADS

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

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

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

1. Are members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
 - A. Meet the qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the appointing authority's satisfaction that the attorney will provide competent and adequate representation;
3. Have adequate facilities such as sufficient support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and

5. Have reviewed and are familiar with the current edition of the Oregon State Bar's Indigent Defense Task Force Report, "Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." (Exhibit C to this policy statement.)

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

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

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

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

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

Lesser felony cases include all Class C felonies other than drug cases.

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

- A. Meets the qualifications specified in Standard IV, section 1;

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

3. **Major Felony Cases in Trial Courts**

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

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

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

4. **Murder Cases in Trial Courts**

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in murder cases, not including capital murder, if he or she:
 - a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has continued to meet the qualifications in Standard IV, section 3 for three years;

- c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and vigorous representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
 - d. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict; and
 - e. On request, can demonstrate the above by:
 - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
 - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from 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; or
 - f. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

5. Capital Murder Cases in Trial Courts

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in capital murder cases if he or she:
 - a. Meets the qualifications specified in Standard IV, section 4;
 - b. Has tried major felony cases for at least five years;
 - c. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict. Lead counsel in capital cases must have acted as counsel or co-counsel in at least one murder case that was tried to a jury and went to a final verdict;

- d. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
 - (1) relevant state, federal, and international law;
 - (2) pleading and motion practice;
 - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - (4) jury selection;
 - (5) trial preparation and presentation, including the use of experts;
 - (6) ethical considerations particular to capital defense representation;
 - (7) preservation of the record and of issues for appellate and other 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;
 - (11) the unique issues relating to the defense of those charged with committing capital offenses when under the age of 18.
- e. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
- f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - (3) skill in the management and conduct of complex negotiations and litigation;
 - (4) skill in legal research, analysis, and the drafting of litigation documents;
 - (5) skill in oral advocacy;

- (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
 - (8) skill in the investigation, preparation, and presentation of mitigating evidence; and
 - (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements, and
- g. On request, can demonstrate the above by:
- (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
 - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, d, e, f, and g or must possess significant equivalent experience under Standard III, section 2.B.
- C. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or

- (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

D. *Limited Caseload.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

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

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

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

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

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

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; has observed at least one contested juvenile court case; is generally familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:
 - a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.
 - b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
 - c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
 - d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
 - e. Oregon State Bar, Juvenile Law, (current version).
 - f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.

- g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
 - h. Pub. L. 105-17 Individuals with Disabilities Education Act.
 - i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1975, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standards IV, sections 1-4;
 - C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
 - D. For abuse and neglect cases and dependency cases, meets the qualifications specified in Standard IV, section 2;
 - E. For remand cases, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively;
 - F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues; or
 - G. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

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

8. Appeals Other Than in Murder and Capital Murder Cases

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

- A. Has reviewed and is familiar with:
 - a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
 - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
 - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
 - d. In the case of appeals of juvenile cases, Oregon State Bar, Juvenile Law, (current edition);
 - e. The Oregon Rules of Appellate Procedure; and
 - f. Oregon State Bar, Appeal and Review (current edition); and

- B. Meets at least one of the following criteria:
 - a. Has experience as appellate counsel, either in practice or under the Oregon State Bar's Law Student Appearance Rule commensurate with the seriousness of the underlying case;
 - b. Has served as co-counsel in at least one appellate case 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. By any other evidence that shows experience, education, and skill in appellate advocacy; or
- C. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

9. Appeals in Murder and Capital Murder Cases

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

- A. Meets the qualifications specified in Standard IV, section 8;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the necessary proficiency and commitment that exemplify the quality of representation appropriate to:
 - a. Capital murder cases if the appeal is in a capital case; or
 - b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority may determine that an attorney with extensive criminal trial or appellate experience,

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

- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
- b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

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

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

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

11. Postconviction Proceedings in Murder and Capital Murder Cases

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

- A. Meets the qualifications specified in Standard IV, section 4;
- B. For appointment as lead counsel, has prior experience as postconviction counsel in at least three major felony cases; and
- C. For capital cases, meets the qualifications specified in Standard IV, section 9 for co-counsel in capital appeals. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 9.
- D. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority also may appoint as lead and co-counsel an attorney with extensive criminal trial, appellate, or postconviction experience or extensive civil litigation or appellate experience, or both, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:
 - a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and

- b. must have either:
 - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Habeas Corpus Proceedings

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

- A. Meets the qualifications specified in Standard IV, section 2; or
- B. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS

1. Certificate and Supplemental Questionnaire

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

2. Submission Date

- A. *Contract Attorneys.* Unless expressly agreed otherwise by contract with PDSC, contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the contract start date and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. *Assigned Counsel (for all Noncontract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

3. Supporting Documentation

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

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

4. Appointment Lists

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications will be approved for inclusion on appointment lists. OPDS's goal is to select attorneys who are more than minimally qualified, where possible, given the volume of cases, the number of attorneys submitting certifications, and the needs of the court. At the completion of the review, OPDS will inform the attorney regarding its decision as to the case types for which the attorney has been approved for appointment.
- B. *Provision of Lists to the Courts.* OPDS will prepare an applicable list of attorneys for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- C. *Updating Lists.* OPDS will update lists monthly with a supplemental list of any changes.

5. Suspension From Appointment List

If PDSC or the court learns of facts that call into question an attorney's ability to provide adequate assistance of counsel even though the attorney meets the minimum qualification criteria, PDSC and the court each shall have authority to suspend the attorney from the appointment list for any or all case types until PDSC is satisfied that the attorney is able to provide adequate assistance of counsel. If a court learns of such facts or allegations, the court must inform PDSC as soon as possible of all allegations and facts and of any action that the court takes. PDSC will notify the court when PDSC suspends an attorney from the court's appointment list.

PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

Phone Number: _____
Fax Number _____
Cell/Pager: _____

Bar Number: _____
Vendor or Tax ID# _____
Email: _____

Name: _____
Address: _____

Years of Experience	
Practice of Law: ____	Criminal: ____
Juvenile: ____	Appellate: ____

Fluency in the following foreign language(s):

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 ____
 - Dependency ____
 - Termination ____
- Civil Commitment ____
- Postconviction Relief
 - Capital Murder ____
 - Murder ____
 - Other Criminal ____
- Habeas Corpus ____

APPELLATE LEVEL

- Capital Murder
 - Lead Counsel ____
 - Co-counsel ____
- Murder
 - Lead Counsel ____
 - Co-counsel ____
- Other Criminal ____
- Juvenile
 - Delinquency ____
 - Dependency ____
 - Termination ____
- Civil Commitment ____
- Postconviction Relief ____
- Habeas Corpus ____

I certify that I have reviewed the Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, and that I meet the requirements of those standards and wish to be listed as willing to accept appointment to the case types checked above.

Signature

Date

Mail the original signed certificate to the Office of Public Defense Services, 1320 Capitol St NE, Ste 190 Salem, Oregon 97303.

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?
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 criminal and juvenile law areas. (Include case types and lengths of time you have practiced criminal law.)
9. Before which courts and judges have you regularly appeared in criminal case proceedings and when? (List name of judge, court, location, and during which year(s) appearances were made.)
10. Before which courts and judges have you regularly appeared in juvenile case proceedings and when? (List name of judge, court, location, and during which year(s) appearances were made.)

Attachment 4

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
July 28, 2005

Issue

PDSC approval of a change to the Office of Public Defense Services (OPDS) personnel policies.

Discussion

The current version of the personnel policies incorrectly defines Initial Hire. Initial Hire is meant to refer to employment with OPDS. Recognized Service Date is the term used to define the date on which a person began employment with a State of Oregon agency.

Current language:

2.21 INITIAL HIRE

The first employment by a state of Oregon agency, or the rehire of a former state employee after a break in service of two years or more.

Revised language:

2.21 INITIAL HIRE

The first employment by the Office of Public Defense Services, or the re-employment of a former employee after a break in service of two years or more.

Recommendation

Adopt revised language.

Required Commission Action

Vote to approve adoption of revised language.

Attachment 5

**OFFICE OF PUBLIC DEFENSE SERVICES
COMPENSATION PLAN**

Effective: July 1, 2005

CLASSIFICATION TITLE	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
Accountant 1	2481	2595	2717	2847	2984	3122	3272	3436	
Accountant 2	2717	2847	2984	3122	3272	3436	3601	3773	
Accountant 3	3272	3436	3601	3773	3955	4146	4350	4566	
Accounting Tech 1	1758	1830	1907	1998	2067	2166	2257	2370	
Accounting Tech 2	2067	2166	2257	2370	2481	2595	2717	2847	
Accounting Tech 3	2257	2370	2481	2595	2717	2847	2984	3122	
Business Services Manager (PEM/D)	3794	3981	4181	4394	4613	4840	5078	5334	5596
Chief Defender	5494	5764	6055	6354	6663	6996	7350	7715	
Chief Deputy Defender	5230	5494	5764	6055	6354	6663	6996	7350	
Compliance Specialist	2481	2595	2717	2847	2984	3122	3272	3436	
Contract & Business Services Director	5494	5764	6055	6354	6663	6996	7350	7715	
Deputy Defender 1	3386	3554	3725	3909	4100	4306	4526	4752	4985
Deputy Defender 2	3909	4100	4306	4526	4752	4985	5230	5494	
Executive Assistant	2979	3123	3287	3451	3617	3794	3981	4181	
Executive Director	5878	6169	6469	6792	7136	7491	7857	8250	8657
General Counsel	5230	5494	5764	6055	6354	6663	6996	7350	
Legal Secretary	2067	2166	2257	2370	2481	2595	2717	2847	
Legal Secretary Supervisor	2533	2659	2788	2931	3069	3217	3386	3554	
Office Assistant 2	1492	1553	1622	1691	1758	1830	1907	1998	
Office Specialist 1	1691	1758	1830	1907	1998	2067	2166	2257	
Paralegal	2481	2595	2717	2847	2984	3122	3272	3436	
Public Defense Analyst	3574	3752	3940	4136	4343	4561	4788	5028	
Senior Deputy Defender	4306	4526	4752	4985	5230	5494	5764	6055	