

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, January 28, 2010
10:00 a.m. – 3:00 p.m.
Clackamas County Circuit Court
Holman Building
821 Main Street
Oregon City, Oregon 97045

AGENDA

- | | |
|--|---|
| 1. Action Item: Approval of the Minutes of PDSC's December 10, 2009 Meeting
<i>(Attachment 1)</i> | Barnes Ellis |
| 2. Action Item: Update on Developments In Clackamas County, Commission Approval of Service Delivery Plan
<i>(Attachment 2)</i> | Barnes Ellis
Ron Gray
Marty Cohen |
| 3. Boards of Directors for Public Defense Contractors
<i>(Attachment 3)</i> | Invited Guests
Commission Discussion |
| 4. Attorney Evaluation Models
<i>(Attachment 4)</i> | Invited Guests
Commission Discussion |
| 5. Eligibility Standards for Court Appointed Counsel
<i>(Attachment 5)</i> | Kathryn Aylward |
| 6. OPDS Financial Monitoring Systems And Safeguards | Kathryn Aylward
Lorrie Railey |
| 7. OPDS Monthly Report
<i>(Attachment 6 – Diversity Survey)</i> | OPDS Staff |
| 8. Commission Discussion of PDSC Role in Contracting Process | Barnes Ellis
Commissioners
OPDS Staff |
| 9. Action Item: Contract approval
<i>(Attachment 7)</i> | Barnes Ellis
Kathryn Aylward |

10. **Executive Session:*** Discussion of Executive Director Evaluation Process;
Action Item: Approval of Minutes of

Barnes Ellis

12/10/09 Executive Session
(handout)

Notes

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

****The Executive Session will be held at approximately 2:00 p.m. pursuant to ORS 192.660(2)(f) and (i).***

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) p378-3349.

Next meeting: The next meeting of the commission is scheduled for March 4, 2010 from 10am to 3pm at a location to be announced in Salem, Oregon.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION
OFFICIAL MINUTES

Thursday, December 10, 2009
1:00 pm to 4:30 p.m.
Senator Hearing Room, Courthouse Square
555 Court St., NE, 1st Floor
Salem, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Hon. Elizabeth Welch

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Becky Duncan
Paul Levy
Shelley Winn

Agenda Item No. 3 Report from PDSC Subcommittee regarding Contract Proposals for Lane County

[Executive Session convened. Following the conclusion of the executive session portion of the meeting, Chair Ellis called the public portion of the meeting to order.]

Marc Friedman thanked the Commission for the time that it had devoted to the delivery of public defense services in Lane County. He said the panel was an experiment. Some things went well but concerns arose and the Commission has decided to move on.

Chair Ellis said that the Commission wanted to try the open panel approach. There are problems with that approach that are not a reflection on the administrator's efforts.

Ingrid Swenson asked the Commission to approve a revised plan permitting OPDS to negotiate a contract with a new provider for the conflict caseload in criminal cases.

MOTION: Shaun McCrea moved to approve the plan; J. Potter seconded the motion; hearing no objection, the motion carried. **VOTE: 6-0.**

Chair Ellis thanked Ross Shepard for his contribution to the facilitation of a successful contract negotiation.

Agenda Item No. 1 Approval of the Minutes of PDSC's October 23, 2009 Meeting

MOTION: Shaun McCrea moved to approve the minutes as amended; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0**

Agenda item No. 2 Approval of the Minutes of PDSC's September 9, 2009 retreat

MOTION: Hon. Elizabeth Welch moved to approve the minutes of the public portion of the retreat; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Agenda Item No. 5 Contract Approvals

Kathryn Aylward described the contract proposals Commissioners were being asked to approve. OPDS was recommending a contract with Markku Sario, the sole public defense provider in Grant County, for a fixed amount per month to cover his overhead. Commissioners were also asked to approve a series of contracts with death penalty mitigation specialists and an investigator, and an increase in the hourly rate for mitigation specialists not under contract. Ingrid Swenson recalled the previous testimony of Robin Mayer, Shaun O'Brien and Matt Rubenstein that they were not aware of any state that paid mitigation specialists less than Oregon and described the significantly higher rates that were paid in neighboring jurisdictions.

MOTION: Chip Lazenby moved to approve the contracts; Shaun McCrea seconded the motion.

Commissioner Ozanne said he would abstain from the vote because he did not have sufficient information about the proposals to review and approve them. He said that Commissioners needed to have more information about what they were being asked to approve.

Chair Ellis suggested that a discussion of the contract approval process be deferred until the discussion of the agency's strategic plan, Item 8 on the agenda. He said the main issue was the level of detail that should be provided to Commissioners. Two years ago PDSC accelerated its process in order to build meaningful review into its schedule.

Commissioner Potter said that he would vote to approve the contracts in order not to delay the delivery of services but in the next cycle he will need to have a better understanding of the basis for the recommendations from staff.

VOTE 4-0. Commissioners Ozanne and Welch abstained.

Kathryn Aylward said that PDSC may want to be informed when contracts are discontinued. She said two of the attorneys who currently handle death penalty post conviction relief cases under contract have decided not to continue their contracts for personal reasons. An attorney in the Appellate Division is leaving OPDS and is available to handle this type of case.

Commissioner Potter asked whether other potential providers had had an opportunity to bid on this work.

Kathryn Aylward said that it was part of the agency's RFP and in addition OPDS has done direct recruiting among the death penalty attorneys.

Commissioner Lazenby said that there are a lot of new lawyers looking for work and if contracts like these were available a law firm might be willing to add capacity in order to handle them.

Ingrid Swenson said that OPDS had received no responses to its RFP on this caseload and that it had had difficulty in the past finding enough attorneys to handle these cases which require experienced attorneys. Commissioner Lazenby said that OPDS should be cautious about the appearance of contracting with former colleagues.

Commissioner Potter said that if OPDS is continually seeking lawyers for this caseload, that need should be communicated. OPDS could create a pool of applicants and should post a notice on its website and the OCDLA website. Kathryn Aylward said there are four cases approaching the post conviction appeal stage and that with the loss of two attorneys, there is now a need for four. Commissioners approved OPDS proceeding to negotiate a contract with the departing Appellate Division attorney.

Ingrid Swenson asked Commissioners to permit OPDS to pursue a contract with an attorney to replace Matt Rubenstein as the Death Penalty Resource Attorney. She said that a request for applications was issued and three responses were received. OPDS is recommending approval of a contract with Jeff Ellis who was recruited by Matt Rubenstein to apply for the position. Mr. Rubenstein is leaving the position in order to become the resource attorney for the Federal Death Penalty Center. OPDS hopes his legal assistant will agree to continue in her position until a replacement for Mr. Rubenstein has been approved.

Paul Levy was asked to review the application materials of all three applicants and to speak with references. Paul Levy reported that an announcement regarding the position was made at a national death penalty training in Portland sponsored by the National Association of Criminal Defense Lawyers and was circulated among death penalty attorneys nationally. Among the applicants, Mr. Ellis was the only one currently engaged in death penalty practice and training at the national level. One of the other applicants did not include any references. Mr. Ellis's references described him as highly qualified.

Chair Ellis (no relation to Jim Ellis) said that Mr. Rubenstein had been an excellent resource and that he was sorry that he was leaving.

Agenda Item No. 6

Commission approval of Service Delivery Plan for Polk County

MOTION: Shaun McCrea moved to approve the Polk County Service Delivery Plan; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Hon. Elizabeth Welch noted the positive developments in Polk County that resulted from the Commission review.

(Recess)

Agenda Item No. 7

Review and Possible Approval of Drug Court Guidelines

Ingrid Swenson summarized previous Commission meetings and discussions concerning the proposed guidelines. She estimated that there are well over 50 drug courts in the state and described how they are initiated. Commissioner Ozanne said that drug courts are generally a product of their local communities. The standards that apply vary from one court to another and some are conducted below any recognized standard of due process and valid therapy.

Ingrid Swenson said she had provided the draft guidelines and a recently issued National Criminal Defense Lawyers Association publication on drug courts to all of the contractors who accept drug court cases. Only four responses were received. The guidelines could be used to remind lawyers about the need to provide zealous advocacy even in the drug court setting. It could also assist them in advocating for drug court procedures that would permit the attorney to provide the required advocacy. She said that the model used in most counties now requires the entry of a guilty plea. Paul Levy said that during a recent visit to Umatilla County it appeared that the practice of requiring a defendant to plead guilty to all counts as a condition of admission to drug court may or may not have changed since the Commission visit in 2007 but that most defense attorneys did not see the drug court as a benefit for their clients. For attorneys who do participate, the allegiance of the attorneys appeared to be more to the drug court team than to the client.

Commissioner Ozanne asked whether PDSC should fund defense attorney participation in some of these courts. Ingrid Swenson said that that issue had come up before and that clients might prefer to be represented, even if the model were imperfect. She said that in some drug court proceedings there might be no constitutional right to counsel when there is no risk of incarceration.

Commissioner Ozanne said that a valid study of the effectiveness of drug courts in reducing recidivism would not compare drug court participants with those who did not participate. The effect of evidence based practice with and without the involvement of a drug court is what needs to be measured.

Commissioner Lazenby said that the Multnomah County STOP court program had been an intensive, team based treatment model that appeared to be successful but that it may have changed. The role of counsel in the program was always problematic in the program but when he represented clients as a criminal defense attorney clients may have benefited legally from representation but may have gone back to drug related criminal activity without any positive change.

Ingrid Swenson said that family drug courts that include parties in juvenile dependency cases have had some good success in reuniting families. Commissioner Lazenby said that when he worked for Multnomah County they sought family based solutions but with a law enforcement model and adversarial representation, they couldn't achieve the desired outcomes.

Greg Hazarabedian said that the discussion is more about whether clients are getting appropriate advice before entering drug court. In some counties with limited resources drug court may be the only option available. Commissioner Ozanne asked why the resources spent on drug courts couldn't be spent on treatment instead. Mr. Hazarabedian said that private foundations and others who support drug court would not support other approaches. For drug court clients who simply want to get clean, drug court can be the best option to advocate for. For many clients it is a poor solution.

Commissioner Ozanne proposed that the Commission approve the guidelines as aspirational, incorporate the NACDL recommendations and add a comment that PDSC cannot endorse all of the practices in the state. Chair Ellis said that adding those recommendations would not mean that PDSC would be critical of attorneys who participated in drug court that did not meet them. Hon. Elizabeth Welch said that some of the recommendations would kill drug courts. District attorneys will not participate in programs they don't agree to. If they don't agree to dismiss the charges, drug court won't happen. She asked whether clients considering participation in drug court have time to review discovery and consider their options. Ingrid Swenson said that the practice of giving applicants two weeks to observe the court and decide whether they want to participate is not uncommon among the providers who testified but it may not be true of all. In preparing for service delivery reviews, OPDS staff could discuss the PDSC guidelines and determine whether a particular drug court model permitted the kind of representation required of contract attorneys.

Commissioner Potter said the defense doesn't control the drug process. He would be comfortable treating the guidelines as an informational tool. To the extent that guidelines one through four describe existing responsibilities he would suggest publishing them and moving guideline five to the front and including the NACDL suggestions as further information and background and then using the guidelines to educate the defense bar instead of using them to punish lawyers.

Greg Hazarabedian suggested including the guidelines as a topic for the next management CLE.

Commissioner Lazenby supported Commission Potter's suggestion. Drug courts may work in some areas but may be seen merely as docket clearing devices in others. PDSC could make it clear that it is saying only that these guidelines are the ethical framework for lawyers to examine their role in these cases. There are times when it is beneficial to the client to participate in these programs and there are times when participation may be so coercive that the lawyers need to have a framework that allows them to state why they are not participating.

Chair Ellis said that it seems to be imperative to have a lawyer counseling the client on whether or not to enter a program.

Commissioner Lazenby said most practitioners don't have a suitable framework for participating in a collaborative process.

Commissioner McCrea said her experience with drug court is limited but in the cases she has been involved in she was impressed by the intensity of the proceedings and the dedication of the people involved. She does not believe that the ethical obligations are any different in counseling a client about whether to enter drug court than they are for counseling them about going to trial, negotiating a non Measure 11 sentence or cooperating in a federal case. The question is always what does the client believe is the best for himself. It is not appropriate for the defense attorney to opt out. If the system is unfair then it needs to be changed.

Commission Ozanne said that it is "assembly line" justice of any kind that is troubling. Does bringing a client before a judge get him sober?

Commissioner McCrea said that it can make a difference.

Commissioner Lazenby said that in some cases having a connection to the judge can work. It worked in the STOP court for many people. We need to have a framework to help attorneys analyze what they are doing.

Commissioner Potter supported the use of an amended version of the proposed document as a tool for lawyers. He and Commissioner Ozanne also supported the use of the document to comment on drug courts during the course of service delivery reviews.

Chair Ellis said the commission was in agreement that the guidelines be used as an information piece. Ingrid Swenson said they do not create any new obligations, but merely recognize existing ones.

Agenda Item No. 8

Review and Possible Approval of Strategic Plan, Biennial Report

Ingrid Swenson described proposed amendments to the strategic plan. After a discussion of who the agency's "customers" are, it was decided that providers would not be described as customers in the plan.

Commissioners then turned to a discussion of the appropriate role of the Commission in overseeing the contracting process. Hon. Elizabeth Welch said that she found Kathryn Aylward's presentation in Eugene to be particularly helpful. She would like to have had information about the priorities established by the Commission in Coos Bay several years ago. After priorities are established she would like to be informed how staff applied those priorities in the proposed contracting plan. She would like to know how many people were turned down for a contract. She said that Commissioners don't know what standards are being applied. In the final analysis the concern may be primarily with the manner in which material is presented. Commissioner Ellis inquired whether commissioners would prefer to see a written summary of major contracts and have staff describe how their recommendations meet PDSC priorities before contracts are negotiated. An additional session could be added before contract approval. Commissioner Ozanne said he would like to be privy to the strategy that leads to the negotiations, probably in an executive session.

Commissioner Welch said that there should be a time in the cycle to review previously established principles and priorities and decide whether they should continue to be pursued.

Ingrid Swenson said that OPDS believed it had followed the Commission's instructions. Two years ago there had been a discussion of principles and priorities and Commissioners received a detailed presentation of proposed contracts and how priorities were applied just prior to the approval of contracts in December 2007. Commissioners decided it would be beneficial in future biennia to accelerate the detailed review so that it occurred before the contracts were presented for approval. In the current contract cycle the detailed review was moved up. Commissioners were provided with copies of previously approved priorities and met in executive session in September to hear about the proposed contracting plan. The Commission clarified its priorities for staff, and staff then negotiated contracts and presented them for approval in October. If Commissioners would like more information in future years about the contracts after they have been negotiated a second executive session, or possibly a public meeting, could be convened for that purpose.

Chair Ellis said that, overall it was a good contracting year. In the future additional detail could be provided in a half-day executive session before contract approval.

Commissioner Ozanne suggested a one or two-day session to review contracts.

Commissioner Lazenby said that if it asks for too much detail the Commission risks becoming an appellate body. Transparency is important but part of the steward role is to get the best deal for the taxpayers through negotiation.

Commissioner Potter said that, in a day long session or less staff could present the proposed contracts. The Commission would not be micromanaging the process. Very little would change but Commissioners would know what they were approving.

Greg Hazarabedian said that staff contracted with his office in accordance with Commission priorities.

Kathryn Ayward said that the point of showing Commissioners the giant spreadsheet was to illustrate how little flexibility her staff had with individual contracts when the overall goal is to keep the system running and cover the caseload. In biennia when there is additional funding the priorities come into play. The only questions to be resolved this year were those that were brought to the Commission for decision.

Commissioner Potter said that the part that was missing was the explanation about what was done with individual contracts. Sometimes all there would be to say is that there was no real change in a contract. Commissioners will want to know what changed between the time the statewide plan was outlined and the time when the contracts were negotiated.

Commissioner Lazenby said that there is a lot more stability in the system than there used to be. He cautioned against the Commission getting too deeply involved in the negotiating process.

MOTION: John Potter moved to adopt the strategic plan including strategy 2 on page 19. Chip Lazenby seconded the motion;

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VOTE 6-0.

Agenda Item No. 9

OPDS Monthly Report

Peter Gartlan reported that Chief Deputy Defender Bronson James had resigned. His and other vacant positions in the Appellate Division have been advertised. He said that the Court of Appeals had determined that court orders denying eligibility for additional earned time credit for inmates under HB 3508 are not appealable. The Appellate Division is challenging that ruling. He also reported that the Oregon Supreme Court had fast tracked briefing and argument in a case he argued regarding the constitutionality of the implied consent law. He also announced the OPDS holiday staff party and the Appellate Division semi-annual CLE.

Kathryn Aylward said that the appellate Division caseload had been growing and that in some areas the expenses related to trial level representation had declined. In view of the cuts that were made to the appellate Division budget, despite an earnest effort to reduce costs, \$155,000 more would be required to

fund the operations of the division through the current biennium. She asked for Commission approval of a request to the Interim Ways and Means Committee to authorize a fund shift from the Public Defense Services Account to the Appellate Division. She noted that the shift would result in a slight increase in the deficit in the account.

Paul Levy reported that the Quality Assurance Task Force had recently reviewed an expanded best practices for contractors list that includes discussion of the value of adopting various practices and ways of implementing them. He also reported that future site teams will explore use of additional measures for assessing quality.

MOTION: Shaun McCrea moved to adjourn the meeting; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

PUBLIC DEFENSE SERVICES COMMISSION
UNOFFICIAL EDITED TRANSCRIPT

Thursday, December 10, 2009
1:00 pm to 4:30 p.m.
Senator Hearing Room, Courthouse Square
555 Court St., NE, 1st Floor
Salem, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Hon. Elizabeth Welch

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Becky Duncan
Paul Levy
Shelley Winn

Agenda Item No. 3 Report from PDSC Subcommittee regarding Contract Proposals for Lane County

[Executive Session convened. Following the conclusion of the executive session portion of the meeting, Chair Ellis called the public portion of the meeting to order.]

28:46 Chair Ellis Welcome back.

28:45 M. Friedman Thank you. I am really here just to acknowledge all of you. I really do appreciate the time that the Commission has given us in the past. The panel was an experiment. I think many things about it went quite well. I am certainly well aware that there were some concerns that arose. I know that you folks are ready to move on to something else. I am here to say thank you for the time that you have given us and particularly I am here to thank Commissioners McCrea and Potter. They have provided a lot of hands on help over the years for the panel. We are appreciative of that.

29:36 Chair Ellis I hope you understand that nobody is approaching this as though someone did something unsuccessfully. We knew in 2004 that this was experimental. There was a division within the Commission. We finally respected the two Lane County commissioners who felt very strongly. People in the community felt very strongly that they wanted to try this. I think we gave it a really good shot. I think there are problems with an open panel. That was really what drove the change. It is not a reflection on your efforts.

30:20 M. Friedman I certainly don't take it that way. Again, I have always known that it was an experiment. I really do appreciate the shot. I am here simply to wish them the best. My concern has always been - and I think everyone that has provided indigent defense services in Lane County has had the same concern - to make sure that public

defense needs are met. It is hoped that what you folks are doing now will be successful and that the level of representation that is required will be there.

30:57 Chair Ellis That is very gracious of you to say what you have said.

31:01 M. Friedman That is all I have.

31:02 Chair Ellis Any questions?

31:07 J. Potter Thank you, Marc.

31:15 I. Swenson Mr. Chair, Item No. 4 on your agenda is the approval of a service delivery plan for the county. The one that is proposed to you is the same one that was provided last meeting. Your previous plan specified that the conflict caseload be handled by the panel. We are asking you to authorize OPDS to negotiate a contract along the lines that have been discussed for that conflict caseload.

31:49 Chair Ellis Are there any questions or comments? Is there a motion?
MOTION: Shaun McCrea moved to approve the plan; J. Potter seconded the motion; hearing no objection, the motion carried. **VOTE: 6-0.**

I feel good about the way that whole process worked out. I look forward to a successful contract negotiation.

32:14 I. Swenson We had generous contributions from many people here and there.

32:19 Chair Ellis I want to express on the public record my gratitude to Ross Shepard for his very significant contribution.

Agenda Item No. 1 Approval of the Minutes of PDSC's October 23, 2009 Meeting

32:34 Chair Ellis The next item is the minutes of October 23. Are there any additions or corrections? I had a couple of typos. On page 19, line 1:24:21, the next to the last word should be "is" instead of "it." On page 28, line 2:06:28, the word "Commissions" should be "Commissioners." Other than that I had no additions or corrections. Anyone else?

33:15 C. Lazenby I have a correction on the approval of the Multnomah Defenders contract. Under 2:44 I have to actually appear as not participating as opposed to abstention. That is actually what happened. I want the record to reflect that I did not participate.

33:47 Chair Ellis As amended or corrected is there a motion to approve?
MOTION: Shaun McCrea moved to approve the minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0**

Agenda item No. 2 Approval of the Minutes of PDSC's September 9, 2009 retreat

34:00 Chair Ellis Then we have the minutes of the September 9 retreat. Any additions or corrections to that? Is there a motion to approve those?
MOTION: Hon. Elizabeth Welch moved to approve the retreat minutes; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Agenda Item No. 5 Contract Approvals

34:20 Chair Ellis Kathryn, do you want to address Item No. 5, the additional contracts?

34:33 K. Aylward You should have a handout listing the contracts we are asking for approval on. The first one for legal representation is Markku Sario. He is the sole Grant County provider and we extended him more time to complete his proposal because he was in a murder case that was in trial. That is why this one didn't make it on the list last

time. The change we made in this contract is similar to the John Lamborn contract in Harney County where we agreed on a fixed amount per month that was required to cover his overhead. If cases go up or down he won't owe us money and we won't owe him money. He was pleased about that, too. The second table lists mitigation and investigation. This was the first time we had issued an RFP for mitigation services. The Commission will remember that we heard a lot of testimony about there being an insufficiency of good mitigators in Oregon, and the hourly rate we were paying was insufficient and they were going to work in other states. We issued the request for proposals and we received, I think, 19 proposals which I was pleased about. We talked to the Death Penalty Peer Panel about these and what we ended up doing was deciding – well, first of all, the rates people were bidding were \$60 to \$80 an hour. We can't afford to pay that. We did come up with a compromise by picking the most experienced mitigators who we know will get used by death penalty attorneys to enter into contracts with and then, for the remainder, we would increase the hourly rate that we are pay for non-contract mitigators. Even a little bit will help hang on to them. It was interesting that in theory, of course, if you pay more you imagine attracting people. I got a call from a mitigator who left Oregon years ago. She is in Alabama now. She called up said, "I hear there are contracts out now. I heard what the rates are that someone else agreed to. I am coming right back to Oregon." So it actually does work. We ended up negotiating the contracts down to \$59 an hour, which worked and was certainly an improvement over \$39 an hour for these people, but they actually need \$60 to \$80 to continue to make it a viable business. We are hoping then to put the \$39 hour a rate for mitigators that are not under contract up to \$44 by January 1. I think that will help. Two of these contracts - somebody who might be doing the math will notice that they are all at \$59 except No. 3, Leroy Chastain and that is strictly an investigation contract, not an mitigator contract and Number 4, Lisa Harmening, is \$44. This is a person who had been under contract with a death penalty provider until we split those contracts out probably four years ago. She had a contract just for mitigation. Even though she is not one of the people that we might have opted to have a contract with at \$59 an hour, we also didn't want to say that, "Now you are going to lose the benefit of a contract through no fault of your own." We continued the contract and made the rate \$44 because that then matches the rate that our non-contract people will get anyway. She will still have the benefit of knowing that she will have a regular monthly payment, but the rate is not going to go any higher than for non-contract providers.

38:38 J. Potter

So Leroy Chastain's contract is for how much an hour?

38:40 K. Aylward

It is for \$39 an hour. Again, it is the just the rate for death penalty investigation and the benefit to him is that because he will get enough business he can have a fixed monthly amount coming in.

38:56 I. Swenson

If I may, Mr. Chair, I want to add a couple of comments. You may all remember it has been a while since Matt Rubenstein brought Robin Mayer and Shaun O'Brien to testify before the Commission more than a year ago. If you will recall, their principal concern about Oregon, once they learned that \$60 was the rate only for the hourly paid attorneys, not for the attorneys under contract, was that our mitigation rate was the lowest they were aware of in the country. At that time, according to Matt Rubenstein, we had probably about five well qualified mitigation specialists. He said there were certainly others who were capable investigators, competent individuals, but who lacked the training to qualify as mitigation specialists. Robin Mayer testified about was the new ABA Standards for Mitigation Specialists that she and Shaun O'Brien had both been working on for some time. Our reaction was that we needed to identify people who met those higher standards. In order to attract them we certainly needed to do something about that rate. The Commission discussed some of the rates that were being paid in other local jurisdictions. The Federal Defender's office and the panel attorneys use mitigators who are paid at approximately \$100 an hour in the same vicinity. In Washington they make \$75 an hour. In California they make between \$75 and \$100 an hour. Among our neighboring states we were approximately half of where we needed to be. In the

review which we did with the peer panel, we went over the entire list. They are familiar with these folks and have worked with them. We also worked closely with Matt to identify, among the initial group of contractors, the very most skilled so that we could retain them but also so that they could serve as trainers and mentors down the road to other potential mitigation specialists. The rates that Kathryn has indicated to you are just below attorney rates for some of this same work. That is the reason for the numbers. The \$59 an hour and the \$44 an hour makes the rates slightly less than attorneys are paid.

- 41:38 J. Potter By one dollar.
- 41:38 Chair Ellis It is a well known marketing ploy. I was curious about Markku Sario. Those are big numbers. Can you describe who is involved with him?
- 41:57 I. Swenson If you will recall when we were out in eastern Oregon, Grant and Harney constitute a single judicial district. We had one provider in each of those districts and there is one judge for both portions of that district. We were paying the attorney in Grant County to go to Harney County and handle conflict cases and vice versa. There is a considerable expense involved in covering these two counties. I forget the distance. It is about 40 or 50 miles between the courts, something like that, and these providers are essentially the only options in those two counties - people who are capable and willing to do public defense cases. The important thing was to be able to sustain them in their practices even though - and we have talked about this in a number of Commission meetings and retreats - even though the caseload doesn't warrant the cost by itself. We have to maintain those attorneys. We have been using case rates but the variation in the volume of cases was significant enough that they couldn't tolerate the swing.
- 43:22 Chair Ellis I was surprised there are 552 cases in those two counties.
- 43:30 K. Aylward That is correct. Not in each of them. That is the number ...
- 43:34 Chair Ellis Aggregate - over two years.
- 43:39 K. Aylward that Markku took either in Grant County or the conflicts in Harney County.
- 43:45 Chair Ellis And it is over a two year period?
- 43:44 K. Aylward That is correct.
- 43:48 Chair Ellis Any other questions?
- 43:50 C. Lazenby Ingrid, can you just bring me up to date on what is going on with your conversations with Portland State Graduate School of Social Work about developing a mitigation specialist training program. Is that going any place?
- 44:01 I. Swenson Not just now. That is partly because Matt Rubenstein is leaving his position. I think the last time we spoke about it his desire was to identify a mitigation specialist who would become, at least part-time, a part of the resource center. That person could then assist him in deciding the best approach to training other mitigators. We certainly haven't gotten to the point of deciding what the best way to go is. One of things we want to talk to you about today is a potential replacement for Matt. As soon as that person is available, that is at the top of the list of things to work on.
- 44:55 Chair Ellis Any other questions? Is there a motion to approve the contracts listed on the handout?
MOTION: Chip Lazenby moved to approve the contracts; Shaun McCrea seconded the motion;
- 45:11 P. Ozanne Can we have discussion?

45:12 Chair Ellis Yes, certainly.

45:19 K. Aylward Mr. Chair, I made a horrific mistake. That number is completely is wrong.

45:27 Chair Ellis Which number?

45:26 K. Aylward The one that you looked at and noted that it was a big number. The total value of Markku's contract is \$435,600. I have no idea why that number is in there.

45:41 Chair Ellis I feel much better.

45:40 K. Aylward It is \$18,100 and something per month that was the cost of overhead, staff, and ...

45:51 Chair Ellis So the new number is what?

45:51 K. Aylward It should be \$435,600.

46:05 P. Ozanne I just wanted to explain my vote ahead of time. I have thought some about the role that Commissioners play with the approval of the contracts. I have concluded that I am going to have to abstain from the vote. I want to express my thoughts. It is a bit embarrassing because I think if anybody is responsible for where I am it is me. In other words, as the executive director I don't think I really appreciated and walked in your moccasins until I got here. Kathryn, I hope you know that my abstention has nothing to do with my respect for your talents. One of the proudest things I have accomplished was identifying you and promoting you. It has nothing to do with you and I doubt there is anything in these contracts that I wouldn't approve. It is just that I have concluded that I am not really approving anything. I think, in my own view, that we either have to decide as a Commission to delegate this process to Kathryn and Ingrid, or we have to do something more in the way of learning so that we really are reviewing and approving them. To get a handout, and, again, no criticism intended because this was the process that I was a steward of too, but to get a handout at the meeting where I am allegedly approving over two million dollars in contracts is just (inaudible). I did think about it a lot when I was executive director and I didn't come up with anything. I just think we have to come up with something better. My own thoughts on it, and obviously we are talking about the next round, is that we actually think about what we do as a Commission in terms of our time. I think I would urge that, in advance, if we can work out a process, the proposals come in and we actually roll up our sleeves and look at these things. Again, I don't think that the result may be any different, but as long as we are approving it I don't feel like I am engaged in an approval process but really a delegation. I am willing to discuss that. Maybe that is the way we need to go because we are volunteers. I just wanted to explain that. I accept the responsibility for where I am winding up because I wish I had been able to come up with a better solution earlier.

48:37 Chair Ellis I have two thoughts on that. One is when we get to Attachment 6, the Strategic Plan document, at page 17, under Strategy 2, there is a paragraph about this subject - our role - so when we get there I would invite you and Judge Welch to continue to address this, but, secondly, I think the statute requires us to approve. I don't think delegation is available to us. I am not sure I would want to do that. I think it is a helpful thing that Ingrid and Kathryn do come here before things are finally approved. Now the question you are asking is what level of detail should we get into. I am very open to - remember, I think it was two years ago that we had a very strong concern about the time compression and how to get from where we started to where we were going to end. We tried to build into our calendar meaningful time. Maybe we haven't done enough of that. What I am going to suggest, assuming that we are able to complete this year is that we talk this through. There are two of you who are obviously uncomfortable and two whom I obviously respect a lot. That being said, your presence counts towards the quorum, so we still have a quorum and we will see if we get a majority here to vote. Any other comments?

- 50:43 J. Potter Well, Mr. Chair, Commissioner Ozanne and I talked about this after the last meeting. I expressed my concern as well along the same lines as articulated very nicely. I will vote for this in large measure to make sure that the contracts go forward and we don't deadlock and hold up the delivery of services, but I agree 100 percent with Peter that we do need to come up with something else. I will be hard pressed to do this again the way we are doing it. Having a piece of paper in front of us and voting through, in this case, a couple of million dollars and at the last meeting \$150 million dollars without understanding better, or having any input into how we got to this recommendation.
- 51:34 Chair Ellis Any other comments? There is a motion and a second. All those in favor say aye. **VOTE 4-0.** The record should reflect two abstentions. Commissioners Ozanne and Welch.
- 52:13 K. Aylward I just wanted to mention - earlier in the meeting there was a question about, "Does the Commission have to approve contracts not continuing?" which is an interesting question. If we are choosing not to continue to contract with someone that is probable a circumstance that you are aware of, but we have a couple of contractors who have decided that they have had enough doing death penalty work. We had a contract with Frank Stoller and one with Marc Sussman. They have each decided, for personal reasons that they don't wish to continue to contract with us. It is a huge hit because they both do post conviction relief and we have cases that are now reaching that point. Death sentence post conviction relief appeals are what we are now facing. It is going to be very difficult to find enough attorneys to cover those cases. Now as it happens, an attorney in our office, a chief deputy, Bronson James, had already given his notice and was leaving our office so that he could be closer to home and work in Portland. He is an excellent appellate attorney with a lot of experience and it seems like ideal timing to be able to scoop him up. I guess what I am requesting is approval to begin negotiations for primarily death sentence PCR appeals, or death sentence direct appeals.
- 53:49 Chair Ellis Any questions on that?
- 53:55 J. Potter I agree with your assessment that he is a good lawyer and would be good on this. My only question is have other people had an opportunity to bid or gain access to these contracts?
- 54:06 K. Aylward In the request for proposals we have specifically sought post conviction relief attorneys. We have asked our existing death penalty contractors if any of them are willing to do this. They are maxed out already just doing trial level work. We have talked some of them into it. Mike Barker and Peter Fahey each have said they would be willing to take some post conviction relief cases. Basically, anyone who is qualified can have a contract. Our need is so great. To be qualified for this kind of work it is pretty rare. You don't have an opportunity to do a death sentence appeal, in most cases, unless you have worked in our office. It is very rare.
- 54:56 J. Potter I am fine. I just wanted to be sure that other people have had an opportunity and we weren't just grabbing at what appeared to be a very good deal. Other folks may later say that they would have liked to have done it too but didn't have a chance. We have sufficiently covered that. I am comfortable.
- 55:10 C. Lazenby Is there an RFP that is directly related to these folks bailing?
- 55:14 K. Aylward No, it is just the same RFP that we issued when all of the death penalty contracts were up, the same RFP that went in July, but we didn't get anyone coming forward and saying they would do this. What has happened in the past, particularly with post conviction relief, is if nobody bid on it then we went shopping. We go try and find someone to do this work for us. We could go through the process of issuing a request for proposals and getting separate applications, but we have already beaten

the bushes, no offense to Mr. James. We have already tried to find people who will do this work and when we do find them like Sussman and Stoller, they won't stay. I think the door is always open on death sentence PCR appeals or direct.

- 56:10 Chair Ellis Remind us what you need authority to do?
- 56:14 K. Aylward I just wanted to share the situation with the Commission in case they had concerns such as Commissioner Potter was getting at or expressing. I don't think I need you to do anything except tell me that you are comfortable with our proceeding to negotiate. The contract terms and hours would be the same as other death penalty contracts.
- 56:41 Chair Ellis Are we comfortable? Everybody is nodding.
- 56:41 C. Lazenby I just want to echo what Commissioner Potter said and that is if you have this chunk of work, that if it was presented as a new opportunity, some provider out there might think that they could add capacity in order to gain those revenues. I have enough young, recent, successful bar applicants emailing me and calling me and taking me to coffee to find out what kind of work they can do and they are willing to do anything. I think John's point is probably well taken. My preference probably would be, even though you are characterizing it as wasted effort, to put this out there for people to know that there is a chunk of work that was previously in other law firms that is there. Give them an opportunity to decide whether or not want they want to add capacity. I am not saying they are going to hire a new member of the bar, but I just know there are lots of lawyers out there.
- 57:52 I. Swenson Except, Commissioner Lazenby, in this particular case, although we did lose two people, nobody was failing to bid on these cases because they thought we had too many attorneys to do them. We had no response to the RFP on this caseload, so that is the problem. We have had a lot of difficulty in the past with this particular caseload and fortunately have been able to persuade some of our best lawyers to handle some of them. Without them there is really a void. We are in a situation where we pursue, if we can, the most appropriate person available. It isn't the sort of caseload that can be handled by a junior associate.
- 58:44 C. Lazenby I guess, all things being equal, I would agree with you. The optics of us – and I am going to be adversarial, creating a caseload for one of our former colleagues who has decided to go into private practice, the optics on that bother me. That is what we are doing, right? Somebody who used to work for us.
- 59:10 J. Potter It may be a communication issue too. What I heard you say is you are always looking for folks to do this work - post conviction work, death penalty. Maybe that needs to be communicated more clearly and more repeatedly through your website or OCDLA postings - sort of an ongoing conversation and then you might get, probably won't, but might get some folks and you put them in a pool similar to what Metro PD does. They have a pool of ready applicants at their disposal. Even if that doesn't happen and the pool is not created, just actively keeping the word out there so when these kinds of things do pop up I feel more comfortable in awarding it to the person that pops up and I think Commissioner Lazenby would too.
- 1:00:10 Chair Ellis Okay.
- 1:00:16 K. Aylward Just so I am clear am I issuing a request for proposals? Am I proceeding to negotiate?
- 1:00:22 Chair Ellis I thought I heard that you could proceed to negotiate but it would be a good thing to add to the website a statement inviting people who have an interest in the area of work to communicate with you.
- 1:00:42 J. Potter Having it out there all the time. You can have it on the jobs portion of our website.

1:00:51 K. Aylward We actually have four cases that we think are reaching that stage. I need many more people. I not only need a replacement for Stoller and Sussman, but I need at least two more people for the four death sentence PCR appeals that are coming in in the next couple of months.

1:01:25 I. Swenson Since we are on the topic of proposed contracts here, one other thing we would like you to permit us to proceed on at this stage is to replace Matt Rubenstein as our death penalty resource attorney. We issued a request for proposals, or a request for applications because it is a slightly different position than a normal contract. In any case, it was issued and we received three responses. Among them was one from a man named Jeff Ellis, he is a Washington lawyer. We asked Paul Levy to review the information on Mr. Ellis and the other two applicants and contact references. I would like you to hear from Paul on what that information is, but we are prepared today to request that you authorize a contract with Mr. Ellis. I think we are extremely fortunate that he is interested in this position. He sounds like the perfect fit for this job. Matt Rubenstein recruited him to make an application because he felt that this was an appropriate replacement for him. I would like to tell you a little more about the process. We are hoping you will permit us to proceed.

1:02:49 Chair Ellis You might tell the Commission, because some may not know, why Matt is leaving and where he is going. He obviously was a terrific resource. We really appreciated his work.

1:03:03 I. Swenson I apologize. I thought maybe I had mentioned it in a Commission meeting but I don't think I have. I have probably only mentioned it to Commissioners individually. He is leaving to become the resource attorney for the Federal Death Penalty Center. Fortunately he will remain here in Portland to do that work and will be available to participate in the larger death penalty defense community, but as of the first of the year he has completed his contract with us. We hope to continue - there is a legal assistant who is working with him and assisting with the dissemination of information material. We hope to arrive at an understanding that would permit her to continue to perform that function until we can get a replacement attorney in place.

1:03:59 Chair Ellis The name of this Washington attorney. How is that spelled?

1:04:01 I. Swenson E-l-l-i-s. Just like our chair's.

1:04:06 Chair Ellis I thought so. I want to make it clear that I don't know the gentlemen and to the best of my knowledge we share a name but not DNA that I am aware of.

1:04:18 P. Ozanne Ingrid, since there were three applications can we see the resumes? The applications? Not this minute.

1:04:32 I. Swenson Of course you can. I brought Mr. Ellis' for you. I did not bring the others. Paul may have those with him and, if so, we can pass them around.

1:04:36 P. Levy I did not bring them.

1:04:42 P. Ozanne You can just send me an electronic copy.

1:04:52 P. Levy The timing of Matt's decision to leave his work with us coincided with a national death penalty training in Portland. He was able to announce that this position would be available at that meeting and to speak with colleagues there. Matt also distributed our announcement to other national death penalty sites. As you heard we received three applications. Matt personally spoke very highly of Mr. Ellis and referred to him as a mentor. He is very familiar with his work in Washington and Matt worked in Washington as well. Of the three, Jeff Ellis is the only one, as far as we can determine from what was submitted to us, who is currently involved in death penalty

practice and who is currently involved in death penalty training and at a national level. We could not determine from what was submitted by the other two. One is not involved in death penalty work presently. The other is probably not. The material he submitted all ended in 2004 and did not include, as we requested, references. Mr. Ellis, in addition to having a wonderful reputation as a practitioner and a trainer, also has the useful background that he has practiced and taught in the area of the death penalty in both Texas and Washington. You are probably aware that we have modeled our own death penalty statute after the Texas statute. We are the only two states with a statute like the one we have here. I spoke with folks in both Texas and Washington and they could not speak more highly of him both as a practitioner experienced in death penalty work and also as a teacher. The person I spoke with in Washington is now (inaudible) from Seattle had been a resource attorney in North Carolina. In addition to all of the other attributes that Mr. Ellis had that he was thrilled with, he identified what we all see with Matt Rubenstein, which is somebody who is approachable, is nice, and who can teach and lead in addition to being highly knowledgeable and a skilled litigator.

- 1:07:58 P. Ozanne Based on what you said, Mr. Chair, I don't need to see the others. It sounds to me from what you have summarized, that the other applicants just don't qualify, they don't have minimum qualifications.
- 1:08:07 P. Levy I think one application didn't meet our requirements as an application. The other certainly had extensive, and it looked to be very good, background with death penalty cases, but hasn't been involved for a while and doesn't compare.
- 1:08:30 Chair Ellis Did Matt know the other two applicants?
- 1:08:30 P. Levy He knew of one of them.
- 1:08:37 P. Ozanne I guess what surprises me is the pool. How broadly was this announced? Nationwide? Was this all we got?
- 1:08:44 P. Levy The National Legal Aid and Defender Association had a training in Portland as part of the national meeting there devoted to jury selection in capital cases. There were folks at that training from all over the country who heard about the position. Then, as I understand it, they distributed the announcement to other lists of organizations.
- 1:09:15 J. Potter Was it NACDL that did the training?
- 1:09:32 P. Levy That is correct.
- 1:09:33 Chair Ellis Well, it sounds encouraging. Matt was a wonderful resource and I am sorry to see him move on from our point of view. It sounds like you have a pretty good...
- 1:09:44 P. Levy From everything we have learned about Mr. Ellis we are very lucky. He has a good practice in Seattle. He went to the University of Oregon Law School. He knows Oregon. I think we are very lucky. He is a strong candidate.
- 1:10:10 Chair Ellis Any other comments?
- 1:10:10 C. Lazenby I was skeptical until I found it he was a duck. I fully support him.
- 1:10:24 Hon. Elizabeth Welch Everybody is so young.

Agenda Item No. 6 Commission Approval of Service Delivery Plan for Polk County

- 1:10:30 Chair Ellis Do you want approval of Polk County? I think we have done it. The addition looked to me like you had completed that. Are there any comments or is there a motion to approve the Polk County Service Delivery Plan?

MOTION: Shaun McCrea moved to approve the Polk County Service Delivery Plan; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

1:10:58 Hon. Elizabeth Welch

I just wanted to make a comment but it didn't have anything to do with that vote. Maybe it was because the issues were very near to my heart, but the movement that has occurred in Polk County as a result of our sticking our noses into those two issues is really very encouraging and I think kind of empowering to us.

1:11:25 Chair Ellis

Even without a letter from Commissioner Ozanne.

1:11:27 Hon. Elizabeth Welch

It was nice to see that they listened and took it seriously and moved with it.

1:11:37 I. Swenson

I need to pass on to Commissioners that in recent weeks and months I have received several comments in completely different areas that revolved around Commission visits to sites and changes that had been implemented. Nobody necessarily bothered to tell us but they sort of got the message and made the changes and then later on we found out about them. I will detail those for you.

1:12:05 Chair Ellis

Do we need a break? We will take a 10 minutes recess.

(Recess)

Agenda Item No. 7

Review and Possible Approval of Drug Court Guidelines

0:07 Chair Ellis

The next item is Action Item No. 7, the Drug Court Guidelines, Attachment 5.

0:35 I. Swenson

Mr. Chair, we are revisiting this issue for maybe the fifth time. At previous meetings you will recall - I think it was in October of 2008 - we had a description of drug courts and a presentation from the Criminal Justice Commission. Then we heard from four of our providers who described very different drug courts and very different situations and eligibility standards and approaches. The Commission in April and May, 2009, briefly reviewed some proposed standards and decided - I think it was at the April meeting - that rather than address them to the court, which the original set was designed to do, to address them to the defense lawyers as recommended practices for defense attorneys. So they were redrafted and sent out to all OCDLA members and to all of our contractors who handle drug cases with the request that they share them with the drug court judges and the people who staff these drug courts.

1:50 Chair Ellis

How many counties have drug courts?

1:52 I. Swenson

If not all of them - well, I know Tillamook County doesn't have one. There are some DAs who refuse to participate but not many. Some counties have multiple drug courts, three or four. I don't have a count for you today of the actual number, but it well over 50 in the state.

2:15 Chair Ellis

Fifty percent?

2:12 I. Swenson

Fifty drug courts. More than one per county and sometimes they have four. They will have them for adult female offenders, adult male offenders, juveniles, and so forth. I can certainly gather that information from the Criminal Justice Commission. They are also being formed rather regularly. Even if you had a good count today you might have some more tomorrow. There is certainly new grant funding available that has not previously been available. I think we will probably see continued growth.

- 2:54 Chair Ellis They are each formed by the circuit court in the county? There is no uniformity to it as I understand it.
- 2:58 I. Swenson Commissioner Ozanne may know more about this than I do, but usually it does involve a judge in particular who is motivated to create the court. It is a concentration of judicial resources that sort of makes them successful or not. Then the district attorney's office has the authority to either agree to this treatment, this informal treatment, or not. There is at least one and I think maybe two counties where the district attorney has just declined to do that. There are different national models. Some people start them by attending a national conference and getting good advice about how to organize one and what the components should be. Other people seem to just feel a local need to resolve a problem. They pull together whatever resources they can. Prior to this infusion of grant funding the probation department would have to commit certain resources and the sheriff's office and the drug treatment folks. Everybody had to pitch in whatever resources they had to make them function. That is a part of the difference because in some communities those resources are very different from one another.
- 4:27 Chair Ellis Is there no one pushing for a statewide, uniformed, consistent system?
- 4:34 I. Swenson Not that I know of.
- 4:42 P. Ozanne Barnes, it is just like the issues, at least this is my view, having worked somewhat on this and now being responsible for helping with the drug courts in Multnomah County. It is akin to the local discretion that is given to the court and the respect that is accorded prosecutors to enforce state laws in very different ways. I think it just fits with the culture of Oregon that allows for really extreme differences in drug courts. That is one of the things that I think we need to account for when we do the guidelines - that we are not expressing support for many of these programs. I personally am pretty ambivalent about the whole idea but at least there are so many different ones and there are some that are just being conducted, in my view, below any recognized standard of due process or therapy. I think we need to account for that somehow in the language. I think in part, as Ingrid says, it starts by some judge who gets religion and really believes in it. That tends to make it unique in each place. There are different ideas about how long treatment should be, what the treatment should be. The tricky part is can you find the next judge after that founding judge that has the same enthusiasm? Can you really institutionalize it? Again, I am a skeptic. It certainly is different in 36 counties.
- 6:31 Chair Ellis I didn't mean to interrupt. I was trying to get oriented.
- 6:40 I. Swenson I did receive only four comments back - not very many. Jack Morris put the most effort into his response, of the folks I heard from. I did incorporate some of the changes that he recommended. I think I may have noted that in the draft in at least one place, that it was based on his recommendation. Then just recently - and I provided you with a summary of the information from this National Defense Lawyers Association discussion of drug courts. That was timely. I also provided that document to all of our contractors and asked them for their comments and thoughts about the information and whether it affected what we should be doing here. I think the national guidelines - they are not guidelines they are a series of concerns, ethical concerns, I think is how they express it in the NAIDA document. I think we did address those concerns in the draft that we presented to you. I did hear from one public defender about his concern which was, "Why pass a bunch of rules that nobody is going to enforce?" I was a little puzzled by that because as drafted, these guidelines do nothing but indicate the existing obligation of lawyers. There is nothing new that is being imposed on anybody, they are the existing ethical requirements of lawyers in these cases. I think the perception is that in drug court you forget all about those obligations and you do something different. You collaborate with the court in such a way that you don't have to follow the normal requirements of advocacy and representation of clients. I responded to him and

talked about those things. It would be hoped that if we were to pass something like this through the Commission and circulate it as a document that the Commission had endorsed, the hope would be that it would be a good reminder to lawyers who can get compromised in this process without wanting to just because of its nature since the setting tends to inhibit objection to the manner in which these courts proceed. So it would be a good reminder to lawyers about how they can continue to represent clients and still participate in drug courts, and I think it would assist them in advocating for directions that the drug court take either at the time it is founded or as it is modified as time goes by so that in the process the court and the other participants can be reminded that these are the obligations that the lawyers have. Lawyers can then say to the court, "If we are going to be involved in this process you must respect that we need time to discuss the discovery with the client, we need time to confer with them about what it means to be in drug court and what they are giving up. We need to protect their rights to due process throughout this proceeding and to confidentiality and privilege; that they don't waive all those rights just by walking into the drug court."

10:43 Chair Ellis

Do most of the drug courts require a plea of guilty before you proceed?

10:51 I. Swenson

I believe that is true. I think that has changed over time. I think initially the model that was more accepted was like the Stop Court model which used to involve either a – I think it was just the right to a speedy trial. Then the court could proceed if you failed the drug court. Well, over time I think that the district attorneys realized that their cases were compromised by a lengthy delay and they began to insist on some kind of process up front, either a stipulation to the facts which would make a trial impossible at a later date, or a plea of guilty. I don't have any numbers for you but I think the guilty plea approach is probably the most popular and the stipulated facts approach maybe less popular. Most of them are not pre-adjudication anymore.

11:50 P. Ozanne

Which is somewhat ironic since they are not murder cases. They are not even serious possession cases or delivery cases. They are pretty small possession cases, so what is to lose? Many of them are, but again as we saw from the testimony we received, other courts put the most serious cases serious cases into those courts.

12:21 Hon. Elizabeth Welch

Ingrid, I think this effort was spurred at least in part by one of our trips out into the real world. It was Umatilla. I don't know when that was but it seems like it was a while ago. A couple of years maybe? Has that situation changed or morphed at all since we raised the issues there?

12:50 I. Swenson

Yes, the last I understood was that it had changed and that there was negotiation permitted on the ultimate charges. If you will recall, the concern was that people had to plead guilty to all 15 counts of the indictment in order to enter drug court. Then if you failed, well then you were adjudicated on all of them. Had you negotiated that case from the outset, you would have been required to plead guilty to one or two or a few of those charges and the balance would have been dismissed. I know Kathryn and Paul were recently out in Umatilla County. Was there any discussion of that when you were just there?

13:26 P. Levy

Yes, we did discuss it. In fact, we addressed this in the report that we provided the Commission. We talked about that report very briefly at the September meeting. On this issue of whether there could be negotiation regarding the charges you would be required to plead to it was unclear whether that had changed or whether it had changed and gone back to what it was, but in any case the lawyers in that county, defense attorneys, still were largely of the view that participation in drug court was not a benefit to many of their clients. This is a drug court where the more serious cases go into drug court. What we found there though - and this is in the report - that has continued to be very concerning - and I am not sure this changed - is the manner in which drug court is conducted there. These guidelines may help cause a change there. This is an example of a drug court where the allegiance of the members of the

drug court team, which includes the defense attorney, is to the drug court team and not to the client. The team gets their plan together in private, with the client excluded, and then presents it to the client who may be quite surprised and wish to have other information conveyed to the team but doesn't have that opportunity. There is still a lot of work to be done in Oregon and that court may still be one that needs work.

- 15:15 P. Ozanne My interest in this went back to our early disposition guidelines which we suggested would provide us with a template when we went out for the service delivery plan and investigated. We could say, "This plan doesn't match our guidelines." I don't know how much we rattle our saber or whether we can, but do we really want to fund lawyers in some of these really awful drug courts? Do we have too? Should we? At least we have a set of standards to hold up to the county.
- 16:07 I. Swenson We touched on that a little earlier. I think one of the thoughts that was expressed by the Commission earlier was that if someone has a right to counsel, they want counsel, even under circumstances that are far from perfect. Would we say, "No, you will have to proceed on your own because we are not going to provide counsel under these circumstances." That was one concern. I think the other one is that for many of these proceedings there probably is no right to counsel. At some point there is. When it ripens into a threat of jail or a sanction, probation violation, or something like that. The daily routine of drug court is often to review progress and applaud good behavior and send you on your way. There is always a potential that there could be a sanction, but there is probably a fairly easy way to identify and separate those cases. I think you could decide that we are not going to have anything to do with this court other than when there is a violation pending we will provide counsel for that hearing. I think you could do that without depriving the defendant of his constitutional right to counsel.
- 17:30 P. Ozanne The other thing that I think is revealing is a lot of the material and literature I am familiar with always says we have a 30 percent reduction in recidivism compared to people who didn't go into the program. That is not the test. Are we comparing drug court to nothing? Really what needs to happen in order to see if these are really working is you need to compare the drug court approach to evidence based treatment, which is essentially a team model with a probation treatment provider and other service providers wrapped around this particular individual, and compare that to the drug court. Indeed you asked me to talk a little about the drug court under Ballot Measure 57 in Multnomah County. It isn't getting off the ground because in our first round, I guess, the group asked for too much money. They told us to go back and start over. The counties that are doing the drug court have to have randomized allocation and a control group to compare evidence based practice that doesn't include drug court with drug courts. I would be really interested because I am skeptical that all of this apparatus with the court and the lawyers adds measurably to what would be good treatment.
- 18:56 C. Lazenby The STOP program, as opposed to the drug courts, the STOP program in Multnomah County, is purported to be what you are describing, which is this intensive, team based, treatment model that had a fair amount of success, or has the STOP program in Multnomah County morphed into that?
- 19:14 P. Ozanne It has morphed into that.
- 19:19 C. Lazenby I agree with you. I have always been bothered by it. Our mutual friend, the late Robert Williams, was a tremendous advocate for this program and touted the personal successes that people have. I was always very worried about the role of defense counsel involved in that. There was no room or role for advocacy within it. It was all driving the clients/the defendants into this treatment modality with the sword of Damocles hanging over their heads. It seems to me that defense counsel was just facilitating guilty pleas. That seems to be contrary to what you are supposed to do in an adversarial system. I don't know how to square that. It has

always bothered me. I don't know how to square that role of a defense advocate with the therapeutic court model.

- 20:15 P. Ozanne Paul described what it often is that you are a member of the "team." Who is this person called the client who arrives on conveyer belt?
- 20:27 C. Lazenby I say that, and I see Greg's hand up, I say that against the backdrop of the time when I was a criminal defense lawyer watching my clients, our clients in our public defender group, benefit legally from our advocacy, but basically go right back into a drug and crime riddled mess without any real positive effect other than we were able to manipulate the system to avoid them getting a conviction. I never saw that that was to their benefit.
- 21:07 I. Swenson We have been talking mostly about the criminal drug courts, but these family drug courts which involve parents of children who are in the dependency system, sometimes, I think, do have success in terms of reuniting mothers and children, dependent mothers and their children. At least the judges who handle those courts feel very positive about the long-term prospects for these families. They serve multiple purposes.
- 21:41 C. Lazenby That makes some sense to me. Years ago when I worked for Multnomah County where Peter now works, there were a lot of people for whom the catch phrase at that time was "the continuum of care." We recognized that we had grandma and grandpa in our senior services. We had the grandkids in our juvenile services. We had mom and dad in our group system and in our drug treatment program. We needed to find a way of wrapping all that together and providing family solutions for those people. We were never able to do it because it all broke down over whether or not it was law enforcement driven or social service driven. The law enforcement piece always won out. You always had this punitive aspect to it. Lawyers brought in made it even more adversarial and made it more difficult to get to the outcomes that would be necessary to build the family that you wanted to.
- 22:34 G. Hazarabedian Thank you, Mr. Chair. I think the discussion is more about whether clients are getting the appropriate advice of counsel from their lawyers before they make the decision whether to go into drug court. I think for people for whom drug court is a good answer, there is no substitute for drug court, and in our resource poor environment, the wraparound care that Commissioner Ozanne was speaking to simply doesn't exist in Lane County other than in drug court. There is nowhere else to get proper treatment with supervision and all the rest.
- 23:08 P. Ozanne Excuse me, but if you took the money that you are devoting to drug court and strengthened actual treatment delivery... Why spend it on judges and lawyers?
- 23:17 G. Hazarabedian Because at least in Lane County some of the private foundations and donors who help support our drug court are not enamored with our criminal justice system otherwise. I think it comes down to the practicalities of where you can get the funding. I think if the standards are properly employed people won't end up in drug court who shouldn't end up in drug court. I think it is maybe more of an intake problem when people are poorly served by being in drug court than it is a problem with having a drug court. The second thing that I wanted to say is that the CJC money that is now being allocated – next week the Commission is going to allocate those grants - is not the basic drug court funding from CJC. That hasn't been affected. Those drug court grants are still in place. We are talking about additional funding to create intensive supervision in drug court programs for people who would have been Measure 57 prison bound people. These new grants are not threatening the existing drug court funding. They are grants to expand that program for another population.
- 24:27 C. Lazenby So is the concern, Greg, about zealous advocacy from the point of view of a criminal defense lawyer? Is it almost a nonsequitur then if you are saying the choice is

between doing a Measure 57 sentence or doing something that is therapeutic and eventually more beneficial, then my zealous advocacy is to try and facilitate getting my client into that process even if it results in a guilty plea or these other things. The basic bedrock concerns of zealous advocacy don't apply here?

- 25:01 G. Hazarabedian No. I am not saying that they don't apply at all. What I am saying is that the client's best interest always ought to be the target that the lawyer is zealously advocating toward. Sometimes you have clients who simply want to get clean and are tired of the revolving door of low level drug crimes. For those clients, drug court is a wonderful thing to advocate for. For a lot of other clients it is a poor solution. So, again, I think it is a matter of what kind of advice – I am always amused when the drug court coordinator, or the drug court judge will communicate to me that, "Oh, it is troubling, Greg. The drug court refusals have gone up in the last couple of months." I will talk to our drug court lawyer about it and be told that that was simply the right answer for those people and that is what the advice was and what they did. There is the perception from the court, I think, that everybody who eligible is supposed to jump at the chance. I don't think that the defense is doing its job correctly if that is the result.
- 26:08 P. Ozanne You said something, and I know I won't catch you on it, but it reflects the difficulties that Chip was talking about. You said it was the "best interest of these people." No. That is not really the case.
- 26:18 G. Hazarabedian No, it is what they think their best interest is. If you have a client ...
- 26:24 P. Ozanne We are sort of coercing them to get into it.
- 26:30 G. Hazarabedian To some degree. I don't think there is a way to make this tension go away.
- 26:40 P. Ozanne No. Is it worth the trouble? I guess just to bring it around. I'm sorry, you were going to raise your hand. I was just going to say that I would like - and you said we have probably done this five times so you are probably hearing a lot of this again - I would like to, and I would suggest some language up front, I think we should incorporate the recommendations that you put in here of what a drug court should be that are included in the National Association of Criminal Defense Lawyers on page 11. I think we should still maintain that people shouldn't plead guilty in advance. I think we should just say that we incorporate, as aspirational, these guidelines. Then I would like us to say that the drug courts in this state are many and varied and we cannot, by establishing these guidelines, endorse all of the practices of the state. We have doubts, in some instances, of the ethics and fairness of these proceedings.
- 27:57 Chair Ellis Where are you going with the not guilty plea, though...
- 28:03 P. Ozanne It is true diversion. What you have is the prosecutor holding the conviction over your head if you don't participate.
- 28:08 Chair Ellis I know that but as I understand the situation, in most of these courts a guilty plea is a condition of you entering the treatment. I am sure from the court's point of view that is acceptance of responsibility and you can't really do treatment well if you don't accept responsibility. If we put in a guideline in that says that we don't think that is a fair procedure ...
- 28:38 P. Ozanne I am not putting a guideline. I am just saying that we incorporate as aspirational this set of
- 28:43 Chair Ellis So we are not saying to our lawyers who participate in that system that we are critical of them? I don't know. Maybe we are.

28:52 Hon. Elizabeth Welch I think you are looking at something that would kill the drug court system and there are those of us who don't think that would be the end of the world, but the reality is as it has developed over the past - what is it now 20 years there have been drug courts - is that the prosecutor will not participate in the program if they are not pleased. It is that simple. They are the ones who make the rules about the charges. The court doesn't really run the program in that respect. It runs the program in the sheparding and the patting on the head and all of that and trying to keep people motivated. If the DA won't drop the charges and agree to this, it is not going to happen.

29:42 P. Ozanne They really select the cases too, in effect.

29:49 Hon. Elizabeth Welch Yes, they participate in that and since Measure 11 they are the ...

29:52 C. Lazenby Drivers.

29:52 Hon. Elizabeth Welch Yes. I was curious in regard to this front end discussion in here which I think is really good. I am not current anymore. I haven't been in a long time, actually, about how long a defendant has to decide whether to enter the program. That is a really big issue. I don't know if it is a problem anymore or not but in a way that is sort of the essential front end problem. How long does a lawyer have to get the reports, to read the reports, talk to the client, advise them, and have an opportunity to think about it, or does it have to happen as it did, at least at one point, virtually all in one transaction?

30:37 Chair Ellis Even your description assumes something. If I recall correctly in Clatsop County there is no discovery. Right?

30:51 I. Swenson I think that is right and I think that is why the defense doesn't participate, one reason they claim not to. I am not sure where the truth lies in that county, but in any case that has been an obstacle to their participation. In response to Commissioners Welch's question, people who testified here testified how differently their programs handle that. The initial approach was to get the defendant into the court as soon as possible after the arrest. There was a lot of pushing to waive procedural objections and just go forward. I don't know how it plays in all of these programs statewide, but in the ones we have heard about it is not uncommon to give them two weeks to observe the court, if they want to, and to decide, at that point, whether they want to participate. Then some of them have an opt out clause which says you can watch for a while and you can participate for a while and then you can drop out if you don't feel like it is working for you. I think it at least sounds like there is some respect for the fact that it takes time to make that decision and that people should not have to (inaudible).

32:07 Hon. Elizabeth Welch So it is not your impression that that continues to be a problem?

32:12 I. Swenson It may be in some places. I certainly can't tell you that it is not.

32:18 Hon. Elizabeth Welch I was thinking if that needs to be addressed in here or not? It is addressed conceptually but it is not quantified in a way so people can say that, "This is the way it is done here and it is okay and the way it is done there isn't okay because it is not enough." The same thing applied in those domestic violence diversion programs that were started another 20 years ago with these same exact issues.

32:47 I. Swenson One thing we could do as Commissioner Ozanne suggested is when we examine a particular system we could use this set of guidelines to determine whether that

system permits the kind of representation that we are requiring of our lawyers, and if not, why not, and consider some kind of effort to address that.

- 33:12 Chair Ellis Other comments? John.
- 33:14 J. Potter Ultimately it seems to me that the defense doesn't control this process much at all. We are not going to have a great deal of impact except individually as individual defense lawyers. I would, at the moment at least, be comfortable in treating these guidelines as almost like a CLE, as an informational tool for the lawyers. Ingrid is saying that these are already existing responsibilities. With that in mind I agree with guidelines one through four, clearly. Guideline five, maybe not, other than in the commentary. I would be suggesting publishing these guidelines, moving guideline five to guideline one because it is the starting place. Then have your four following guidelines and then, as has been suggested, NACDL's suggestions attached as further information and background. Then you have educated, to the degree you can, the defense bar. Having a guideline that punishes the lawyer, if we were to do that, or trying to put some teeth into it I don't think works. I think you are just going to have to educate and people are going to have to make individual decisions.
- 34:35 Chair Ellis Greg.
- 34:35 G. Hazarabedian This might be an appropriate topic for education at the next management CLE in October.
- 34:46 J. Potter This could be the handout material.
- 35:00 P. Ozanne I like what John said. I would agree with that. I actually didn't want to discipline the lawyers. I wanted to discipline some of the courts.
- 35:17 C. Lazenby I like Commissioner Potter's suggestion. I just think we need to be clear eyed about what we are doing. I think the real important thing that John said is that the defense lawyers are really sort of trailing in the wake here. They are not only the tail trying to wag the dog; they are a flea trying to jump on the tail. That is how far out of control different courts are in these processes. I think in places it works and I think it has worked for a lot of clients. I fear that in some of our counties it is simply a docket clearing device, and that it is used to dangle some hope of treatment and benefits to get guilty pleas. In very short order people are often convicted and punished because they failed. That is a cynical view but that may happen in some places with fewer safeguards. I think if there is a way that we can at least present these materials. I think the most common decision a defense lawyer is going to end up making is to decide not to participate as opposed to lapsing back into zealous defense, just by saying, "I can't participate in this ethically under these guidelines because of what is happening with this particular client or class of client," I think we need to set those standards but we need to make it clear that all we are doing is saying, "We think this is the ethical framework in which to examine your role vis-à-vis your clients in these different systems when these circumstances come up."
- 36:47 P. Ozanne I agree with what you said, Chip. I remember when I was in Ingrid's position with OPDS you wind up with a lawyer stating they are not going to participate in this program. In a couple of instances when it happened, I agreed, you shouldn't. Then we had to go out and find some other lawyer to do what we didn't want them to do. That is kind of why I wanted to say no to the court. Ingrid's point is well taken. I suppose there are people who really in their best interest have decided they want to be part of drug court and should have the assistance of counsel.
- 37:29 C. Lazenby I think these standards could provide a framework. Years ago, Judge Jones, Edward Jones, in Multnomah County gave me a cartoon and there is a judge speaking to a defendant. In the background the bailiff appears to be blowing up a balloon that is holding a briefcase. It says, "Since you can't afford an attorney one will be inflated for you." I don't want our lawyers to be in that position in terms of the drug court. I

want them to have some sort of ethical framework to analyze their role and their actions. As Greg points out, there are times when it is beneficial for the client to go down that road. There are other times when you may be participating in a coercive process and you need have some framework to state why it is you are not participating, and putting this back on the court or the system to rectify your ethical objections.

- 38:28 Chair Ellis I may be way behind the curve...
- 38:28 C. Lazenby Shaun is shaking her head.
- 38:30 Chair Ellis It just seems to be imperative to have a lawyer counseling the client on the question of whether to enter the drug court system. The advice may be, "This is just a pig in a poke. You are not going to get any discovery. You are going to be required to plead guilty and there is no assurance that you are going to pass the program. Some of us think it is a shame," and whatever else you have to say, but at least the client is entitled to that. Am I missing something?
- 39:03 C. Lazenby I don't think I am arguing against that or either one of us is speaking against it. I think we are expressing some concern about the deviation from the real clear cut, easy cases where I have a client charged with a crime. The state has indicted my client. We are going to trial and I am going to test the state's evidence, and I am going to provide legal advice and sharp and zealous advocacy for my client. In these situations you are brought into a situation where I think the defense lawyer is pulled away from the zealous advocacy piece by the way the process works. "We all know what is best for this defendant. It is treatment and it is treatment and extensive supervision, and in order to obtain that we are going to have your client plead guilty to everything. Facilitate that please. We are going to have your client plead guilty to this and then they are going to participate in this process. Now, of course, if they are unsuccessful it is going to be just as if they had pled guilty. We are going to go ahead and sentence them and throw them in prison." I think that in that context the zealous advocacy gets a little murky. All I am saying is that I don't think that most practitioners in that situation have a framework that is suited to that collaborative process, which I think benefits a lot of people.
- 40:35 Chair Ellis Sounds like some aspects of juvenile. It is a paternalistic system. We are going to come to it later this year, but the fact that this waiver of counsel in juvenile cases is a way to co-opt the process is troublesome.
- 40:57 C. Lazenby I always learn the depth of my misunderstanding of things when Commissioner McCrea corrects me, and she has been shaking her head no all the time I have been talking.
- 41:07 S. McCrea I haven't been shaking my head no every time you have been talking. I have really mixed feelings about this and maybe part of it is that my experience with drug court is really limited. I have had one experience with a client who actually was sentenced into drug court after he was convicted. I went to the Lane County Drug Court with him. Then I had the experience of sitting through the Federal Drug Court, taking the place of the public defender for an afternoon. In both of those instances, I have to say, I was really impressed. I was impressed by the intensity of the situation. I was impressed the dedication of the parties and the defendants and people who were involved. I guess the reason I was shaking my head, Chip, is because it seems to me, and I don't know if this is the case, but it seems to me that the ethical obligations are no different in counseling a client about whether to enter drug court than they are for anything else in terms of whether to accept a plea or whether to go to trial. The same risks and gamble that you would be explaining to a client in going to trial you have to talk to the client about in this sort of circumstance. The attorney has that obligation. Come on, look at Ballot Measure 11, it is horrible having to talk to a client and say, "Okay, look. If you go to trial and you get convicted you are looking at a mandatory minimum, no possibility of parole, no good time, all of these things,

do you want to toss the dice and go to trial?" That is really, really difficult too. Then you get in the federal system with those kinds of situations. In a federal case you have a client who says, "Okay, I want to cooperate." Well, I may have real ethical concerns about that. It may, to me personally, be an issue. But the question for that client, just like the question for a client in drug court, is what is best for that client. I at least as a practitioner see my obligations to present the options, the pros and cons, and then, of course, inevitably, well not inevitably but in a lot of cases you have the person say, "Well, what would you do?" I generally tell them, "I am not you." I see it as my role to tell them what I think is best for them so that they can make that decision. I am not making it for them. I guess I just have a problem with defense counsel opting out. If the system is unfair then we have to help them change the system. Ballot Measure 11 isn't fair and the federal system isn't fair. We are part of the process, too, and we have got to help these people. The people who testified, yeah there were issues and problems with the drug courts. I don't know about all 50 of them, but in my limited experience I thought that for the right people, in the right circumstances it could really make difference. Maybe it has just gotten too broad and too much of a docket clearing type of thing.

44:36 P. Ozanne

As I have been thinking and hearing you both speak, I think it is really not a drug court issue, it is an assembly line justice issue that we have whether it is drug court or early disposition court, or whatever. I remember what burned me as a public defender in California. I would come in with 50 files and start calling names, frequently names of black people and this white guy was yelling names and telling them what their deal was so we move the case along. I didn't have any individual relationship with the client like you have where you are following through with the client. They just kind of all came in. That is the problem with a high volume drug court or high volume plea court. That assembly line justice - we are always struggling with it. Maybe it is not drug court that is bothering us. I am not sure what the judge and the lawyers add to the treatment component. That is kind of a separate issue.

45:27 S. McCrea

I will tell you in Judge Henry's courtroom, the day I was there with my client, "intense" was the only word I can think of for it. She was on top of it. She was looking at the defendant. She was talking to him. She knew where things were. She knew where they needed to go. She wasn't just letting him give her rote answers. She was putting him on the spot. That is the issue you were talking about when you have a judge who is invested in the situation. There is a certain amount of burnout among the dedicated players. Then if you can get somebody else in who is going to have the same level of dedication.

46:14 P. Ozanne

Psychologically, does having somebody show up episodically in front of a judge lead to sobriety? Is that really the solution? We think that if you bring somebody in and ask, "Where you have been and what have you been doing?" - I don't think the treatment literature suggests that is really how people get sober.

46:51 S. McCrea

Isn't it like anything, there has to be recognition of a problem and a willingness to seek a solution. I don't mean to diminish what you just said but I will tell you what, if you join Weight Watchers and you have to go weigh in every week, it makes a difference.

46:57 C. Lazenby

I think you are both right. I think that in some cases it is having that connection to the judge, having the judge do that personal piece that you don't get with that assembly line justice that you complained about. I mean, look. I have seen it work. I hate to bring it up because I always get emotional but Robert Williams, he was really the person that single-handedly brought the STOP program to Multnomah County. He fought for drug courts all over the state. Through him I learned a lot of moving stories about people for whom that was the only way they were going to recover. You should go to the graduations for drug courts where people basically break down and say, "My life was saved." We're trying to figure out a way for lawyers to participate in this in a way that doesn't compromise what their role is.

Part of the answer may be it is a completely different role. If so, we need to give the people we are funding, or at least participate in providing them with a framework for analyzing what it is they are doing. I have a natural recoil. As a former defense lawyer, I would recoil at somebody saying that, "Your client is going to plead guilty to all 15 of these counts in order to participate in this thing."

- 48:30 S. McCrea I don't disagree with you on that.
- 48:29 C. Lazenby I can look at my client and my client really needs this treatment, but can I really say that I am able to advise him that pleading guilty to all 15 counts in this indictment is really what should end up happening? We need to have a framework for analyzing that that isn't just, "I am a criminal defense lawyer and I am going to do zealous representation." What does that mean in the context of a therapeutic court? I think we have to start wrestling with that like everybody else in the profession does.
- 49:02 J. Potter It strikes me that this starts to do that. This gives a bit of a framework. We are not going to do away with drug court here. We are not going to tell drug courts how to do their business. The best we can hope for is to help lawyers deal with the reality of drug courts. Having this as a nice reference tool that they can refer to helps give direction. If the question on the table is are we going to approve this as a tool to help lawyers and provide some guidance as they make decisions, I am in favor of taking this document, maybe amending it as I suggested, and maybe attaching what NACDL has to say as a guideline, a tool for lawyers.
- 49:46 C. Lazenby I think Greg's suggestion that it be brought up so that our community can beat it up and rub some of the edges off of it is a good one too. I think we just need to have that conversation.
- 50:01 J. Potter If I was a lawyer and was going into drug court and representing somebody, I would want these guidelines at my disposal to help me ferret through all the ethical obligations that I have and pinpoint these four and give me some guidelines.
- 50:20 P. Ozanne I agree with John. I am prepared to vote for your proposal but I wonder what about the fact of maybe commenting on drug courts as we go visit counties. Do you have some sense that we should stay hands off on that?
- 50:33 J. Potter No.
- 50:35 P. Ozanne What model, what set of standards would be used to comment?
- 50:42 J. Potter These comments actually allow us to comment with the attached NACDL commentary to say, "We don't particularly like this notion of" - whatever it happens to be - "pleading before you get into drug court, not having a lawyer there with enough time to review the documents." We can comment on that.
- 51:05 Chair Ellis I am not quite sure where to go from here. There were suggestions for ways of supplementing. I didn't hear any comment that anything said in the document was criticized. Do you have enough guidance, Ingrid, to massage it.
- 51:28 I. Swenson Very helpful. Yes I do, Mr. Chair.
- 51:28 Chair Ellis I think I did hear, and I am not sure this requires a formal action, that this be used as an information piece. It is not something we are sending out as rules, but I think the discussion makes clear that people would like to see it disseminated.
- 51:53 I. Swenson I think it is fair to treat it as an information piece because we are not claiming to create any new obligations, we are just recognizing what they are and that they apply to drug court representation.
- 52:14 Chair Ellis Any other comments on this? You hit a raw nerve with this one.

52:29 C. Lazenby I promised myself I was just going to shut up today. Another broken promise.

Agenda Item No. 8 Review and Possible Approval of Strategic Plan, Biennial Report

52:53 Chair Ellis The Strategic Plan and the Biennial Report. Do you want to give some background on this? At some point I do want to address how we proceed on the strategy two paragraph and the role of the Commission. I think it is clear we have two Commissioners troubled by it.

53:10 I. Swenson Very good, Mr. Chair. If I could I would just very quickly tell you with respect to the strategic plan what is new and what isn't. It doesn't track well with the old one because we moved some things around. It wasn't possible to give you an edited version. The first page, which has Vision, Mission, Values is unchanged. On page two, the only thing that changed was down at the bottom of the page when we are talking about the two divisions I reversed the order of them. Traditionally we have talked about the Appellate Division first and Contract and Business Services second. Our management team thought about that and realized that the vast bulk of the work we do and support is through CBS. Nothing changed on page three. On page four, there were some minor editorial changes. In fact one of them still appears in the margin that should have been removed. Page five is unchanged. Page six is where we begin some significant changes. Of course we are talking about a different biennium so it is a completely different discussion. This was amended to reflect current budget issues. We talk about reporting to the 2010 legislature and building support for a possible supplemental appropriation to PDSC and then building our 2011-13 budget. On page 7, these are the same three challenges essentially that we have been talking about for several biennia. The discussion is a little bit different but essentially they are the same.

55:00 Chair Ellis What does the word "customer" mean in this context?

55:07 I. Swenson This is a legislative directive and they allow us to define customers as our contractors for purposes of the contracting business.

55:21 K. Aylward It is our public defense providers.

55:26 Chair Ellis I found myself uncomfortable with the word "customer" here. I thought in context it was referring to providers, but somebody could easily say there is a group of customers out there that are the clients that ultimately receive service.

55:49 I. Swenson This was language that was discussed with the legislative staff as we revised our Key Performance Measures. All agencies are required to do customer satisfaction surveys. Working with them we had to come up with the identity of whom we ought to be polling on a regular basis about their satisfaction with our services. As far as clients are concerned, they are either satisfied or dissatisfied with the representation they receive. We have avenues for obtaining that information. What Kathryn and her staff do is receive requests, pay bills, deal routinely with a different group of people.

56:42 Chair Ellis But I could see a category of customer being courts. I would rather we use words that really meant something in our business. It would be fine with me if instead of saying "customers" we said "providers" and "courts".

57:00 I. Swenson Well, we don't necessarily satisfy courts. We are not directed to satisfy courts in a sense. We cooperate with them. We try to work well with them, but if they are unhappy with us it doesn't necessarily mean we are not doing our job properly.

57:21 Chair Ellis It may not. Who is better positioned to say the services are being provided on a timely basis? The quality is satisfactory? I don't like the idea of us thinking of providers as in "The customer is always right." We contract with providers. We

certainly listen to them. I am certainly hoping that they feel good about what we do, but I don't view it as our being here to please them.

- 57:57 I. Swenson They are the consumers of our services for purposes of what this division does which is to receive requests for funding, to approve or disapprove those requests, to promptly and efficiently pay the people we owe money too. It is not PDSC clients we are talking about or the customers of public defense. I think we are talking about a limited group of people with whom that division deals. The kinds of questions they ask are, "Were you polite and courteous when you interacted with these people who use your services, such as payment and authorization of expenses. There should be a better measure for how well we provide the ultimate service which we are providing, which is public defense representation, but that is not what the key performance measure is trying to get at. We can certainly use a different term to make it clear that we are talking about the consumers of services provided by this division, rather than the Public Defense Services Commission clients.
- 59:24 J. Potter So the contract provider, is that the person that you are talking about?
- 59:25 I. Swenson Or hourly rate lawyers or experts. All those people that we deal with on a business level.
- 59:35 J. Potter So it is the public defense service provider?
- 59:35 I. Swenson Yes.
- 59:35 S. McCrea And the test is concerning CBS?
- 59:44 J. Potter Is the word "customer" a word that you are being directed by the state to use?
- 59:55 I. Swenson Yes, in that all agencies must survey their customers in these categories.
- 1;00:01 J. Potter It is a strange for us. I agree with the Chair it is a strange word. After you have used it once can't you just put a parenthesis and define what it is and continue to use "customer?"
- 1:00:14 I. Swenson Sure. Certainly in our strategic plan we can call it whatever we want.
- 1:00:17 C. Lazenby On one level, the "customer" here may very well be the Joint Ways and Means Committee. They want to know that we have been adequate stewards of the money that they have given us. I am only saying that 25 percent facetiously. To a large extent that is our role. We are supposed to manage timely and efficiently the money that has been allotted to us through the legislative process to provide indigent services. That is what this ensuing conversation is going to be about. That is part of the reason when Commissioner Ozanne was the executive director he started trying to do performance measures and things like that to show that the money was being spent efficiently. On one level Ways and Means is our customer, just to muddy the waters a little more, Mr. Chair.
- 1:01:12 I. Swenson Could we qualify that term and just make it clear what we are talking about there and that it is not our "customer" in the ultimate sense.
- 1:01:25 Chair Ellis That addresses part of my concern. I think you are equating "customer" with service provider that interacts with staff. I would like to either in that same phrase or as a separate KPM that we do survey the courts. It is not hard for us to do. I think they are a key performance measure for us.
- 1:01:58 I. Swenson We had a key performance measure. I think we are supposed to be working on a new one to replace it, that essentially talks about quality. We were doing an annual survey of judges, district attorneys, citizen review boards, talking about quality of our ultimate services, representation. Is that the one we have to amend?

- 1:02:26 K. Aylward No. Just by way of background with the customer service key performance measure, this came about to try to gauge the quality of the interaction with the taxpayers. So statewide when they are talking about customers they mean taxpayers. For us the closest that we could get to that, with some direct feedback, was the people who are being paid by us. Even though I agree with you, we spent a long time with legislative fiscal office. We had lots of meetings to talk about who really who are our customers. That key performance measure has now been legislatively approved. I would hesitate to make changes to how the key performance measure is described because everybody knows that is your customer service rating. But as Ingrid says in the report we could do something else, but our key performance measure was handed to us and named a certain thing. Even the categories that we measure within customer service we were required to use. I don't know if that helps.
- 1:03:42 I. Swenson We are also developing another key performance measure, are we not?
- 1:03:48 K. Aylward Just changing – no, they put that on hold. They knocked that off. We had said we wanted to develop one that was tied to money. That disappeared in the final passage of our budget. LFO recommended that all the deletions be deleted and the change to how we measure AD's backlog.
- 1:04:39 I. Swenson We will have to continue to work with Legislative Fiscal to see what kinds of measures they will be satisfied with. They certainly understand that it is important to this Commission that we measure things that are important to accomplish. It is very hard, as Commissioner Ozanne recalls, trying to get at performance measures which meet their needs and which also address sort of core functions of the agency. I am not sure we will ever get together on that.
- 1:05:10 Chair Ellis I have a memory going through a bunch of these and apparently they are the ones being deleted.
- 1:05:18 J. Potter It is like drug court. We don't control them.
- 1:05:18 Chair Ellis Okay.
- 1:05:27 I. Swenson On page eight, we talk about Goal II, Assure Continued Availability of Qualified Public Defense Providers in Every Judicial District. That is a new goal in the sense that we revised this to reflect that it is our primary goal. I don't think we ever articulated that before, but really that is what we have to do is provide a statewide system. Some of the priorities that this Commission establishes are directed at preserving providers, helping providers recruit and retain and that is because we have to create and sustain a statewide system. Strategy 2 has simply been rearranged and updated. We have identified this as part of PDSC's role. As PDSC does structural reviews part of what you are doing is ensuring that you have a statewide delivery system that is working. I don't believe there are any major changes on page nine. On page 10, the quality piece, Goal II, assuring quality again has been updated and revised because of ongoing activity in that area. Then Strategy 2, on page 12, recognizes that PDSC's service delivery reviews also contribute to quality. It is not the principal thing that you are looking at but you certainly care about it when you are doing your structural reviews. I have listed your reviews as one of the strategies for achieving that goal. Juvenile law is where we begin to focus on particular areas of representation that the Commission has reviewed. We talk about juvenile law, post conviction relief, death penalty representation. It has become a little more of your focus than the geographical structural reviews. There is more emphasis in this report on those reviews. We indicate that in 2010 you will be looking at appellate representation, representation in civil commitment cases, and probably in psychiatric security review board cases. Strategy 3, this has to do with boards of directors, and I suppose my real question to you is Item C, page 15, Strategy 3 at the bottom. Item C says it is an attempted resolution of our earlier discussion about whether we should be prescriptive about the boards. The way this report attempts to address that is to

say, “Well, we are going to advise people to have boards. It is to their benefit to do it, and in given cases may require that contractors have boards.” That may not be how you wish to treat this issue or you might want to leave it there temporarily. We plan to review boards at maybe the January or the March meeting and look more broadly at who has them. We are gathering data on them -who has them, what are their functions? I think that will give you more information on whether you do need to require contractors to have boards. If so, do you want prescribe who serves on these boards? I know you haven’t resolved all of those questions. I left this language in as sort of temporary language.

- 1:09:28 J. Potter Is the term “public defense contractors” all encompassing? Does it include the contract, for example, that we just approved this morning of mitgators and investigators?
- 1:09:37 I. Swenson Certainly whenever we talk about boards we, at least, internally don’t think of our individual attorney contracts as people who are likely to ...
- 1:09:46 J. Potter I wouldn’t think so.
- 1:09:47 Chair Ellis Some of our best providers are people like Jack Morris’s firm, or Jim Arneson’s firm, and there is no board in the picture there. We have got, some would say, an autocratic structure but it works pretty well.
- 1:10:08 I. Swenson Commissioner Potter is talking about our death penalty contractors. There is usually just one attorney in his or her office.
- 1:10:17 Chair Ellis In my mind I always think of the board issue when you have consortia or PDs. You have multiple practitioners and I do like having a board with community involvement and outside involvement.
- 1:10:36 I. Swenson In previous discussions on boards there has been some discussion about it not being inappropriate for a law firm to have an advisory body, maybe not a board of directors but an advisory body that performs the same kind of service for them that a board can for a different kind of group or entity.
- 1:11:00 Chair Ellis I thought for purposes of this document your language was fine.
- 1:11:07 I. Swenson Strategy 4, on page 16, is new, again leaving open the question of how prescriptive you will decide to be in terms of evaluations. That is also on your agenda for early next year. Down at the bottom of the page, Goal III, this begins a section of the plan that is reorganized. The reorganization, again, has to do with CBS and AD. In the past they have been blended in these statements. I have separated out all of the CBS goals and strategies and set them forth together as a group and then talked about AD separately. Strategy 2, on page 17, is the one that we need to discuss in some detail and, shall we just pass over that one for now?
- 1:12:13 Chair Ellis Let me pause because I promised Commissioner Welch a spot on the agenda when we got to Strategy 2 if she wishes.
- 1:12:25 Hon. Elizabeth Welch I think my comments have become moot because of the other people who have spoken today on the same subject. In other words, the reason I asked to talk was because I looked at the minutes and said, “Did I really say that?” That was not very informative. I thought they got that wrong and then I looked at the transcript and it is exactly what I said. I wanted to make a statement about what I should have said, but I think my lawyer has handled it perfectly over here. I don’t have anything to add at this point.
- 1:30:00 Chair Ellis I do feel a need. This is impressive that two Commissioners feel the level of discomfort the two of you have expressed. I am not quite sure how we ought to

address this. I very much want the topic of role of the Commission on contract approval to be on a near term agenda and talk it through. I think your level of discomfort is a big red flag. If you feel that way we need to address it.

1:13:43 Hon. Elizabeth
Welch

Let me say this; we were having a little chat about it today. We had a discussion along these lines a couple of years ago, post Coos Bay the process that happened in the fall two years ago. Then we had a discussion, at my request, and I thought we had come up with an idea about how to do this. I have to be just as honest as I can. When Kathryn made her presentation, not the one in Bend but the one before that - I don't remember physically where we were, if it was Eugene or wherever - I found that particular presentation to be really good. I thought that the next time we would hear about what we talked about two years ago and that didn't happen. I certainly have not given a lot of deep thought to how to fix it. My recollection is, and maybe someone could unearth that earlier discussion, because everything gets recorded. It has to be written down somewhere. It talked about the priorities that the Commission had adopted in Coos Bay. They were pretty clear and to the point, kind of meaty stuff. I thought the decision was that we would be presented with information consistent with those priorities. In other words, if priority A was, "Everybody gets paid the same thing as DAs," just as an example, to what extent have we met that priority in what has happened here? There were others down the list. I don't know that we need to know everything about everything that Kathryn and company talked with these folks about, or the people who were turned down. How many people were there out there? Again, I am not trying to be prescriptive here other than to say that I think if we have priorities, if we have values, then we should follow them. I think like Peter said on the record the results of having that discussion may be no different than the results of what has happened in the last two meetings. It is not that anybody is saying there is something terribly wrong here with the way these contracts are being let, we simply don't know what standards we are using. The final analysis may be nothing more or less than the manner in which the material is presented to us, not at one time, perhaps, but over - whatever makes the most logical sense. I hope that rings bells with some people because most of us were involved in that discussion.

1:16:48 P. Ozanne

I think, Commissioner Welch, I was just looking at this language and I think back when I was struggling with this and not succeeding, I think this was language that might have been developed since I left. It said that the Commission will continue to establish principles and priorities which govern the contracting plan for each biennium, and before the final terms of contracts are negotiated by OPDS the Commission will review the outline of the statewide plan and be advised about how PDCS's principles and priorities were applied. Really I just want to make sure we are on the same page about this. I think maybe I heard you say that the presentation would be after negotiations. It seems to me that we want some guidance or a feeling like we are guiding the negotiations, while we obviously can't participate in them. I have no interest in doing that. John at some point talked about a geographic approach. Again, I think maybe we just need to - rather than try to do it today that we talk about it at a retreat.

1:17:56 Chair Ellis

Would you two feel better if prior to being asked to approve a contract you had seen a written summary of at least all the major contracts, describing the agency that we are dealing with or the contractor, describing why staff is suggesting this moves towards some of the goals that we have set, and have a chance to talk about it before the contract is negotiated. So one session in there and more information than we are getting. What we are getting now is clearly very conclusive. It is a dollar amount with the name and that is about it.

1:18:45 P. Ozanne

To answer your question, I would like to interact more with staff to see how that would work. It could be oral too. Somehow I want more of a flavor, as a Commissioner, of what Kathryn and her team of analysts looks at when they look at

a clump of contracts. Somehow I would like to be, without participating in the negotiation, privy to the strategy that leads to the negotiations.

1:19:13 Chair Ellis

Would you want that executive session?

1:19:17 P. Ozanne

I think it might be best if it fits under the law.

1:19:26 Chair Ellis

I think under the law we are okay on that.

1:19:30 Hon. Elizabeth
Welch

It seems like there were principles and priorities, whatever the term was a few years ago; that there should be a time in the cycle when we look at those again before this process begins and say, "Are these still the principles and priorities that we have and that we want the contracts to be characterized by?" Then assuming they are, we say so or make any changes we want to make and then we get that information. I don't know how it should be presented. It seems like that shouldn't be set in stone either. It should morph as circumstances change and what the priorities are.

1:20:11 I. Swenson

For purposes of discussion I think it is important for all of you to understand that we believed we were doing exactly what we had told you we would do based on what you had established as priorities. Here is how we got there. Two years ago we did have a discussion of priorities and principles and after that all of you concluded that that wasn't quite enough. We got to the principles and priorities but then in December we presented you with all these contracts and gave you a lot of information at that time, but it was at the last minute and you couldn't digest it so we decided, "Let's move that up." So we did that and we added another step. At two of your meetings this year we talked about principles and priorities. I gave you a list of every principle or priority you had ever discussed or established. I gave it to you twice and you also took input from contractors at one of those meetings. So we weren't the only ones helping you to identify what you wanted to create as your current list of priorities. Then we added this new step, so prior to negotiating these contracts, Kathryn and her staff did their whole statewide plan based on the priorities you established and nothing else. The whole purpose was to say, "Here is what we would do. Now I want you to know that if we apply priority A, this is what it is going to look like." Now at that meeting, and we can't talk about the details because it was an executive session, but at that meeting you then said, "No. You have misunderstood. We don't want to reduce that differential, we want to leave that one in place," so you gave her additional direction. She had already attempted to outline a plan that was within budget, addressed the request of every single contractor, and followed every one of the priorities. It was a huge undertaking and you had the opportunity to ask any question you wanted, see the material in writing on her many spreadsheets. It is very hard to digest. It is almost impossible. My thought would be if you really want to have a different kind of input the only way you could do that after the initial presentation is for Kathryn to negotiate those contracts, come back to you - or even prior to negotiation - after you have heard about her effort to apply your priorities, then you add another step that says, "Okay, now we want to go contractor by contractor and find out how you have dealt with each and every one of them." That information was available at the September meeting, but it simply wasn't digestible. We took far more time than we had allotted at the retreat, but it wasn't enough for you to do that. I do think it is a process question. We are refining it. We understand that you can't get there all at once and make everybody comfortable. You are voting on something that is based on a priority you established and that doesn't violate some other priority that may have been deemed more important. I want to assure you that we believed we were in complete compliance with what we thought your approach was going to be to these contracts. We are a little disappointed, and you will have to forgive us, that you don't agree. I am delighted to have this discussion so that we can address those concerns. We want you to be in charge of this process, very much so. I think what we could do as part of the next cycle would be to set an executive session and talk about the considerations that went in to individual contracts and how the principals were

applied. Maybe that is a public meeting. Maybe we don't have to have that in executive session - just an opportunity for Kathryn to talk about how she made any changes from what she told you about in the statewide plan, based on what you told her at the later meeting. Kathryn, anything to add?

- 1:24:55 Chair Ellis The good news in all this, notwithstanding the two abstentions, I don't think anybody feels that we haven't had a terrific contracting year. I am not hearing stress from the provider community. I am hearing that we got full coverage, both geographical and topically. We think we are either going to be within budget or at a level that we could supplement in May. It is not like we are sitting here with disarray and stress and everybody feeling bad. I do respect my two colleagues. What I am inclined to want to do is have a half-day executive session somewhere in there and kind of walk through the detail that you may feel we already got. I think they don't feel they quite got it, but I think that is worth doing.
- 1:26:07 I. Swenson You are thinking at the stage before you approve the contracts?
- 1:26:11 Chair Ellis Before the vote.
- 1:26:11 I. Swenson So, similar to the process we used this time only we add a piece where before you are asked to agree to all these contracts, you have information about each specific contract and what the changes are.
- 1:26:31 Chair Ellis At least the major ones.
- 1:26:28 P. Ozanne Maybe we got off on the principles and priorities because maybe it is more the process of meeting again. Maybe what I am realizing now that I am sitting in this chair, with a full-time job somewhere, though I read everything, I am obviously losing touch with what happened in your guys' full-time position. Like you are saying, a lot of this happened but I still don't feel sufficiently conversant with the specifics. I think we need, as a Commission, to take a multi-day, maybe a two day process and go through it. How many contracts are there?
- 1:27:20 K. Aylward One hundred and twenty, maybe.
- 1:27:20 P. Ozanne Figure out a way to slice them and just understand them better. Understand the process more.
- 1:27:33 C. Lazenby My concern is on a couple of different levels. I guess it is the government lawyer in me that starts to get a little quaky about putting too much in writing. I think there is a fair amount of horse trading that goes on with the staff statewide, within the principles and guidelines that we have set up, but it is a lot like that sausage making machine down the road from where we are sitting today. There probably aren't equities all the way around. There probably are people that didn't get the right deal. I would worry about the Commission, and I think we said this before; we can go too far down this road of wanting to get a lot of detail. What ends up happening is we become sort of an appellate body. How are we going to horse trade money back and forth among these contracts across the state if we go too far down this road? That is one concern that I have. I think there is transparency, but I also think that part of steward role is to get the best deal for the taxpayers in the State of Oregon. That isn't always going to be the best for the individual provider if they happen to be in a difficult negotiating position. I want everybody to be comfortable in making the decisions to approve what it is the staff does. I am just concerned that if we get too far into micromanaging this then we become inured in that and we lose the general, broad principles that we have told staff to follow.
- 1:29:14 J. Potter My guess would be that we go through a process, whether it is a half-day or two days, or one day, and you are sitting down with the staff and you are going through the contracts and we won't be micromanaging. We won't even question the decisions they - well we will question them but we are not going to change them in

99 percent of the cases. Nothing much would change. What would change, I think, for me, is it would give me a better understanding of who we just contracted with and what they are providing. If I were asked by a reporter, “You just approved \$150,000,000 worth of contracts what did you do?” I would be hard pressed to go back a couple of meetings to regurgitate our principles and priorities, because I can’t quite apply those principles and priorities to these individual contracts. I just think it is a minor missing link. You may not consider it minor. You would just do everything you would have done. You have got all the contracts there. You know how you got to them and now you are presenting them to us in executive session. I think it can be done in a day or less.

1:30:30 G. Harazabedian If I can just offer a brief perspective from where I sit. I see the contracting process that Kathryn conducts directly related to your principles and priorities. It was one or two contracting seasons ago where your priority was to help - I believe it was the underpaid rural offices who had trouble recruiting people, something like that. We went ahead and put it in our normally slightly optimistic proposal without really thinking we were going to get it. Sure enough when the phone call came from Kathryn it was, “Well, we are not in the position to help you as much as you would like us to this time because you are not one of those target contractors that the Commission is trying to help this out this time.” That was in fact true. The way I see it is that Business Services is contracting with an eye toward what your direction is. I think you may just not be aware of it.

1:31:27 J. Potter That is my point.

1:31:34 P. Ozanne Barnes says he recollects better than I do the statute. Maybe we need to change the statute. I wouldn’t recommend that. I guess this is a situation where I am up in the county working, and I say that sarcastically because I have to work with a commission. Democracy is a wonderful thing. We have got this Commission and you have to live with it. What I am seeing now is that I don’t really feel good about feeling like I am the steward of \$200 million dollars and I really know what is going on. I think the solution is the kind – it is not changing any process. It is not questioning any decisions that were made. We may have some input but it is just that we have scattered it over monthly meetings and all the pieces are there. I think we need to have that little step in there, maybe.

1:32:30 J. Potter It is an educational process.

1:32:30 Chair Ellis Kathryn?

1:32:30 K. Aylward Can I just make one comment and, again, it is because we see things from a different position, so we think we are showing you something. What have we discovered in this process, and I have one analyst here and I am sure all of them would back me up. There is so little flexibility and that was the point of that giant spreadsheet - to show you that if you do this and this and this you end up here. You get locked in where you can’t make one change for this person without also having to make it for this, this, and this contract. Then you don’t have enough money. We reach a point where we are just done and we never made a decision at all, other than to keep the system running and make sure we had the caseload covered. In some biennia where there is additional funding then that is where the priorities come into play, but in a biennium where we are \$10.6 million in the hole, we never had a point where we were saying, “Let’s make a decision,” except for a couple of things which we then did bring to you at that meeting, like, “Do we cannibalize or not?” Those were the things that we brought forward for the Commission. I am happy to do as much and more, it is just that I think when I point to a giant spreadsheet to me what I am saying is, “Nothing can change.” That probably wasn’t conveyed.

1:34:05 J. Potter That was at the Eugene Hilton. I remember those charts. The little link that I think is missing is just to be sitting down in executive session and you telling us as you are now about these are the individual contracts that apply to these big numbers that are

on the chart. You are saying, “In this contract we really haven’t been able to do much at all with them. They are still going to handle what they did last time. There has been no significant change in this, that and the other thing.” You just move on through so we could answer the question, if somebody asked us, “What did you just fund?” And we can say, “We funded the status quo.” It may be as simple as that.

- 1:34:46 I. Swenson Well, so I think my question would be, “At what stage would you like to have this more in-depth conversation?”. Now going back to the retreat, the executive session, what if we extended that to a full day? Kathryn and her staff would have put together the best plan they could for your review and discussion of priorities. Would that be where you would want to say, “Well, let’s look at what you proposed to do here with respect to each and every contractor?”
- 1:35:18 J. Potter This is where you hope to go with your contract negotiations before you have actually negotiated.
- 1:35:17 I. Swenson And then the question would be, okay, then she does that and she again thinks she has done as you have directed to her to do. Do you need her to come back at the time of contract approval and say, “Now remember we talked about X and here is what we did there?”
- 1:35:43 J. Potter In that scenario I would want to know the deviation. That is all. “You deviated from what you were hoping to achieve with this contract. You told us what you were hoping to achieve with contract A, and B, C, and D. You achieved them all except here. You couldn’t reach agreement and had to go up/down, some significant deviation.”
- 1:36:14 I. Swenson Is that the main thrust?
- 1:36:22 C. Lazenby I think it is a worthy conversation to have so that people are comfortable – and I understand what you are saying about approving that. There was an earlier suggestion by somebody that maybe we do it regionally or by district to see how cohesive it really is. I looked at that spreadsheet, when we were talking about it, and I saw the same thing you saw. There isn’t really a lot of give in it and it really doesn’t change that much from year to year. It is all fairly static. You get some folks that shrink and disappear in one area and somebody else will pick that up.
- 1:37:02 Chair Ellis That is more true now. Six years ago, four years ago, there was quite a lot of flux.
- 1:37:09 C. Lazenby But we have standardized a lot of that and the criteria, I think, that we have imposed since this Commission has existed, and the system as a whole has created a lot more stability. It is really just a tuck here and a little bit of a pinch here that happens pretty much across the board with all these folks. I think sometimes, because we still hear the occasional gripe coming from different districts about inequities that exist with some of the horse trading done by our staff, maybe it is a matter of us figuring out a way that we can recognize that our principles and guidance has been imposed on the entire negotiating process. So that we can see that I am willing to do anything to make you guys feel comfortable. I think they are adhering to what we have been saying to do and that we can get too deeply involved in it and it is a road we don’t want to take too far.
- 1:38:13 J. Potter I am not suggesting at all that we do any second guessing. Just lead us along a little better so that we can answer the ultimate question, if we get asked, “What did you just do?”
- 1 :38:24 Chair Ellis The good news is you have a group of Commissioners who really care, really want to be doing it. Believe me the alternative of a bunch of passive figureheads who don’t care is far worse.
- 1:38:49 J. Potter They may wish to try that.

1:38:51 I. Swenson You should know that Mr. Borden often says that he has observed many boards and this is one of the most active and one that impresses him with its level of interest.

1:39:08 Chair Ellis More we need to do or say?

1:39:09 I. Swenson May I point out just a couple of other things on the strategic plan? On page 18, Goal V, we have established that as an independent goal – high quality representation in appellate cases and training and support for the state public defense system. On page 19, Strategy 2 is new. This anticipates a potential budget action by this group. You may not want to endorse it at this time. I believe OPDS will be recommending to you that you include in the budget proposal for 2011-13, parity for their ...

1:39:57 Chair Ellis You have it in here twice so it must be important.

1:39:55 I. Swenson Very important. Last session we did not pursue that as one of our policy packages, I think we hoped that we could get there eventually without necessarily the use of a policy package, but there was a lot of interest by legislators in parity for our AD folks. We would be urging you to add it back into this package, but if you don't want to act on that today it is fine.

1:40:29 Chair Ellis What is interesting is the parity argument at the trial level is more complicated. It is not state funding. There are some places where our providers are actually doing better than their counterparts, and you always have the argument from the DA's side that you just have to defend the cases we bring but we have to do all this other work for all those other cases to decide what cases we bring. At the appellate level and the AG/Appellate, I don't think any of those arguments apply. It is to me a much cleaner comparison.

1:41:12 I. Swenson On page 20, there are new two strategies under Goal VI. One is strategy 4, to develop a management manual outlining the decision process for senior managers at OPDS. This has been on my To Do list for a long time and I thought if I got it in the strategic plan maybe there would be a better shot of getting that done. Then strategy 5 is new too - a contingency plan for critical management functions. We don't often get around to talking about these things and I think, again, if we add them to our strategic plan they will get more attention. I revised Goal VII about promoting diversity and cultural competence to indicate some of the things we had been doing and some of the new plans. We did get our diversity survey returned. Unfortunately, the response rate was only like 50 percent. It certainly distorts any results and doesn't serve as the sort of baseline survey that we had hoped it would, but it is something to work with and we certainly can use it to identify people who are successful at being good recruiters. I think those are the main changes. This is a draft. I do have to submit the biennial report. I would like to submit that in the very near future. There is no particular deadline for it but I would like to submit it prior to the February session of the legislature. If you are not ready to take action on the strategic plan at this point you certainly don't have to. I would like to include it with the biennial report so I would await your action.

1:43:09 Chair Ellis I thought both were very well written. It wasn't just promotional. There was quite a lot of meat in there.

1:43:26 S. McCrea I agree.

1:43:26 J. Potter So, Ingrid, are you looking for a motion to approve the strategic plan?

1:43:35 I. Swenson If you are prepared to do that. Otherwise you can do it in January, if you are not.

1:43:41 J. Potter **MOTION:** I would move to adopt the strategic plan including, on page 19, strategy 2 that was new that Ingrid mentioned you might want to hold out. Chip Lazenby seconded the motion;

1:43:58 J. Potter There is the potential that there will be folks that will say that you have only included in here a parity issue with the AG and your office. As the Chair noted the distinctions between defense and prosecution at the trial level are more complicated than in appellate work. I think that is one of the responses. The other is I think it is a good first step because once you achieve that parity the argument at the trial level, I think, becomes slightly easier.

1:44:30 I. Swenson If I may, Commissioner Potter, we talk about parity for other defenders as a goal. We just hadn't necessarily identified it as a Commission policy package. You may well adopt it, again, as you have before. We just list it as a challenge and a goal.

1:44:52 Chair Ellis That is at page seven?

1:44:58 I. Swenson Right.

1:44:56 Chair Ellis Any further discussion? There is a motion and a second. All those in favor say aye? **VOTE 6-0.**

1:45:10 Chair Ellis The other document is actually your report, isn't it?

1:45:12 I. Swenson It is. If you would like to give me any guidance..

1:45:25 Chair Ellis I thought the footnote on page three was very effective. That new Miranda warning, "If you can't afford a lawyer you will be set free." I thought it was a good report. I read it from the standpoint that it is yours to do.

1:45:55 I. Swenson I owe you an annual report which you will get soon.

1:46:00 Hon. Elizabeth Welch Ingrid, at the last meeting there was some discussion very late in the day about - and I believe it is the minutes - Kathryn made the final comment in terms of the - I wish I could find it. Never mind. I'll bring it up next time.

Agenda Item No. 9 OPDS Monthly Report

1:46:27 Chair Ellis Are we at the point of the monthly report?

1:46:39 I. Swenson Pete is here.

1:46:46 P. Gartlan This is the presentation you have been waiting for.

1:46:53 S. McCrea No, you have been waiting for. Maybe we ought to start putting those at the beginning of the meeting.

1:46:56 Chair Ellis No. We would lose our audience.

1:47:00 P. Gartlan This shouldn't take more than 60 or 70 minutes. Only kidding. Pete Gartlan with AD. It was mentioned earlier that Bronson James, one of our chief deputies, is leaving. Bronson has been a terrific asset to the agency and to the division. I am really sorry to see him leave. He will be taking some post conviction appeal cases, so we haven't lost him completely. That means that we are in the process right now of taking applications and recruiting people. Because we are losing a chief deputy they are typically an internal promotion. It is kind of a cascading effect. Somebody moves up and somebody else has to come in. Plus we have several vacancies existing because several attorneys have left in the last six months or so.

1:48:04 Chair Ellis Are their departures anything unusual or is that just normal attrition?

1:48:08 P. Gartlan No. Thankfully everyone is moving on to something that they really want to do. Bronson wants to be closer to home. He has a child and he wants to be available. Carolyn Bys went from here to The Hague. She has always been interested in international law. She is doing something that she really wants to do. Kenneth Kreuzscher is another Deputy II. He is going to be working in Portland starting a practice with a friend. It is something he has wanted to do. People are moving on to good things.

1:48:55 Chair Ellis No turnover is as bad as too much turnover.

1:49:00 C. Lazenby With those departures are you going to advertise or just ask for applications for each individual position, or are you going to try to do any reorganization within AD that you have been wanting to do with those freed up positions? I am not suggesting you need to, I am just asking.

1:49:19 P. Gartlan We didn't think about that. Over the past several years we have been adding positions in the sense of giving people some sort of ladder to move up. What we are doing now is a mass advertising. We are advertising all the positions from Chief Deputy, Senior Deputy, Deputy II to Deputy I which is the entry level. We intend to interview a pool of people and make our decisions. On House Bill 3508 you have been receiving reports every Commission meeting for the last several months. I just wanted to let you know the status of that and right now there is a motion under advisement in the Court of Appeals. The state is challenging whether or not the trial court's decision to give somebody earned time, the extra 10 percent earned time credit - to make them eligible. The state is saying that that decision, the denial of giving somebody 10 percent, is not appealable. Right now that is where we are. I don't know if that makes any sense, but if a trial court says, "Yes, you are eligible for 10 percent more earned time," the person gets it. If the trial court denies it...

1:51:03 C. Lazenby They are done.

1:51:03 P. Gartlan That is according to the state. We are saying, "No. This really a new sentencing and we should be able to challenge this on appeal."

1:51:15 P. Ozanne Just to give you the dimensions of the problem, we were told by our district attorney in Multnomah that there would be 300 hearings. The last we had heard there were 900 scheduled. It is going to be a pig in a python.

1:51:33 C. Lazenby That is a colorful phrase, Commissioner Ozanne.

1:51:38 P. Gartlan We have three more Supreme Court arguments in January and we actually have one next week. Maybe you have read about it. It is the implied consent law and whether or not it is constitutional. The Supreme Court has fast tracked that argument. The decision came out, I think, September 30. The Supreme Court has fast tracked the briefing and the argument schedule. The argument is going to be next Wednesday and you are invited to come.

1:52:26 P. Ozanne You are arguing it?

1:52:27 P. Gartlan Yes. Finally, on a festive note we have our holiday CLE a week from tomorrow. Again, you are all invited. It is at the Employment Division building which is on Union Street and followed up by the holiday party.

1:52:47 I. Swenson Why don't you tell them who the presenters are?

1:52:52 P. Gartlan We have Justices Linder and Palmer on interpretation of constitutional provisions. Then we have Judge Schuman from the Court of Appeals. We are looking for the hot issues so we are giving him a series of questions. Then we have Sylvia Stevens addressing us with respect to ethical issues regarding client files. Then finally, Anne

Munsey, who is a senior deputy in our office, will be giving a presentation on the differences in the exclusionary rule on the state and federal level.

1:53:38 J. Potter

Can AGs attend this?

1:53:42 P. Gartlan

(inaudible). That is all I have.

1:53:55 P. Ozanne

It is Friday, December 18?

1:54:07 K. Aylward

One thing that we want to make the Commission aware of - I have been looking at our operating budget and we have a couple of issues. One is that our budgeted amount assumed no step increases. Then the union negotiated a single step during the biennium for state employees and we followed suit. We are providing one step but there is no way to fund that. I have been looking at all of our services and supplies and expenses trying to cut back on those. The other issue is the - well, the way that you can get to those big numbers is by holding vacancies open, so that was my plan. "I know so and so is leaving and we just won't fill that position." That is the only way you can get those large numbers to rack up. These were big cuts that were made and the single step is expensive. Unfortunately what is also happening is the appellate case assignments are going up. I didn't budget for them to go up. For example, in calendar year 2008, the average was 151 case assignments. In 2009, the average through November 30 is 193 a month. That is a 28 percent increase. It is huge. Now intake is not necessarily when the crunch comes, it is six months later when you are actually working those cases, but we know it is coming so we cannot leave any vacancies open other than the vacancies that we have committed to leave open to account for the furlough cuts. It was interesting, when we happened to have a vacancy occur at the end of last biennium and then another one early in this biennium, we were thinking, "Great, let's fill the position." But we are filling a position that is paid 20 percent less than an AD position, and we would be telling that person, "Even worse you are going to have a furlough day, so you are not going to get even as much money as is in the compensation plan." We are saying to our existing experienced attorneys, "If we have furloughs you are still going to have just as much work to do, but only four days a week to do it in and we also need you to train this new person who is going to come on board and doesn't know how to do anything." We all just looked at each other and thought, "That is ridiculous. Why would I give up a day of work of an experienced attorney because I have filled my vacancy?" I would rather leave those vacancies open and keep the people that we already have trained. We are going to leave this portion of these positions open so that we don't have to take furloughs. That is unusual. Other than the furlough positions we are keeping open there is no way. We are going to be asking the Interim Joint Ways and Means to make a rebalance. Account expenditures for trial level services are coming in at less than our original projection. One of the main things that has happened is, historically - and I just assumed nothing was going to change in the needs of the account other than those that were accounted for. We have been averaging a death sentence a year for quite some time. There hasn't been a death sentence since June of 2007. That is two and a half years without one. I know that at some point there is going to be less expense - it is the pig and the python of death penalty cases. If you are not getting death sentences now you know that you are going to be spending less than you might have had you gotten your typical annual number of death sentences. Also contractors -as I said before a lot of contractors said, "I am going to tighten my belt along with everybody else in Oregon," - let's say the contracts came in at less than I anticipated they would. I don't know what that figure is yet, but those two things, the account is not going to need as much as originally requested and our office does, so we are going to ask for a rebalance between the account and AD of about \$155,000, if that is okay with you. We worked with LFO on this and truly, I have told employees to use their personal cell phones when they are making a long distance call because they don't want the office phone to be billed for a call. That is pretty extreme when that is happening. We have no money. There is nothing else I can cut. Even my grand scheme of,

“Let’s move to a new building and I can negotiate a month’s free rent in between the move,” I don’t know that that is going to happen.

- 1:59:44 I. Swenson We are asking the Commission to authorize what we have been discussing with LFO as sort of a last ditch effort to manage the Appellate Division for the balance of the biennium.
- 2:00:00 C. Lazenby Do we meet before the January election or after?
- 2:0:07 K. Aylward We have to submit the request December 14.
- 2:00:11 I. Swenson And it goes to Interim Ways and Means first, and then if it is approved there it would go to the full Ways and Means.
- 2:00:25 K. Aylward We will also be requesting a couple of technical adjustments. The chief deputy position has always been budgeted to CBS. I would like to move that budgeted position out of CBS because it makes my CBS budget look big. That will be a technical adjustment to move the funding and the position from CBS to AD. Then there is one other technical adjustment between CBS and AD, but those won’t have to be dealt with by Ways and Means.
- 2:01:05 J. Potter So with the \$155,000, if you move it over it fills your hole on the salary side. What happens if the tax measure doesn’t pass and there is a bigger deficit that public defense has to incur? Are you still saying that even with that deficit the trial level contracts will still be okay?
- 2:01:30 K. Aylward No. Right now what is in our budget is that, assuming we get \$3.5 million from the first \$10 million of House Bill 2287, we will still be \$10.6 million short. What I am saying now is I don’t think it will be as much as \$10.6 million, it might be \$9.6 million, so our picture is getting better. If they then come back because the tax measures don’t pass and say, “Well, you had a five percent reduction option and a 10 percent reduction option submitted.” Those reductions follow the same lines of our original reductions at the beginning of this biennium when we said, “I can shave two percent off CBS. I can probably whack 10 percent off AD, but if you want more than that it can only come from the account.” When we get so small we cease to function. If I call in sick there is no CBS. You have a critical mass you have to maintain. So this round when they came back and said, “Um, how about another five and another five on top of that? What would that look like?” Well, it would look exactly the same. I already gave everything CBS could give up. I already gave up everything AD could, in fact too much because I was assuming I would be able to hold vacancies open to do that. Anything beyond this has got to come from the account.
- 2:03:00 J. Potter What I am getting to is at some point we may run out of money for the contracts. We may run out of money and it stops. You have talked about that being where we just stop providing services. It may be a month before the end of the biennium, it may be two. Under the scenario you are proposing where you move some money into OPDS, does that then pretty much take away the possibility that CBS, your office, has to stop? Is that a better strategy for OPDS but not for trial level service? Or do you shut down the state office too?
- 2:03:40 K. Aylward I think the problem with that is the size of the numbers that we are talking about. If my office just needs \$10,000, and the account instead of being \$10.6 million short would be \$10.59 million short, it is still within the margin of error and my view has always been, in a lot of situations, is if you have got 10 problems of varying sizes, and they are of equal value, you fix the little one and that goes away. The big problem will always be a problem and the solution is then just a question of magnitude. Is it \$10.6 or \$10.59? However you are going to solve that problem it is going to need a solution. It just makes more sense not to have so many little problems.

2:04:40 J. Potter I think I agree. I was just asking.

2:04:40 Chair Ellis Any discussion on authorizing Kathryn to make the request? Is there a motion?
MOTION: John Potter moved to approve the request; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

2:04:56 C. Lazenby When we get to that point, Commissioner Potter, we are all going to be involved in making that decision.

2:05:02 S. McCrea We are going to be answering the phones at CBS.

2:05:12 Chair Ellis Any other subjects?

2:05:15 P. Levy Real briefly I want to tell you about the continuing work of our Quality Assurance Task Force. This is the body that advises us on our peer reviews. In addition to recommending and reviewing peer reviews the group is continuing to look at this new version of recommended best practices. I think it was distributed in September and then it was part of the management conference as well. Currently we have on our website a one-page document called Best Practices. This is now about 15 pages with much more detail on why these practices are important and how they can be achieved. It is really more about what they mean and how they should be accomplished. We are moving toward finalizing that document and hoping it will be useful in a number of different areas. The group is also exploring ways in which we can conduct our peer reviews and get a better sense than we are getting now of the quality of work that we are attempting to evaluate. We get a lot of very interesting opinions and anecdotal information. Judge Welch was on our last peer review and can tell you that you can come away from some places with the impression that everything is either wonderful or terrible. The degree of confidence you have in that assessment is not always strong. We are looking at some new instruments that we could use to actually assess and review. That is an interesting process that continues to evolve.

2:07:22 Chair Ellis Anything from the audience? If not, I would entertain a motion to adjourn.
MOTION: Shaun McCrea moved to adjourn the meeting; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

Attachment 2

**CLACKAMAS COUNTY UPDATE
SUMMARY OF INFORMATION AND TESTIMONY RECEIVED BY PDSC IN
MARCH TO AUGUST 2009**

1. OPDS's Findings in Clackamas County (Judicial District No. 5)
(March 2009)

The Circuit Court and the District Attorney

There are eleven Circuit Court judges in Clackamas County. Judge Steven Maurer is the presiding judge. Judge Deanne Darling is the primary juvenile court judge. The Trial Court Administrator is Mari Miller. The County has seven specialty courts.

John Foote is the District Attorney and Greg Horner is his chief deputy. There are currently 29 deputies and the number of positions is expected to remain stable. While, as noted below, the defense bar rarely adds new lawyers, the District Attorney's office does have turnover in its staff and has become the point of entry for new attorneys seeking criminal law experience in the county.

Procedure in criminal cases

There are five special courts for criminal cases. The adult drug court is designed for defendants with significant, long-term drug or alcohol addiction. A guilty plea is required for the defendant to participate in the program. One Clackamas Indigent Defense Consortium (CIDC) attorney is assigned to cover the drug court. The mental health court is limited to defendants charged with non-violent offenses whose behavior is principally attributable to mental illness rather than substance abuse or anti-social behavior. There is also a DUII Court, a community court and a domestic violence deferred sentencing program. CIDC lawyers cover these courts as well.

A consortium attorney is present in court for felony and in-custody misdemeanor arraignments. Each case is generally assigned to a particular attorney on the same day as the arraignment. That attorney checks for conflicts, and if a conflict is found the case is reassigned to another consortium attorney.

Arraignments for clients who are in custody, either at the Clackamas County Jail, at the Inverness Jail in Multnomah County or in a state correctional facility¹, are generally done by video. Only a few prisons (such as the Columbia River Correctional Institute) do not have video capacity.

Three of the Clackamas County courtrooms are fully wired for video appearances and there is a portable "polycom" unit that can be used in other courtrooms.

¹ Arraignments from the state institutions are usually on warrants.

While the capacity for confidential communication between attorneys and clients is limited, the video system is used principally for routine appearances.

The county uses a master calendaring system. There is a court liaison team which includes CIDC, the district attorney's office, the bar president, the trial court administrator and the judges which addresses system issues on a regular basis. Based on the recommendation of this group the county has been using a "case manager" system for scheduling criminal cases since 2003. Except for serious cases such as Measure 11 cases, the parties are expected to resolve cases or set them for trial by the 35th day after the first appearance. The district attorney's office is required to include a settlement offer when it provides discovery to the defendant. Motions must be filed 21 days before trial and are generally heard on Mondays. There is no trial docket call but lawyers are required to notify the court 24 hours in advance whether their cases will actually be going to trial.

The state issues subpoenas in only about 15% of criminal cases. The trial rates in Clackamas County, however, are higher than the statewide average.²

Clackamas County is growing and the court anticipates that the criminal caseload will continue to grow as well. Jail capacity has been an issue in the county. In 2005, the Circuit Court judges sitting en banc issued an order prohibiting the sheriff from closing additional beds. After the voters approved a levy in November of 2006 the Clackamas County Board of County Commissioners unanimously agreed to devote \$50 million towards construction of a new adult jail and to construct the first phase of an expanded jail at another site with a planned completion date of 2010. There are currently approximately 400 jail beds available in the county.

OPDS contracts with CIDC to handle 6,844 cases per year. CIDC is currently just slightly under quota. The district attorney's office notes arrest rates have been fairly constant for the past eight years in Clackamas County even though the crime rate appears to be dropping.

Procedure in juvenile cases

The Clackamas County Juvenile Court is located with other county offices in a group of buildings several miles from the County Courthouse. Mondays and Thursdays are the principal juvenile court days, although preliminary hearings are held daily as needed. There are two juvenile drug courts, the juvenile dependency drug court and the delinquency drug court. Both meet on

² From January 1, 2008 through June 30, 2008 the statewide trial average for felony cases was 5.4% and for misdemeanors, 4.4%. In the same period the trial rates in Clackamas County were 7.1 for felonies (39 to the court and 37 to juries) and 6.7% of the misdemeanors (53 court and 87 jury).

Wednesdays and are staffed by Independent Defenders, Inc. (IDI) attorneys. Citizen Review Board hearings are held on Tuesdays.³

Attorneys are not present for shelter hearings in juvenile dependency cases. Attorneys generally receive notice of their appointment, however, on the same day as the shelter hearing. Dependency cases are scheduled for “judicial review of the petition” 30 days after the shelter hearing. This hearing serves as a settlement conference. Once jurisdiction is established (either by trial or by admission) a review is scheduled before the Citizen Review Board at five months. Upon the court’s instruction, the CRB focuses its attention at this hearing on creating a realistic concurrent plan to be implemented if the primary plan (usually of return to parent) cannot. Since these hearings are scheduled with input from the attorneys, attorneys are almost always present. The court then conducts a review at approximately eight months and a permanency review at thirteen months. A second CRB review occurs prior to the permanency hearing at ten months. This hearing is scheduled at the time of the first CRB review, which, again, allows attorneys to participate in the selection of the hearing date. There are two DHS offices in Clackamas County, the North Clackamas office and the Oregon City office. Both DHS offices are reputed to do a good job of transitioning cases from the initial protective services worker to the on-going worker, both of whom usually appear at the dispositional hearing. There is an active CASA program in the county and individual CASAs are assigned in approximately 60% of the cases.

Ellen Crawford is the Juvenile Department director. There are twenty-three counselors who work under her supervision. This department makes extensive use of formal accountability agreements and other informal approaches based on a comprehensive case management system. Low risk youth are generally referred to diversion programs. Higher risk youth are referred to juvenile counselors who may still recommend a formal accountability agreement. There are three deputy district attorneys assigned to juvenile court cases. It is the district attorney’s office that files the petition after receiving the police reports from the juvenile department in those cases in which adjudication is sought.

An attorney from IDI is present for delinquency preliminary hearings. At the preliminary hearing the court sets an “adjudication and disposition” hearing approximately 30 to 60 days later. If the youth wants a trial the attorney notifies the court of the need for a trial date. Few youth remain in custody pending trial. The county has access to fourteen detention beds at the Donald E. Long facility in Portland. Youth are rarely held for more than a few days.

³ Clackamas County is one of a very few counties where the Citizen Review Board has been able to schedule its hearings to accommodate attorneys’ schedules. Instead of having review dates scheduled automatically in accordance with the DHS calendar, the Clackamas Board schedules its hearings at the time of disposition when the parties and their attorneys are present. The second review is scheduled at the time of the first review. The Citizen Review Board of Washington County has also moved to this system and the Marion County CRB is exploring the use of a similar system in that county.

The delinquency drug court currently has fifteen clients. The program serves youth who are fourteen to eighteen years old. The drug court team continues to refine the structure and operation of the court.

Probation violations are used sparingly in Clackamas County juvenile court, and only after other alternatives are exhausted except in cases of new criminal activity or a significant risk to public safety. Attorneys are notified when informal sanctions are imposed on their clients.

Public defense contractors

There are two public defense contractors in Clackamas County, the Clackamas Indigent Defense Consortium (CIDC) which contracts with PDSC to handle criminal cases, and Independent Defenders, Inc. (IDI) which contracts for juvenile and civil commitment cases.

CIDC

CIDC has 27 members. It has a board of directors, five of whom are permanent members. All members are currently consortium attorneys. The board was recently restructured when two of its permanent members resigned. Their positions were taken by two younger members. The board has a president who serves at the pleasure of the board. The current president is Brad Jonasson. Every year two members of the board are replaced with other non-permanent members. CIDC operates under written bylaws; executes written agreements with members and has a manual for attorneys.

Ron Gray is the administrator of the consortium. Mr. Gray serves on two advisory groups to OPDS, has served on site review teams, and, at OPDS's request, prepared a list of best practices for consortia which is attached as Exhibit A. CIDC uses a portion of its PDSC funds for administrative functions and sets aside a certain amount to cover supplemental compensation for lawyers who handle particularly complex cases. Mr. Gray is assisted by Janan Billesbach, who has worked for the consortium for many years. Currently she is partly retired but continues to work half time from her home where she has a dedicated phone line and computer and is able to make consortium appointments on a daily basis.

The consortium president has assumed responsibility for creating an attorney evaluation process. He has assembled a committee which is working on a questionnaire to be sent to clients and a questionnaire to be sent to system representatives. Among the factors that will be analyzed in terms of attorney performance will be trial rates.

The work of the consortium was reviewed by an OPDS site team in 2004. OPDS has also conducted two statewide surveys that included Clackamas County. In the most recent of those surveys, the respondents were principally the local Circuit Court judges. They described the work of CIDC on average as good. Comments noted that the range of skill varied from one attorney to another and that there was some frustration with the less skilled attorneys.

Comments received by OPDS staff prior to this review from members of the local criminal justice system indicated that: CIDC has a lot of very good, experienced attorneys; they maintain a good relationship with the district attorney's office and the court; the county is fortunate to have them; Ron Gray is responsive to concerns from the bench and court staff; the consortium is able to provide mentoring when attorneys need it; the judges' workload is very high in Clackamas County and it is very helpful to have a provider that is as flexible as CIDC; it would help to have more attorneys; members cooperate with the court to make the system work, as does the district attorney's office; CIDC has also been a "partner" in the creation and operation of the treatment courts. Although there is a range of quality, on the whole it is very good with only a couple of attorneys who are problematic. CIDC attorneys are, on average, significantly more experienced trial attorneys than deputy district attorneys in the county.⁴

IDI

There are currently eleven attorneys in the consortium. Most of them have been part of the consortium for more than 20 years⁵. The consortium has a board of three members, one of whom is not a consortium member. The consortium has hired a former DHS worker who uses her expertise as a child welfare specialist to assess child clients' circumstances, advise attorneys about appropriate services for children, review DHS files and otherwise assist attorneys in representing children. The consortium does not sponsor trainings for its members. Members are active participants in juvenile court system-wide meetings and trainings, however.

Marty Cohen is the administrator of the consortium. Concerns about performance by consortium members are brought to his attention. He handles delinquency cases and staffs the juvenile drug court. He and the attorney with whom he shares office space both have a significant private practice.

In view of the declining juvenile caseload⁶, Mr. Cohen has advised other members of the consortium to take on private cases.

⁴ Only 4 of CIDC's attorneys were admitted to practice within the last 15 years; more than half the members have been practicing for 25 years or longer.

⁵ One of the senior attorneys is currently training a new lawyer in juvenile representation however.

⁶ All categories of juvenile cases appear to be declining in the county. In the calendar year 2008, the consortium received credit for a total of 2,574 cases.

OPDS conducted a quality assessment site review of IDI in 2007. Responses to the 2008 statewide survey indicated that representation provided by this group varied from good to excellent in both dependency and delinquency cases. Caseloads were deemed to be “about right to somewhat too large” in dependency cases and “about right” in delinquency cases. Specific comments noted that most juvenile lawyers were involved in other kinds of practice and that too often they met clients at the courthouse, did not meet with foster parents and didn’t have sufficient contact with clients.

Comments received during visits to the county by OPDS staff prior to this review indicated that the juvenile attorneys are “top notch” and do a great job; some of them have too many court appearances although this is getting better as the caseload declines. (It was acknowledged that their income from public defense cases has declined and that they are probably required to do other kinds of cases. It was also noted that they do a good job of making sure that someone appears for them if they cannot be present for a hearing, although the substitute attorney does not always have the needed information.) One commentator said OPDS should make sure attorneys understand the extent of their duties to clients, especially with respect to contacting them and keeping them informed about the status of the case. It was also suggested that OPDS consider changes in how it compensates lawyers in dependency cases. Some attorneys believe they get paid only for attending hearings, not for continuing representation of the client while the case is open. It was also recommended that the consortium consider terminating one of its members. Marty Cohen is generally considered to be responsive to concerns about members and willing to intervene. Another commentator noted that some of the attorneys are very effective at getting appropriate services for their clients while others seem disengaged. Some attorneys meet with foster parents, others don’t. Some children are reportedly not seen by either their attorneys or their caseworkers.

One of the effects of limited attorney availability is the lack of representation at shelter hearings in dependency cases. DHS indicates that this is a disadvantage to the consortium’s clients because DHS cannot work closely with the parents until the parents have met with their attorneys and decided whether or not to contest the petition and whether or not to cooperate with DHS in service planning. If attorneys were present at shelter hearings they could also argue against removal or in support of a particular placement.⁷

Many attorneys apparently do not have sufficient time to meet with their clients before the judicial settlement conference. While it is reported that attorneys are

⁷ It should be noted that despite the absence of attorneys at these hearings they can sometimes be quite lengthy when the court requires DHS to produce evidence of the need for removal and proof that reasonable (or active) efforts have been made to prevent removal as required by ORS 419B.150.

generally familiar with the case and the documents prepared by DHS, they often have not discussed the case with their clients before the court hearing.

Attorneys do participate on a regular basis in child safety meetings. Now that the Oregon Safety Model⁸ is in place, decisions about placement are generally not made at these hearings but attorneys who are very committed, especially to child clients, nevertheless attend and participate. It was reported that it would be helpful to have one of the attorneys specialize in the representation of older children who will transition out of foster care to independent living.

In delinquency cases, the quality of representation is rated fairly high even though it was reported that lawyers don't always meet with their clients prior to the adjudication and disposition hearing and that there are few motions filed and few trials. It was also reported that the attorneys' level of experience and good working relations with the juvenile department, the district attorney's office and the court are appreciated.

OPDS's recommendations for further inquiry at PDSC's March 12, 2009 meeting in Oregon City

Based on the information provided to OPDS during its visit to Oregon City, OPDS recommends that the Commission consider the following in developing a service delivery plan for Clackamas County.

The structure

The current system includes two consortia, with overlapping membership, that handle criminal and juvenile cases, respectively. The structure appears to be working satisfactorily although a number of commentators point to the need for additional attorneys and for better quality monitoring.

Attorney evaluation

While CIDC attorneys are given credit for providing high quality representation in most cases, some of the judges express concern about the attorneys' availability, about the need to be bringing in and training new attorneys to eventually replace current members, and about the need to consider removing some consortium members on performance grounds. As the Commission is aware from its service delivery reviews in other areas of the state, one of the weaknesses of the consortium model is that consortia often lack a system for evaluating the work of the attorneys and methods for addressing underperformance. It appears that CIDC is undertaking to create such a system. Ron Gray and CIDC have provided statewide leadership on quality assurance procedures. The Commission may want to follow closely the development of an attorney

⁸ The Oregon Safety Model approach to child protection was adopted by DHS in March of 2007.

evaluation process in this county as a possible model for use by other consortia around the state.

Need for Additional Attorneys/Compensation

In Clackamas County, there is a significant discrepancy between the general assessment that the lawyers in juvenile cases are skilled and experienced and the frequent observation that they are not having timely and adequate communication with their clients.

In juvenile cases, the need for attorneys to handle cases in addition to their public defense caseloads may affect their availability for court hearings and the ability of some of them to provide appropriate representation. It appears that the principal dilemma for these providers is that PDSC's case rates do not permit attorneys to limit their caseloads and add new members without finding supplementary sources of income. Significant additional funding for juvenile representation as proposed in PDSC's Policy Option Package No. 100 and SB 450 sponsored by Sen. Jeff Kruse⁹ may be needed to ensure that attorneys are meeting their obligations to their clients.

While the burden of high caseloads is understood, attorneys should not allow their caseloads to prevent them from attending shelter hearings, meeting with clients before court hearings, meeting with youth, child clients and foster parents, litigating motions to suppress and taking other actions that may be necessary for good representation.

If current funding undermines attorneys' ability to comply with PDSC contract provisions regarding timely contact with clients, representation at hearings and the like, the contractor needs to raise these issues with the Commission and with OPDS prior to and during contract negotiations.

2. Summary of Testimony at March 12, 2009 PDSC Meeting

Mari Miller, the Trial Court Administrator for the Clackamas County Circuit Court welcomed Commissioners and guests to the court. She noted that her staff was occupied with planning for Friday court closures. She said that the court has worked effectively with public defense providers to resolve issues before they occur. She noted that her court has the highest number of cases per judge in the state.

Chair Ellis said that the Commission is engaged in a process of reviewing the delivery of services throughout the state and has taken the approach that each community is different and its public defense needs may be different too. The Commission's two goals for public defense are quality and economy. He noted

⁹ SB 450 proposes an increase in funding to PDSC specifically for the purpose of improving representation in juvenile dependency cases.

that Clackamas County is the only remaining metropolitan county that has a single provider system and the Commission would like to make sure that the single consortium model is the appropriate one.

Barbara Johnson testified that she is the Executive Director of the CASA program in Clackamas County. She said that she has met with the juvenile consortium administrator in the past to discuss issues that arise between CASA volunteers and attorneys for parents and children. She spoke to a number of experienced CASA volunteers to obtain their comments for the Commission. CASA volunteers commented that attorney caseloads are high and that, although attorneys can make a real difference, they sometimes lack passion, don't return calls, are less zealous when they represent children than when they represent parents, often meet their clients just before court and fail to bring any original information to the court. Attorneys don't regularly attend child safety meetings but do attend CRB reviews. Ms. Johnson suggested that a CASA be appointed in every case and that counsel be appointed only upon request of the CASA or other party. Ms. Johnson said that the decline in the dependency caseload in Clackamas County coincides with the implementation of the Oregon Safety Model and that the decline may be the result of the way the model has been implemented in the county.

Commissioner Welch noted that Oregon has a significantly higher removal rate of children from their homes than most states.

Mike Clancy and Gay Canaday testified that they were part of the original group of four lawyers that founded the Independent Defenders, Inc. (IDI), a consortium that is the sole contractor in the county for juvenile public defense cases and civil commitment cases. IDI has a rotating system for case assignments. Most attorneys handle both dependency cases (parents and children) and delinquency cases. Most civil commitment cases are assigned to Ms. Canaday. Consortium attorneys also cover the juvenile drug court. Most members of the group have been practicing for twenty years or more. Consortium members have brought in some younger attorneys recently, however. Mr. Clancy has mentored one of the newer members. He said the consortium needs to do a better job of bringing new people in.

Ms. Canaday said that consortium's eleven members bring with them different kinds of expertise. Some members have expertise in criminal cases or in domestic relations cases; one member has expertise in social security benefits and Ms. Canaday has expertise in handling mental health cases. The benefit of having this expertise available probably outweighs the scheduling challenges that arise with attorneys who have other kinds of practices. She said that IDI attorneys love their juvenile work and that that is a key to good representation. She said that IDI has a board of directors of four members including three senior IDI attorneys and one CASA. The board meets quarterly and IDI members meet

at least quarterly as well. She believes IDI attorneys get along well with CASA volunteers, who have a different perspective than the attorneys.

Mr. Clancy said that IDI had met with the CASAs to discuss their relationship and other issues. He said that attorneys sometimes have difficulty reaching their clients before hearings, despite efforts to do so. Time frames for hearings are short and don't always allow the attorney time to meet with the client. Some appointments occur just prior to hearing dates. Most attorneys send letters to clients immediately after receiving notice of appointment by fax.

Chair Ellis inquired how the consortium deals with members who have performance issues.

Mr. Clancy said that they use progressive sanctions. The organization lacks a full-time administrator and probably needs to have better procedures in place. Over the years there has not been a need for progressive sanctions because of the experience level of the attorneys. If there are problems, board members talk to the attorney about them.

Ruth Boen, who serves as administrative staff to IDI said that the consortium is responsive to complaints. After discussing calendar management problems with one attorney and providing him specific guidelines, the board sent him a letter setting forth its expectations. She also noted that in addition to the new attorney who was mentored and trained by Mr. Clancy, another young attorney received the same kind of training in another member's office.

In delinquency cases, Mr. Clancy said that there was a period of time when the district attorney's office was objecting to formal accountability agreements (FAA) even in cases in which DA approval was not needed. After a discussion with the juvenile department, circumstances have improved and juvenile court counselors will sometimes agree to FAAs without the district attorney's agreement. Another approach that attorneys for youth have taken is to ask that a case be set out for trial for a long enough period to complete needed services.

Mr. Clancy said that the perception some people reported about attorneys not having contact with delinquency clients was a misconception. Detained youth are held in Multnomah County which does make it more difficult for attorneys to see clients in person. In dependency cases, IDI has hired a retired DHS worker as an investigator who sees children in foster care and prepares a written report that is provided to the court and DHS. DHS workers are not always seeing children as often as they are supposed to or seeing them outside the foster home.

Both Ms. Canaday and Mr. Clancy said that contact with OPDS has been satisfactory. Ms. Canaday expressed a desire to have access to a list of expert

witnesses in termination of parental rights cases to supplement the short list that they are currently working from.

Judge Deanne Darling is the principal juvenile court judge in Clackamas County. She outlined the schedule of juvenile court hearings and noted that attorney availability is a major issue for her in trying to schedule juvenile court matters in a timely way.

She said that the IDI attorneys are very experienced, very efficient and very cohesive in terms of being willing to cover for each other. When lawyers cover for each other, however, they may not know the case. She said that it would help if lawyers in the juvenile consortium were not also taking cases from the criminal consortium because of schedule conflicts. She also suggested that consideration be given to creating a regional contract office that specialized in termination of parental rights. With respect to a public defender office handling part of the juvenile caseload, she said that the consortium has benefits with respect to the management of conflicts.

Judge Darling said that all but possibly one of the consortium attorneys is capable and well informed and that they do a good job of understanding the difference in their role when representing young children and representing older children. She believes they may need to do better outreach in order to have earlier contact with their clients and noted that it is rare that attorneys provide any first hand information or reports to the court regarding any of their clients.

Ron Gray, the administrator of the Clackamas Indigent Defense Consortium (CIDC), said that the consortium was started in 1983 and grew over time. The consortium now has 27 members who are on rotating lists for case assignments. There are separate lists for probation violations, misdemeanors, Ballot Measure 11 cases and homicides. Cases are assigned on a rotating basis, except that if an attorney with special qualifications is available a case may be directed to that attorney outside the rotation. Substitutions do not cost the state any additional funds in Clackamas County since only the second attorney is paid. There is a provision in the CIDC contract that permits attorneys to share the payment but it is rarely used, most attorneys believing it evens out over time. With respect to substitutions due to attorney/client incompatibility, the court usually lets a defendant know when the state will provide one more attorney but only one. Within the consortium there are three members who volunteer to accept appointments for these clients.

Mr. Gray noted that five of the current Circuit Court judges are alumni of CIDC. He said that currently the District Attorney's office perceives the defense as an enemy. CIDC was able to work more effectively with previous district attorneys.

Contrary to a statement in the draft report, Mr. Gray said that CIDC has brought in some new and younger lawyers. The consortium has an apprentice program

for new attorneys. New attorneys have to find a mentor lawyer within CIDC to serve as a resource. Only some of the apprentice attorneys are given a position with CIDC.

Five or six of the 27 members handle just criminal cases. Other members have mixed practices and some serve as prosecutors and judges in municipal courts. For most CIDC lawyers 50% or more of their practice is in CIDC cases. This means that most members have a variety of skills that may be needed in particular cases. It also gives members a balanced view of the larger system and makes them more effective in settling cases.

Chair Ellis recalled that several years ago the United States Department of Justice explored the antitrust implications of CIDC being the exclusive contractor for public defense services in criminal cases in Clackamas County. The issue was not pursued by the Department of Justice but Mr. Ellis inquired whether having a single provider was the best model.

Mr. Gray said that the question for the commission should be whether that model provides quality representation. He said a good consortium needs an aggressive manager who is willing to confront attorneys who are not performing satisfactorily. The operation should also be economical for the state and if the state only has to send one check per month to the consortium, it is efficient for the state. Micromanagement by the state is not necessary. If the system isn't broken you shouldn't try to fix it. A public defender office was attempted in Clackamas County in the early 1980s. Consortia have lawyers with broader experience than public defenders and some public defenders have an adversarial relation with district attorneys.

Mr. Gray said that the consortium does not currently have a succession plan for his position, should he decide to retire. To be effective the administrator needs to be willing to be unpopular and he is not sure where his successor will come from but there are a couple of members of the group who might be good candidates.

The CIDC board of directors has five permanent and four rotating members. There was one outside board member but he retired recently and has been replaced by a CIDC member.

CIDC is working on a questionnaire for randomly polling clients about the performance of CIDC attorneys.

When a complaint is received about a CIDC lawyer, Mr. Gray usually consults immediately with the attorney. If the problem is not resolved Mr. Gray can take the matter to the board and the board decides whether or not the attorney can remain a part of CIDC. In two cases, the members resigned before the matter could be taken to the board.

Mr. Gray said that he and his staff have a good working relationship with OPDS staff.

Mr. Ellis expressed appreciation to Mr. Gray for his contributions to the public defense system as a whole.

Judge Maurer, the presiding judge of the Clackamas County Circuit Court, said that he and his colleagues have a high level of satisfaction with the operation of CIDC, especially their screening system for applicants, their level of competence and their commitment. Judges who are former CIDC members continue to have an investment in seeing that high quality public defense services are provided.

The court has been very comfortable with Mr. Gray's ability to address concerns and the mentoring that is provided by senior CIDC members. There have only been a handful of new members added because of the limited size of the group. The process for training new members is not too dissimilar from public defender office models although the public defender offices can provide a greater level of in house training and mentoring.

There will be a need to bring in more new lawyers as the older ones retire and at some point to bring in a new administrator. A more specific and comprehensive recruitment process will need to be implemented to replace retiring members. A public defender office has some advantages in terms of the incentives it can offer to a new attorney but the consortium model offers some incentives too, such as the benefit of having a portion of a new attorney's practice guaranteed, to cover office overhead.

On the whole, this county has preferred a single provider approach. The bench in Clackamas County has been very involved in public defense and has been able to work collegially with this group.

3. Commission Discussion at April 16, 2009 Meeting

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

its contracts with providers to clarify the requirement of timely contact with clients.

With respect to Clackamas Indigent Defense Consortium (CIDC), Chair Ellis said that although it may be working well at the present time, in three or four years there might be difficulties since CIDC does not seem to be evolving. They are not bringing in new members. Intervention by PDSC may not be necessary now but might be needed in the future.

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

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

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

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

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

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

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

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

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

4. Additional Developments since March PDSC meeting.

Attached as Exhibit A are a series of questions sent to and responses received from Ron Gray regarding the operation of CIDC.

Attached as Exhibit B are a series of questions sent to Marty Cohen regarding the operation of IDI. Mr. Cohen will provide written responses to the commission for review at its June 18 meeting.

IDI member and board representative, Gay Canaday, inquired about attorney evaluation models that IDI might adapt for its own use. Several examples were provided.

5. Testimony and Discussion at June 18, 2009 PDSC Meeting

Ron Gray testified that nine out of the last ten lawyers who joined the Clackamas Indigent Defense Consortium (CIDC) were under the age of forty. CIDC has an active apprenticeship program with two attorneys currently serving apprenticeships. There are two major benefits to the program. It is a way for new attorneys to engage in criminal defense work and it allows CIDC to evaluate their suitability for membership in the consortium.

Commissioner Ozanne asked Mr. Gray what the Commission's role is in the operation of the consortium.

Ron Gray responded that the Commission's role is to point out areas of concern for the consortium to address. In response CIDC is addressing the structure of the board, the need to plan for a transition in the administration of the consortium, the graying of the membership, an update and revision of the bylaws and an attorney evaluation process.

Commissioner Ozanne noted that although CIDC has been a leader in developing models for other public defense providers even it has found it difficult to apply these models to its own operation. The Commission may need to be more proactive in this regard.

Ron Gray said that CIDC is undertaking an extensive attorney evaluation process and hopes to complete evaluation of all the attorneys in the fall. The CIDC board is considering the addition of outside board members.

Commissioner McCrea asked Mr. Gray whether the CIDC board was considering eliminating the permanent board terms. He replied that if, for example, CIDC were able to identify an outside board member it should probably be for a permanent position. Permanent board members provide continuity.

Commissioner Potter inquired about the consortium's bylaws. Mr. Gray said the organization has very detailed bylaws that are being revised for the first time since they were developed over twenty years ago.

Benjamin Kim testified that he had practiced law in Los Angeles County for most of his professional career, including eleven years as a Deputy District Attorney. Wanting to move his family out of the area he was drawn to the Northwest and felt that CIDC would be a good fit for him since he did not want to become a public defender but did want to handle some public defense cases as well as start a private practice. He joined CIDC about two and a half years ago and thinks it is a very good model for the delivery of public defense services.

Ron Gray said that whenever a new attorney applies for membership in the consortium, the board has to decide whether it would be appropriate to add another lawyer at that time. Ben Kim applied after another lawyer left so it wasn't a difficult decision. He anticipates that there may be two additional vacancies arising out of the evaluation process.

Commissioner McCrea asked how cases are allocated among members. Mr. Gray responded that there are separate rotations for probation violations, misdemeanors, felonies, Measure 11 cases and homicides. The goal is to get all members qualified to handle all case types except homicides, which are the only voluntary rotation. Cases are distributed evenly for each case type. Once a year a lawyer can opt off a single case but is otherwise expected to handle all cases assigned.

Rhett Bernstein said that he is also a new member of CIDC. He began his legal career as a prosecutor in the Linn County District Attorney's Office but tired of government service and wanted to open his own practice. He enjoys representing indigent clients but likes being able to take on other kinds of cases. He is a member of the CIDC board and also serves on the Clackamas County Bar Association Board. He has found the consortium open to younger members. With the caseload declining, however, it would be irresponsible to bring in new attorneys at this time. The original model at CIDC was for attorneys to receive no more than 50% of their income from public defense cases. Public defense cases currently account for only about 30% of his income.

Commissioner Ozanne said that he did not believe the Commission was seeking to open a public defender office in Clackamas County. The Commission would like to see the consortium live up to its potential. Without an employee/employer relationship it is difficult to enforce quality standards and it may become more difficult to sustain a mixed practice. The trend in larger urban centers has been for attorneys to specialize.

Commissioner McCrea said that Commission Chair Ellis had questioned whether the model in Clackamas County – a single provider system - was the appropriate one. She said that the Commission’s goal is to achieve quality and economy and that she is pleased with CIDC’s responses to the Commission’s concerns.

Commissioner Ozanne said that one of the benefits of a mixed model is that there is some competition, but there is no Commission agenda to develop a public defender office and he would not support it.

Marty Cohen said that the juvenile caseload in Clackamas County is declining. While attorneys have been added over the life of the contract, currently they are only replacing members who leave. One of the older attorneys recently left the consortium and a new attorney has joined after being mentored by Mike Clancey. None of the eleven current members handle only public defense cases. This gives members more flexibility and allows them to survive periods of declining public defense caseloads. While Judge Darling expressed concern about the attorneys’ availability she is aware of the benefits of having public defense attorneys skilled in other areas. With respect to the composition of the board of directors of Independent Defenders, Inc. (IDI). Three members of the board have been in place since the founding of the board. An outside member was added a number of years ago and they would like to add another non-attorney member with expertise in education issues. IDI is also considering the addition of a rotating position that would allow members to serve one year terms. The board meets quarterly and consortium members meet regularly as well.

Gay Canaday said IDI has initiated a six month pilot project in child representation. Two attorneys will specialize in handling children’s cases. They will be partnering with CASA volunteers in advocating for services for child clients. IDI attorneys are now meeting monthly with the juvenile court judge and DHS representatives. They have been working on resolving scheduling issues with the court. Contrary to a statement in OPDS’s report, attorneys are present at all delinquency prelims. The court agrees it is not necessary for attorneys to be at dependency prelims but they are present for shelter hearings.

Commissioner Welch advised other Commissioners that she resides in Clackamas County and knows all of the IDI attorneys. She has also sat as a judge from time to time in the Clackamas County Juvenile Court. Her biggest concern has to do with the zealotry of representation in all classes of cases.

Having appeared in courts across the state, she noted that there are a lot of very quiet lawyers in the courtroom in juvenile cases.

Ms. Canaday said that much of the advocacy in juvenile courts occurs outside the courthouse. In order for everyone to perform at a higher level, more time would need to be allocated to these hearings.

Mr. Cohen said that hearings that last fifteen or twenty minutes in Clackamas County might last hours in other counties. More zealous representation would require negotiating more hearing time with the court.

Commissioner Ozanne said that part of the problem is the culture that develops in a particular court. The role of attorneys shouldn't be to negotiate with judges but to strongly assert the client's rights.

Ms. Canaday noted that there have been many appeals filed by IDI attorneys in the last year. While it may not be apparent in the courtroom, attorneys are taking appropriate steps. Multiple appeals in civil commitment cases have resulted in the judicial officer now following the letter of the law.

Marty Cohen said that juvenile attorneys have to balance "best interest" and "expressed wishes" representation in juvenile cases. A similar situation exists in drug court and it would be helpful for drug court lawyers to get together to discuss some of the issues that arise there.

Ingrid Swenson said that she and Kathryn Aylward had met with Judge Welch to discuss juvenile representation issues and how to incorporate PDSC's expectations into the contracting process. She said OPDS had issued a statement on the role of counsel in juvenile cases, that the bar had updated the performance standards for juvenile lawyers and the Commission had directed public defense attorneys to observe these standards. A lot of work remains to be done, however. Both of the Clackamas County consortia have been working to address the Commission's concerns. They are both good providers and the Commission would like to help them continue to improve. She said she would prepare a draft service delivery plan for the Commission to consider.

Commissioner Ozanne said that the best plan would be to have Commissioner Welch on a permanent rotation through the state's juvenile courts. Despite his admiration for the Clackamas County contractors, they still have no regular attorney evaluation process in place and have had difficulty dealing with underperforming attorneys. As to both evaluation procedures and board structure, it might be appropriate for the Commission to develop models. This may be a subject to be considered at the Commission retreat.

6. PDSC Discussion at August 6, 2009 Meeting

Chair Ellis said that after reviewing the transcript of the June meeting he was encouraged. Although Clackamas County tends to be self-contained, Ron Gray had been more forthcoming. The concern in Clackamas is that Ron Gray has become almost indispensable. Although they have not been responsive to commission concerns in the past they now appear more willing to respond. The board continues to be a provider only board with permanent members which is not a preferred model, but he would prefer that the Commission not force change.

Commission Ozanne said that Clackamas County had been held up as a model and Ron Gray has been a leader on consortium issues. While they do good work they may be Exhibit A for why the Commission needs to be more prescriptive. The Commission needs to discuss what steps it should take. Clackamas County is still struggling with how to do an evaluation and its board lacks diversity, business expertise and community involvement. At a retreat the Commission should discuss possible prescriptions regarding board makeup and standard evaluations, with accommodations for differences around the state.

Commissioner Stevens asked if there was evidence that board makeup affects a contractor's practice of law, that it affects service delivery.

Chair Ellis said it is intuitive that whoever selects Ron Gray's replacement should be a balanced body rather than a group of providers whose dominant thought is what it will mean for them.

Commissioner Ozanne said that Exhibit B for a more prescriptive model would be Ron Gray's acknowledgment that there was one attorney who shouldn't be practicing criminal law.

Commissioner Stevens said that there is a difference between commission oversight of board makeup and the need for attorney evaluations. It is heavy handed to tell a business how it should be run but it is appropriate to tell them that they need to evaluate attorneys when we are paying the bills for those attorneys.

Chair Ellis asked if there isn't a difference between private enterprise and public service.

Commissioner Stevens said that unless it can be shown that a particular structure isn't working, the Commission shouldn't be involved with the inner workings of a contractor.

Chair Ellis said that even evaluations might not serve their purpose if the board were composed of members who didn't want to push too hard for fear that they might be affected.

Commissioner Welch asked if the situation would be the same if we were talking about a law firm, such as the Lillegard firm [in Polk County], instead of a consortium.

Chair Ellis said that if a law firm were the sole provider in a large county, the concerns would be the same.

Commissioner Welch said that Commission Steven's concerns were more persuasive to her with respect to a law firm since in a consortium there is no real business entity or other management structure beyond a system for managing the public funds they receive.

Commission Stevens said that this is probably a conversation for the retreat.

Commissioner Ozanne said that in Clackamas County he observed a troubling level of synchronization with the judiciary. It is a best practice to not have the judiciary run the public defense system and we have generally struck the right balance in Oregon but Clackamas may need to be reminded of this.

Chair Ellis said he would like to schedule an updated presentation on Clackamas County to see that they had followed through on the evaluations.

Commissioner Ozanne said that in Clackamas County they seemed to be concerned that the Commission might move to a public defender model. That is not his intention. Chair Ellis said that he is more open to it.

Service Delivery Plan for Clackamas County

Structure:

The public defense delivery system in Clackamas County relies on a single provider for criminal defense representation and a single provider for juvenile and civil commitment representation. Lack of competition does not in itself, appear to have negatively affected the delivery of public defense services in the county but when the sole provider is a consortium it is more likely than other types of providers to lack of a system for evaluating the work of member attorneys, a method for addressing underperformance and mechanisms for admitting new members and preparing for transitions in leadership.

Overall the representation provided by members of CIDC is rated as "good," and representation by IDI as "good to excellent." The quality of representation provided in individual cases, however, is reported to vary from one attorney to another in both consortia.

Neither of these contractors, at the time of the Commission hearing in March of 2009, had in place a process for systematic evaluation of the work of their attorneys and both have sometimes failed to address significant performance issues even when they were well known.

Recently, however, both consortia have taken some very positive steps to address attorney performance. At the June PDSC meeting it was reported that CIDC had nearly completed its design work on an evaluation tool and that evaluations of all member attorneys would be occurring in the fall of 2009. Mr. Gray expected that the evaluation process might result in the removal of some members.

IDI has begun research on an evaluation process and has already implemented some efforts at quality improvement. One attorney has been terminated from consortium membership. Two attorneys are now specializing in child representation as part of a six-month pilot project. IDI members are meeting with Judge Darling, with CASAs, and with DHS to enhance their effectiveness as community partners.

It is hoped that these positive developments will continue. PDSC has invited representatives of both consortia to report on the results of these efforts at the PDSC meeting on January 28, 2010.

In terms of admitting new members, CIDC has long had a well regarded mentoring program in place which allows inexperienced lawyers to handle misdemeanor cases under supervision. When there are vacancies in the consortium, successful apprentices can be added to the organization and trained to handle the full spectrum of criminal cases. While some younger attorneys have been added over the years, the majority of members have been with the consortium for many years. If and when a large portion of these attorneys decide to retire, the current mentoring system might not be adequate to train a sufficient number of new attorneys.¹⁰

The CIDC board has now taken some initial steps to plan for the eventual need to replace its current director.

IDI added a new member recently. Openings in the membership are currently rare since the caseload is declining. Again, should a large proportion of the current members decide to retire at approximately the same time, replacement would be difficult and continuing members might not be able to mentor the number of new attorneys needed. No succession plan is in place should the current administrator decide to retire.

¹⁰ The two newer CIDC attorneys who testified before the Commission on June 19 appeared to be very positive additions.

While it will be critical for both consortia to ensure that they have the capacity to “evolve” to meet changing circumstances such as those discussed above, the current public defense delivery system in Clackamas County appears to be functioning satisfactorily.

Best Practices

Both CIDC and IDI have implemented a number of “best practices” for public defense providers, including having a board of directors to oversee the operation of the organization.

Both CIDC and IDI have had boards since their founding. Both have had or currently have at least one non-consortium member on their boards. CIDC’s board includes some permanent positions and some rotating positions. All of IDI’s board positions have been permanent but discussions are taking place about possible expansion of the board.

One of the topics that the Commission will be discussing at its January 28, 2010 meeting is the role of boards in Oregon’s public defense system and how directive the Commission should be in encouraging or requiring implementation of best practices in board selection and operation for some or all public defense providers.

It has also been recommended that PDSC consider taking a more proactive approach to the implementation of quality assurance systems in defender offices, again, either by outlining and recommending best practice models, or by requiring that an approved process be in place. This topic is also part of the agenda for the January 28 meeting.

Exhibit A

EXHIBIT A – CIDC Questions and Responses

1. **Question:** *CIDC Board. Some recommended best practices for boards and commissions of non-profit organizations are for them to include outside members, staggered memberships and few, if any permanent, members. PDSC may wish to make a recommendation to CIDC on some of these best practices (for example, Commissioner Potter suggested that you designate a certain number of board positions for members with 0-5 years of experience, those with 5 to 10 and those with more than ten) and would like to be informed whether any of these practices have been considered by CIDC and, if so, why they were rejected.*

Response: The short answer to the question about practices on staffing a Board of Directors, is that we have simply operated under the same system for many years and it works. We do not limit our rotation on the Board base don years of experience. A new attorney could be ion the Board the first year of practice. We have a policy of encouraging all CIDC attorneys to spend time on the Board, regardless of experience levels, and this practice has given us a good mix of young and old over the years we have been in operation. We did have a non-criminal defense attorney on our Board for the first 24 years. He also worked on one of the committees. When it came time to replace that member, the Board took a traditional, "if it aint broke don't fix it" attitude. We did debate and did quite frankly battle over bringing in a non lawyer and/or non CIDC affiliated Board member. However, the idea made little headway. My impression, and I could be wrong, is that the Board had no idea what criteria would be used to recruit a non attorney Board member, and chose not to put in the work.

Follow-up Question: *The overriding concern I heard from our commissioners is that your current method of selecting board members may not be serving the best long term interests of CIDC. They would be interested in having a discussion about the merits of using outside board members and of eliminating permanent positions and staggering terms so as to be more inclusive of the broad range of your membership. If these issues have been discussed by your board, the commission would like to hear about those discussions and discuss the merits of them with you in June.*

Would you please send me a current copy of your bylaws and other rules or policies CIDC has adopted that govern the operation of the consortium.

Response: As to the Structure of the Board: I am happy to discuss this with you at the June meeting. As far as access to serve on the Board, we rotate 2 members every year, and have tried to get everyone on the Board who shows an interest. Other issues can wait for now.

2. **Question:** *What is your plan for bringing in new members to replace members who will be retiring in the next five years? Do you have a plan for replacing attorneys you expect to retire in the next 10 years?*

Response: Our method of replacement is not based on cycles of 5 or 10 years. We have a procedure for the Board to decide on open or abandoned positions, to advertise for applicants and a committee to evaluate applications. The efficiency of that system will be based on how much advance notice we get of retirements.

Follow-up Question: *I suppose the logical follow-up question would be, if you don't get a lot of advance notice and a significant number of members decide to retire around the same time, how would you bring in and train a sufficient number of attorneys to handle the caseload? It is not just an academic question since twelve of your members have*

been practicing for 30 years or more. (I know that in the current economic environment much of the workforce is working beyond minimum retirement age and lawyers probably even longer than average, but if the economy takes a significant turn for the better, there may be a lot of retirements that occur around the same time.)

Response: As to what to do in the face of a mass retirement ("migration"): We have yet to work out a specific program, but I will begin to cover the issue with the Board at our next meeting.

3. **Question:** *What is your succession plan for the administrator position?*

Response: We do not have a definite plan for the succession of the administrator. We have several competent members, a few of whom would take the job if recruited. Training would take about a month. But, I am still here to haunt you.

Follow-up Question: *We're glad you're still there and hope you stay a long time. I think the commission would be interested in the process that would be used to select a new administrator assuming there were willing applicants. Would there be any effort to confer with the bench and others at that point about who could best fill your shoes? Without outside input would the board and membership be tempted to select the person least likely to enforce quality standards and expectations?*

Response: As to the administrator: I have mentioned to the Board that any successor should be selected based on Board interviews of those interested, and feedback from the judiciary on ability to work within the present system. There would have to be a training period with me as well. That is about as far as the Board has taken the process.

4. **Question:** *What progress has been made on the development of an attorney evaluation procedure?*

Response: We have already designed and mailed out a client survey to a random sample of clients for all of our attorneys. The return rate from clients is low, as anticipated. We have yet to examine and evaluate the data. However, it will be a factor in the training and work we do with attorneys.

Follow-up Question: *I guess I may have misunderstood what kind of attorney evaluation process Brad Jonasson was working on. When we met in your office back in February, I assumed it was a more comprehensive evaluation than a client feed-back form that was being considered, with direct outreach to judges, district attorneys and others participants in the local court system for input on a regular basis, something like the process put in place by MCAD after its reorganization. Can you clarify?*

Response: As to attorney evaluations, we are drafting a judicial survey for each attorney, and a template for the Board to use to process both judicial and client information on each attorney.

Exhibit B

EXHIBIT B – Questions to IDI Administrator

1. IDI Board. Some recommended best practices for boards and commissions of non-profit organizations are that they include outside members (you already have one), a mechanism for bringing newer members onto the board, and few, if any permanent, members. PDSC may wish to make a recommendation to IDI on some of these best practices and would like to be informed whether you have considered adding board members, rotating board seats or making other changes in your board structure, and, if so, why they were rejected.
2. You have brought in two new consortium members recently. Was that part of a succession plan? Were they brought in by individual attorneys or by IDI? Who bore the burden of training/mentoring the new attorneys? Was this an effective way to bring in new lawyers? Are there other approaches being considered? Do you have a comprehensive plan for replacing attorneys as they retire or move into other areas of practice?
3. What is your succession plan for the administrator position?
4. Does IDI plan to implement an attorney evaluation procedure? Will it include soliciting information from others in the juvenile justice system about the performance of the attorneys? Will it include a process for removing attorneys with significant performance issues?
5. One of our commissioners is considering recommending to the commission that it develop a series of specific requirements/expectations of attorneys for children. It might require, for example, that an attorney for a child between the ages of 0 and 5 be required to observe the child in the residence after initial placement and then on a regular basis, to speak with the foster parent at regular intervals, to communicate with DHS, the CASA, treatment providers, and parents' attorneys on a regular basis, to maintain a file for each client in which the attorney periodically articulates why the child cannot be returned home or placed with relatives, lists the issues that the child's attorney has raised in conversations with the DHS worker, in CRB reviews, in court hearings, and what actions the attorney is taking to advance the plan for the child.

INDEPENDENT DEFENDERS, INC.

PO Box 1229
Lake Oswego, OR 97035
503-635-5805

June 10, 2009

Ingrid Swenson
Executive Director
Office of Public Defense Services
1320 Capitol St., NE, Suite No. 190
Salem, Oregon 97301

Re: Response to Commission's questions of April 24, 2009

Dear Ms. Swenson:

I have reviewed the questions sent to me on April 24, 2009. The our Board has met and discussed the issues which were raised by these questions. We have started the process of implementing some changes and are considering other adaptations to how we have been operating since our inception. We have always been a relatively small provider. We began with four attorneys. Three of the attorneys are still active in our consortium. They comprise the current board of directors, with an additional board member who is currently a CASA and has been a business owner. Although our consortium has grown from four attorneys to the current eleven, it is still a smaller provider in the Metro area. We have kept our area of expertise to Juvenile law and Civil Commitments. Over the past two years, for the first time in our history, we have had a reduction in the number of cases from what we have estimated in our contract. As we have always done, we have paid our attorneys on a per case basis. As we have had a decrease in our caseload, we have been able to have a sum available to reimburse the Commission as a result in the overage in our caseload. We have worked with our analyst in reconciling our numbers and reaching agreement as to appropriate adjustments in our contract.

1. As mentioned above, we currently have four board members. As a result of our meeting with you earlier this year, we have been searching for another public member, possibly someone involved in education or business. It is also likely that we will add to the board one of our member attorneys on an annual rotating basis. We have no "mechanism" for bringing in new board members. We have discussed possible

new additions with our current board and with the member attorneys.

2. Our caseload has decreased over the past two years. Although we have discussed bringing in new attorneys, with the decreasing caseload, it has been difficult to be able to add people during this time. We have added three attorneys over the past 8 years. Two of these attorneys were added as a result of attorneys leaving the organization and the need to keep the number of attorneys stable to handle the number of appointed cases. Two of the attorneys shared space with Clancy and Slininger and they mentored the attorneys and assisted them in learning juvenile law in Clackamas County. The third attorney had a number of years of experience practicing juvenile law in Multnomah County. He wanted to practice in Clackamas County. He initially shared office space with me and has now moved his office to Oregon City. We receive letters and emails from attorneys during the year expressing an interest in joining our consortium. It would appear from their resumes that they have experience in this practice area and may be able to “hit the ground running” if we needed to add attorneys. We have discussed this pool of attorneys, word of mouth referrals and if necessary advertising, if we need to add one or more attorneys in the future.

3. We do not have a succession plan for the administrator position. As mentioned, this is a small group. We have been lucky to have had only two administrative assistants during the life of our organization. Both have been very knowledgeable and have had the ability to work with the Court and the Commission or its predecessor. If I decide that I no longer want to perform the duties of administrator, our current assistant would be vital in assisting the new administrator in the performance of his or her duties. I am confident that many of the current attorneys in our contract could perform the duties of the administrator if they wanted to do so. It is my belief that my replacement would come from this pool. This is not a highly paid position as we have tried to keep overhead low and maximize the payment for services to our clients. It is not a full time position and would best be done by someone who is representing clients under the contract as well as administering the contract.

4. After the last meeting, we have begun to research what would be an appropriate comprehensive evaluation process. We have obtained evaluations from other consortia and would like to be able to incorporate from those a process that would meet the needs of our organization. We would like it to include input from others in the juvenile justice system. It would formalize the process which we already have in addressing performance issues of attorneys. This currently involves written and/or oral notice of the problem needing to be addressed, a plan to correct the problem and timetable to do so, and notice of the possible sanctions if the problem is not corrected.

5. It is appropriate to set some guidelines or expectations as to what should be done in various types of cases, as long as sufficient funds are provided to pay for the services which are expected. If an attorney is expected to go from Canby to Sandy to see a child in a foster home at the initial placement and at regular intervals during the case, then they should be compensated for the time spent to do this. The same is true of the other suggestions. I believe that some of these suggestions are being done by the attorneys in the consortium, although it may not be done consistently in every case

and by every attorney. There should be some leeway given to the attorney to perform the necessary duties in representing their client which take into account the specific issues in the case.

Very truly yours,

Martin R. Cohen

Attachment 3

AGENDA ITEM 3 - BOARDS OF DIRECTORS FOR PUBLIC DEFENSE CONTRACTORS

1. Previous PDSC Discussions regarding Boards

April 16, 2009 PDSC meeting

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

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

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

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

....

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

August 6, 2009 PDSC meeting

Chair Ellis said that ... [CIDC] board continues to be a provider only board with permanent members which is not a preferred model, but he would prefer that the Commission not force change.

Commission Ozanne said that Clackamas County had been held up as a model and Ron Gray has been a leader on consortium issues. While they do good work they may be Exhibit A for why the Commission needs to be more prescriptive. The Commission needs to discuss what steps it should take. Clackamas County is still struggling with how to do an evaluation and its board lacks diversity, business expertise and community involvement. At a retreat the Commission should discuss possible prescriptions regarding board makeup and standard evaluations, with accommodations for differences around the state.

Commissioner Stevens asked if there was evidence that board makeup affects a contractor's practice of law, that it affects service delivery.

Chair Ellis said it is intuitive that whoever selects Ron Gray's replacement should be a balanced body rather than a group of providers whose dominant thought is what it will mean for them.

Commissioner Ozanne said that Exhibit B for a more prescriptive model would be Ron Gray's acknowledgment that there was one attorney who shouldn't be practicing criminal law.

Commissioner Stevens said that there is a difference between commission oversight of board makeup and the need for attorney evaluations. It is heavy handed to tell a business how it should be run but it is appropriate to tell them that they need to evaluate attorneys when we are paying the bills for those attorneys.

Chair Ellis asked if there isn't a difference between private enterprise and public service.

Commissioner Stevens said that unless it can be shown that a particular structure isn't working, the Commission shouldn't be involved with the inner workings of a contractor.

Chair Ellis said that even evaluations might not serve their purpose if the board were composed of members who didn't want to push too hard for fear that they might be affected.

Commissioner Welch asked if the situation would be the same if we were talking about a law firm, such as the Lillegard firm, instead of a consortium.

Chair Ellis said that if a law firm were the sole provider in a large county, the concerns would be the same.

Commissioner Welch said that Commission Steven's concerns were more persuasive to her with respect to a law firm since in a consortium there is no real business entity or other management structure beyond a system for managing the public funds they receive.

Commission Stevens said that this is probably a conversation for the retreat.

September 9, 2009 PDSC Retreat - (Discussion of Boards and Attorney Evaluation)

56:15 P. Ozanne I said proactive too, in part, but I will talk prescriptive because you did talk about proactive. Prescriptive would be, for example, I think it is time to really say that every consortium needs a board of directors and they need an outside member. I think we need to, and I don't know what the scope is, I think, hopefully, the public defense offices have that, and if they don't then we should prescribe it for them, and an attorney evaluation. We could come together as has often been the case in these areas of quality assurance. I don't understand why we have to have different systems. I think we could collectively agree on what the best way to evaluate an attorney is. My sense is too, having managed over the last 10 years, doing more management than lawyering, that when you are a manager you tend to really want to avoid problem areas. I don't think there is any rule we can have, but evaluations aren't about telling people if they are doing a bad job, you have to tell people right away if they are doing a bad job. Evaluations are more coaching, career mentoring, so it should really be a positive thing but ultimately, if it has to be, it is mentoring to get someone out of the business. I don't see why we can't prescribe an evaluation.

57:40 Chair Ellis Would you want to do it, "When you bid for a public defense contract you have to have these things"?

57:53 P. Ozanne I think so. When you start thinking in those terms, which I did when I was in Ingrid's position, you always hit something like, "Well, that is not going to work in places where there is nobody else or whatever." That would be the implication. I would think that the community of juvenile defense lawyers and public defense lawyers, if there is a difference, could come up with a uniform instrument and recommend a process to do it. I am not personally thinking annual evaluations are important. If it got done at all I would be happy. When I am in an organization I usually shoot for maybe two years. Then anybody who reports to me I will tell you all the time when you are doing good work, but I will also tell you right away if you are not. We have got a lot of work to do but the evaluation would be prescriptive and the formation of a board would be prescriptive. You just have to have one. I would be inclined to say that, yes, this is a condition of the contract.

58:59 Chair Ellis How do the rest of you feel?

- 59:00 J. Stevens I continue to have a problem. I don't mind saying that they have to have boards because they are created agencies. They are in fact businesses and they do spend public money. I still have a problem with requiring a certain makeup on the board unless I have got some evidence that not having the makeup is actually hurting them. I haven't seen any of that. If we were to prescribe a makeup of a board, I would like to see what difference that is going to make other than in perception. If it is going to make them better decision makers or anything else, I haven't seen any evidence of that.
- 59:52 P. Ozanne I think there is. I have seen it and I am not arguing it is not a completely respectable position to be more hands off than prescriptive. I think I may be a minority. Where I have seen it is where I have been able to convince a board that they needed at least a business lawyer as opposed to criminal, so that people knew how to set up the incorporation documents.
- 1:00:21 Chair Ellis You need a Chip Lazenby on every board.
- 1:00:21 P. Ozanne I think it is worth having an outside, non-lawyer as we do on this Commission.
- 1:00:29 J. Stevens You are required by law to have me.
- 1:00:34 P. Ozanne I am talking about trying to persuade you to create law here. They have an outsider who isn't a lawyer, somebody who really has deep community roots to build support in the community or has some unique business knowledge.
- 1:00:53 Chair Ellis How do you handle that? There are several firms around the state, some of them single member firms, who are among our very best providers. You are thinking of consortia, but I am thinking of law firm providers and there are some wonderful providers and they have really one person who runs it.
- 1:01:19 P. Ozanne Again, it is the problem with central planning. I would require that they have a community board that wouldn't necessarily direct them but they would be required to have other bar members, a makeup like a board. It would be an advisory committee about what they are doing. That is probably what I would try to do.

1:01:39 Chair Ellis Part of the rationale is succession. Without a board you just have no succession. Part of the rationale is this is public service and so you want a sense of public accountability, but I do wonder how we do that with the private firms.

....

1:02:19 P. Ozanne I think if they take the public's money it comes with certain conditions even though it is not enough and all of those things. Again, that is just one Commissioner's view. Maybe there is a way to distinguish the consortium from the private firm in a way that is principled. My answer in the past has been that they should have a board too but it would be an advisory board.

1:02:48 C. Lazenby I agree with Peter in a sense. The devil is in the details in trying to figure out how to make it work. The notion I think is worth pursuing. As we were having the conversation earlier and there were some elements that were being pointed out about consortia and what their problems were, I probably somewhat cavalierly said, "That sounds like a business formation problem to me rather than a real problem." They could structure it in such a way that would resolve all those (inaudible) into saying we need more money. It would also make them more accountable and make them more professional and provide a more disciplined approach in terms of the way the services are provided. If at the end of the day that is what we really want to do, is instill higher quality and more consistent quality of service across the state, then we need to have some accountability models that we can look to. To a certain extent the consortium models that we are looking at – four or five law firms that have one or two lawyers each involved in sharing this caseload, it becomes really amorphous in terms of trying to say who is responsible for quality. Not that they wouldn't step up and do that but I think we need to start asking ourselves, "Are the entities that we are giving this public money to structured in such a way that we can hold them accountable?" To the extent that there are features in this consortium where it can allow that to happen, if we want to get through and then talk about how we ensure quality we are just shooting in the dark. We won't be able to do it unless we change that structure.

1:04:32 Chair Ellis One of the great success stories of the last six or so years is Marion County. I would be interested in how people analyze

what is happening. My perspective is it was a county where there wasn't anybody doing anything wrong, but it was a private appointment system. No better. That is all it was. I think our meetings there were among the more stressful meetings that we have had. It led to creation of a PD and galvanized MCAD to now become a much stronger, much better, and much more well managed group. Part of that has to do with who is there and doing the managing part. Part of it, I think, had to do with competition really causing some change. Part of it has to do with I think they were as uncomfortable as we were in those meetings. It was not a pleasant experience on either side and I give both the practitioners and the managers a lot of credit. Instead of sulking they really straightened out and have done well. How can we build on that? That was prescriptive. That was probably the most assertive change this Commission made in any geographic area.

1:06:31 P. Ozanne That is more, in my view, proactive. That is a situation where you look at a specific situation and the Commission gets involved. Whereas with a normal board/chief operating officer relationship, you would tell Ingrid to go solve it. This was a good example of the proactive. By the way, do they have that kind of board of directors now? I can't remember what happened. I know we got a good administrator in there, Judge Lipscomb. I would be worried that the thing would regress back to the meeting in Marion County without a robust board for us to go visit occasionally.

1:07:13 Chair Ellis The one we see is Olcott Thompson who is a provider.

1:07:23 P. Ozanne It is hard to talk to the founding members of a consortium about really sort of organic or quality problems. Ingrid and I had to go do that because there is so much defensiveness and there would be anyway. If you got a board with some people of different perspectives, I think it makes it easier both to talk about the issues and affect change.

1:07:43 Chair Ellis How do the rest of you react to Peter's comments? I would describe our MO up to this point as cajoling, recommending best practices; having the quality assurance task force come in and give suggestions. It is all an effort to cause the change without imposing the change. Do the rest of you feel we have played that out as far as it goes and we ought to be more demanding and assertive?

- 1:08:25 J. Potter Do we now, on the RFP - I should know this but I don't - ask the question, "Do you have a board? If not, why not? If you do what does the board entail?" The secondary question that Peter touched on - evaluations of lawyers, "Do you evaluate lawyers? If not, why not? If you do, tell us about the evaluation process."
- 1:08:47 I. Swenson I don't think we do the "why not" do we Kathryn?
- 1:08:53 K. Aylward No. We ask them to let us know which of the best practices they have implemented and if there is a financial reason why they haven't implemented it that they need to tell us what that is, but a lot of the responses to the RFPs were things like, "Not needed," "Not applicable," and that was sort of the end of it.
- 1:09:17 J. Potter You might consider changing cultures in small steps. I would think this change is a balancing act. You can either go in reasonably heavy handed and demand it, or you can make it known that this is the distinct preference of the Commission and OPDS and put the onus on the contractor to explain why they might not want a board and sell us on that notion individually or explain why they might not want to evaluate lawyers or if they have some other alternative, but basically sell the concept back to us so that we can say, "Oh, under that circumstance we agree, but our preference is this model."
- 1:10:06 J. Stevens I think when it comes to evaluations we have every right to say, "(A) you will do it; and, (B) this is how you will do it." We are paying for that service and we have a right to know what we are getting and know that it is working the way we intend it to work.
- 1:10:24 Chair Ellis You won't see the evaluations.
- 1:10:23 J. Stevens I know. You need to know that it is being done. I just think you do. Because it is the state's money and the people's money, we have every right to say that they will do it and they will do it the way we want them to.
- 1:10:41 Chair Ellis Is part of the problem the classic systemic one that you have a consortium that has been together and is kind of set in its ways, and it is the devil's own due to get them to be the ones to decide to make that kind of a change.

- 1:11:05 P. Ozanne We have a public option. “If you don’t want to do it we will send in our own people to evaluate.”
- 1:11:13 S. McCrea That is what we are doing with the site visits.
- 1:11:17 Chair Ellis That is the cajoling model. That has been our effort to get there by persuasion.
- 11:11:25 P. Ozanne We could have a statewide public option that we will bring in with our own evaluators if you don’t want to.
- 1:11:28 S. McCrea In storm trooper outfits.
- 1:11:40 J. Potter I think we are making considerable progress using the cajoling model and maybe it ratchets up a little bit. I am a little hesitant, and maybe it is just me not wanting to seem like big government –
- 1:11:52 S. McCrea No. I am way hesitant, John. If I were a porcupine my quills would all be popping out right now.
- 1:11:57 J. Potter I think you bring people along by educating them. There may be people who never want to come along and we choose that they don’t get a contract.
- 1:12:09 Hon. Elizabeth
Welch On the evaluation thing I am thinking back about when I was still working as a judge everyday, in Portland of course, where there are lots of law firms. We were just talking about juvenile again. The people who most frequently came to talk to the judge about, “How are the people who work for me doing?” was the district attorney’s office. I am thinking about what law firms had people come and ask questions and which ones didn’t. You know what? There is a correlation there. I can’t prove it, but it was the better firms that were asking. You could find out whether or not they are polling the bench by asking them.
- 1:12:59 Chair Ellis The great prod that worked in Marion County was competition. In the areas where you are thinking about where you get the entrenched provider that doesn’t want to change. What about the prod of competition?
- 1:13:17 P. Ozanne We are still, I think - and when I say “we” I am using that pretty liberally; I wasn’t here when the public defender office got started – I think...

1:13:27 Chair Ellis You had a lot to do with the spade work on it.

1:13:29 P. Ozanne ...the jury is still out on whether that is really going to do the job. Competition is a nice idea but it gets pretty sticky. When you actually have people in the county there is some competition. It is a good concept. I think most folks, especially the ones who are dragging along I suspect they know there really aren't a lot of alternatives and we are probably stuck with them.

1:14:00 C. Lazenby Unless we can change the way that stuff happens. They will adjust.

1:14:07 S. McCrea I feel the other way. I feel like the message over the past several years has been, "If you don't start performing you are going to get snapped off the vine." I think that is kind of the word that has gotten out. I think people are really concerned about that. That is my impression. It is not business as usual. It is not like you can just get by. It is more like resistance is futile and you will be assimilated.

2. Survey of PDSC Contractors on Boards and Evaluation Processes

Contractor Boards & Attorney Evaluations

Please provide the name of the person completing this survey.

Answer Options	Response Percent	Response Count
Name:	100.0%	38
	<i>answered question</i>	38
	<i>skipped question</i>	3

Number	Response Date	Name:
1	Dec 16, 2009 9:46 PM	James Varner
2	Dec 16, 2009 9:50 PM	Kenneth W. Madison
3	Dec 16, 2009 9:53 PM	Guy B. Greco
4	Dec 16, 2009 10:01 PM	Mark McKechnie
5	Dec 16, 2009 10:11 PM	Victoria Moffet
6	Dec 16, 2009 10:40 PM	Doug Fischer
7	Dec 16, 2009 10:51 PM	Tom Crabtree
8	Dec 16, 2009 11:23 PM	Keith B. Rogers
9	Dec 16, 2009 11:32 PM	Holly Preslar
10	Dec 16, 2009 11:33 PM	Rob Harris
11	Dec 17, 2009 12:21 AM	kris kaino
12	Dec 17, 2009 12:26 AM	Lane Borg
13	Dec 17, 2009 1:46 AM	Karen Stenard
14	Dec 17, 2009 4:23 AM	Gordon Mallon
15	Dec 17, 2009 4:40 PM	Martin Cohen
16	Dec 17, 2009 8:07 PM	Robert Suchy
17	Dec 17, 2009 9:03 PM	Carole Hamilton
18	Dec 17, 2009 9:45 PM	bruce liebowitz
19	Dec 17, 2009 10:15 PM	Richard A. Cremer
20	Dec 17, 2009 10:58 PM	Robin L. Wolfe
21	Dec 18, 2009 12:19 AM	CHRIS L. LILLEGARD
22	Dec 18, 2009 2:10 AM	James Varner
23	Dec 18, 2009 5:19 PM	Gary Kiyuna
24	Dec 18, 2009 6:54 PM	Mary Ann Murk
25	Dec 18, 2009 9:01 PM	Tom Sermak
26	Dec 19, 2009 4:41 AM	gary kiyuna
27	Dec 20, 2009 7:45 PM	Sharon Mitchell
28	Dec 22, 2009 2:53 AM	JODY MEEKER
29	Dec 22, 2009 9:13 PM	Herbert Putney
30	Dec 23, 2009 9:57 PM	Jim Arneson
31	Dec 28, 2009 9:59 PM	Craig G. Childress
32	Dec 31, 2009 9:23 PM	Jodi Gartman
33	Jan 11, 2010 11:32 PM	Jennifer Nash
34	Jan 12, 2010 2:47 PM	Ron Gray
35	Jan 12, 2010 5:06 PM	Greg Hazarabedian
36	Jan 14, 2010 4:54 PM	Dick Garbutt
37	Jan 15, 2010 2:30 AM	Richard Condon
38	Jan 15, 2010 5:46 PM	Grant R Burton

Contractor Boards & Attorney Evaluations

Please tell us which contract entity you represent.

Contrator

Answer Options

Contract Entity

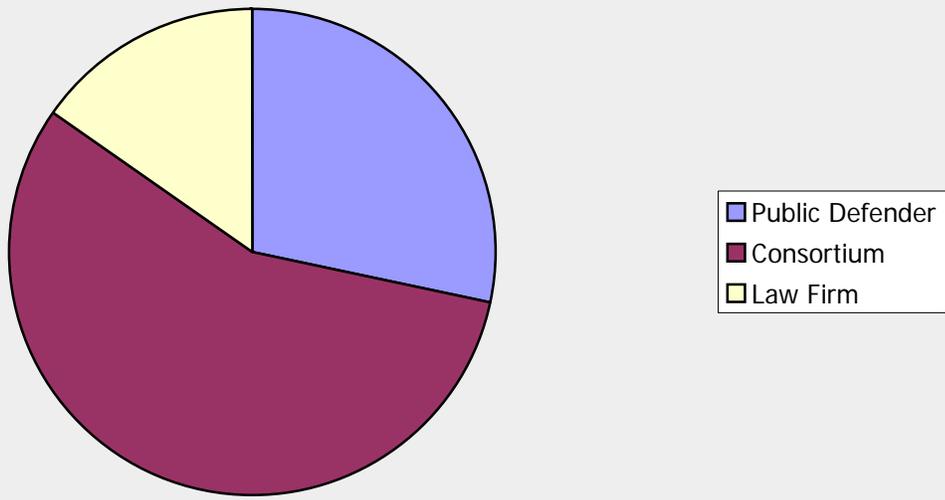
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<i>answered question</i>						39
<i>skipped question</i>						2
Aaron & Associates	Alexander & Associates PC	Baker County Consortium	Bend Attorney Group	Benton County Legal Defense Corporation	Blue Mountain Defenders LLC	
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Brindle McCaslin Lee PC	Chris L. Lillegard PC	Clackamas Indigent Defense Corporation	Clatsop County Defenders Association	Columbia County Indigent Defense Corporation	Coos County Indigent Defense Consortium	
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Coughlin Leuenberger & Moon	Crabtree & Rahmsdorff Defense Services, Inc	Curry County Consortium	Dawn McIntosh	DeKalb Brenneman & Brenneman	Gordon Mallon	
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Grande Ronde Defenders	Hillsboro Law Group PC	Independent Defenders Inc.	Intermountain Public Defenders Inc	Jackson Juvenile Consortium LLC	James A. Arneson, P.C.	
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John B. Lamborn	Josephine County Defense Lawyers	Juvenile Advocacy Consortium	Juvenile Rights Project Inc	Karpstein & Verhulst	Klamath Defender Services, Inc.	
0	1	1	1	0	1	
L & S, Inc.	Lane Juvenile Lawyers Association	Lincoln Defense Consortium	Linn County Juvenile Defense Corporation	Linn County Legal Defense Corporation	Los Abogados	
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Madras Consortium	Marion County Association of Defenders	Mary Ann Murk	MASH	Metropolitan Public Defender Services Inc	Morris Olson Smith & Starns PC
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Multnomah County Indigent Defense Consortium	Multnomah Defenders Inc	Multnomah Juvenile Defense Consortium	Native American Program/Legal Aid Services of Oregon	Oregon Appellate Consortium LLC	Oregon Defense Attorney Consortium Inc
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Oregon Post Conviction Consortium	Polk County Conflict Consortium	Portland Defense Consortium	Public Defender of Marion County	Public Defender Services of Lane County	Rader Stoddard & Perez
0	0	1	1	1	0
Richard Cremer, P.C.	Ridehalgh & Associates LLC	Rose City Defense Consortium	Southern Oregon Public Defender	Southwestern Oregon Public Defender Services, Inc.	Troy, Rosenberg & Wolfe
1	0	0	1	1	1
Twenty-Second Circuit Defenders	Umpqua Valley Public Defender	Wasco/Sherman Indigent Defense Corporation	Yamhill County Defenders Inc		
0	1	0	1		

What is the structure of your contract entity?

Answer Options	Response Percent	Response Count
Public Defender	28.2%	11
Consortium	56.4%	22
Law Firm	15.4%	6
<i>answered question</i>		39
<i>skipped question</i>		2

What is the structure of your contract entity?

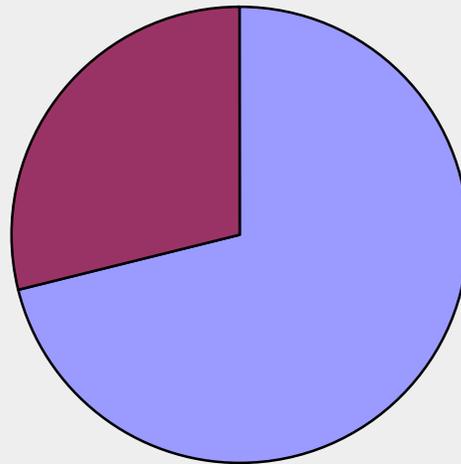


Contractor Boards & Attorney Evaluations

Does your contract office or group have a board of directors or other advisory body?

Answer Options	Response Percent	Response Count
Yes	71.1%	27
No	28.9%	11
<i>answered question</i>		38
<i>skipped question</i>		3

Does your contract office or group have a board of directors or other advisory body?



■ Yes
■ No

Contractor Boards & Attorney Evaluations

How many members serve on the board?		
		Response Count
		28
	<i>answered question</i>	28
	<i>skipped question</i>	13

Response Text		
1	Seven	Dec 16, 2009 9:55 PM
2	14	Dec 16, 2009 10:09 PM
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10	4	Dec 17, 2009 4:53 PM
11	5	Dec 17, 2009 6:24 PM
12	7	Dec 17, 2009 8:19 PM
13	3	Dec 17, 2009 9:08 PM
14	8	Dec 17, 2009 9:52 PM
15	One	Dec 17, 2009 10:17 PM
16	1	Dec 18, 2009 12:21 AM
17	seven	Dec 18, 2009 9:20 PM
18	5	Dec 22, 2009 3:04 AM
19	Five	Dec 22, 2009 9:17 PM
20	Bylaws require at least five but up to nine, we currently have five members	Dec 31, 2009 9:44 PM
21	5	Jan 11, 2010 11:41 PM
22	9	Jan 12, 2010 2:51 PM
23	Seven.	Jan 12, 2010 5:25 PM
24	Ten	Jan 12, 2010 7:27 PM
25	5	Jan 14, 2010 5:04 PM
26	five	Jan 15, 2010 2:50 AM
27	2	Jan 15, 2010 5:54 PM
28	Five	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

Who is eligible to be a board member?		
		Response Count
		28
<i>answered question</i>		28
<i>skipped question</i>		13

Response Text		
1	Firm owner or partner	Dec 16, 2009 9:55 PM
2	Board members cannot be employees of JRP. Board members are screened to avoid the likelihood of a conflict-of-interest.	Dec 16, 2009 10:09 PM
3	Members of the consortium	Dec 16, 2009 11:40 PM
4	Anyone so elected, appointed, or designated	Dec 16, 2009 11:44 PM
5	Active members of the Oregon State Bar in good standing.	Dec 16, 2009 11:47 PM
6	Anyone. Including providers, other attorneys or members of community	Dec 16, 2009 11:49 PM
7	Anyone	Dec 16, 2009 11:58 PM
8	no prosecutors, but otherwise no limitations.	Dec 17, 2009 12:34 AM
9	2 spots are for consortium lawyers, additional spots must be non-consortium	Dec 17, 2009 1:50 AM
10	members of the consortium and public members	Dec 17, 2009 4:53 PM
11	anyone	Dec 17, 2009 6:24 PM
12	Any YCD provider attorney	Dec 17, 2009 8:19 PM
13	No limitations	Dec 17, 2009 9:08 PM
14	firm head or independent board member	Dec 17, 2009 9:52 PM
15	The owner	Dec 17, 2009 10:17 PM
16	Stockholder	Dec 18, 2009 12:21 AM
17	Our requirements are that four members be lawyers anyone can fill the other positions	Dec 18, 2009 9:20 PM
18	Two board members are contract attorneys and the other three members must be community members.	Dec 22, 2009 3:04 AM
19	Any Adult	Dec 22, 2009 9:17 PM
20	Two of the members must be attorneys who are not contract attorneys of the organization.	Dec 31, 2009 9:44 PM
21	3 current consortium members and 2 non-consortium members	Jan 11, 2010 11:41 PM
22	Any contracting Attorney, plus one non-contracting person	Jan 12, 2010 2:51 PM
23	Six Lane County lawyers and one non-lawyer.	Jan 12, 2010 5:25 PM
24	Any one	Jan 12, 2010 7:27 PM
25	Very rarely occurs but we use a case by case evaluation.	Jan 14, 2010 5:04 PM
26	Senior affiliates	Jan 15, 2010 2:50 AM
27	Shareholders (we only have two active shareholders at the moment).	Jan 15, 2010 5:54 PM
28	Any adult	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

How are members selected?		
		Response Count
		28
<i>answered question</i>		28
<i>skipped question</i>		13

Response Text		
1	Firm owner or partner	Dec 16, 2009 9:55 PM
2	Board members are selected to represent a range of skills and qualities that will contribute to the organization and support JRP's mission. Prospective board members can be recommended by anyone. Board members, with the support of the Executive Director, screen potential members. New board members are elected by a majority vote of the Board of Directors.	Dec 16, 2009 10:09 PM
3	by vote of the entire membership at an annual meeting held per by-laws in November of each year	Dec 16, 2009 11:40 PM
4	By board recommendation	Dec 16, 2009 11:44 PM
5	One member appointed by the Chief Justice of the Or. Supreme Court; one appointed by the President of the Or State Bar Assoc.; one appointed by the President of the Multnomah Bar Assoc.; One appointed by the President of OCDLA; One appointed by the Executive Director of the OR ACLU.	Dec 16, 2009 11:47 PM
6	By serving board members	Dec 16, 2009 11:49 PM
7	By the directors	Dec 16, 2009 11:58 PM
8	We have four positions appointed by various outside authority, Mult Co, Wash Co, OSB, and Chief Justice, then we have three at large members appointed by the board.	Dec 17, 2009 12:34 AM
9	The consortium voted on the consortium members of the Board. The community members were chosen because of their expertise in the area of employment law, DYS and DHS	Dec 17, 2009 1:50 AM
10	by a vote of the current board	Dec 17, 2009 4:53 PM
11	by the board and director	Dec 17, 2009 6:24 PM
12	Election per bylaws	Dec 17, 2009 8:19 PM
13	If a board members leaves, the other two discuss different people, approach one, and if she or he is interested, the board members approach the presiding judge.	Dec 17, 2009 9:08 PM
14	board consensus	Dec 17, 2009 9:52 PM
15	By who owns the law firm	Dec 17, 2009 10:17 PM
16	by the stockholders	Dec 18, 2009 12:21 AM
17	one is appointed by the Chief Justice one is appointed by the Marion Co. Board of Commissioners one is appointed by the Or. St. Bar president and the others are selected by the board.	Dec 18, 2009 9:20 PM
18	Community members are selected based on their experience with the types of cases we are appointed to or based on their business experience.	Dec 22, 2009 3:04 AM
19	By existing Board members.	Dec 22, 2009 9:17 PM

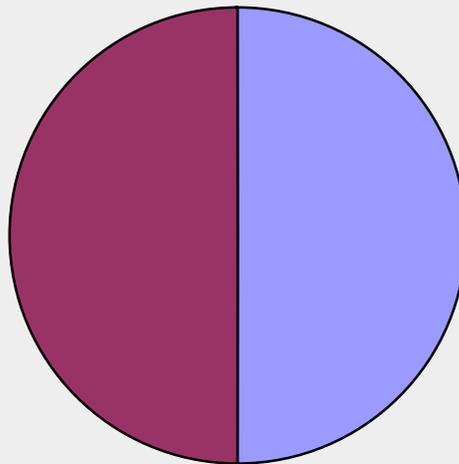
Response Text		
20	New board members are nominated by board members and will be elected by a majority vote of the current board members.	Dec 31, 2009 9:44 PM
21	nomination of current board members	Jan 11, 2010 11:41 PM
22	Board vote, as two members rotate annually	Jan 12, 2010 2:51 PM
23	Lane County Bar Association appoints the six lawyers and the lawyers select the one non-lawyer.	Jan 12, 2010 5:25 PM
24	By majority vote of the Board	Jan 12, 2010 7:27 PM
25	Tenure with KDS, business acumen, reputation with the courts, reputation with other attorneys, reputation in the community and "a good fit."	Jan 14, 2010 5:04 PM
26	Original board members do not have terms that expire. They can be replaced upon a vote of the other board members, or upon resignation.	Jan 15, 2010 2:50 AM
27	Vote by majority of shareholders.	Jan 15, 2010 5:54 PM
28	By existing Board members	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

Does your board require that one or more members be independent persons not performing services under the contract?

Answer Options	Response Percent	Response Count
Yes	50.0%	14
No	50.0%	14
<i>answered question</i>		28
<i>skipped question</i>		13

Does your board require that one or more members be independent persons not performing services under the contract?



■ Yes
■ No

Contractor Boards & Attorney Evaluations

How many members are required to be independent?		Response Count
		27
<i>answered question</i>		27
<i>skipped question</i>		14

Response Text		
1	N/A	Dec 16, 2009 9:55 PM
2	All	Dec 16, 2009 10:09 PM
3	n/a	Dec 16, 2009 11:40 PM
4	None	Dec 16, 2009 11:44 PM
5	None. As a practical matter, all Board members have been independent of management.	Dec 16, 2009 11:47 PM
6	NA	Dec 16, 2009 11:49 PM
7	None are required to by the bylaws, but in practice all of them are independent and always have been. One is a practicing lawyer and the rest are business people in the community	Dec 16, 2009 11:58 PM
8	all seven	Dec 17, 2009 12:34 AM
9	The majority. Currently 3 I believe our bylaws allow for up to 5 independent members	Dec 17, 2009 1:50 AM
10	at least one	Dec 17, 2009 4:53 PM
11	non are required but all but the director are	Dec 17, 2009 6:24 PM
12	0	Dec 17, 2009 8:19 PM
13	I don't think there is a written prohibition against this, but we have never had someone providing services under our contract also serve on the board.	Dec 17, 2009 9:08 PM
14	2	Dec 17, 2009 9:52 PM
15	N/A	Dec 18, 2009 12:21 AM
16	All of them. "No prosecutor, judge (other than a senior judge under ORS 1.300), employee of a law enforcement agency, or any other person having a direct economic or other conflict of interest with the corporation or the interests of the corporation due to the nature of the person's profession or employment may be a trustee. Membership in the Marion County Association of Defenders and representation of public defense clients as a member of that association do not constitute conflicts of interest with the corporation such that they would preclude service as a trustee."	Dec 18, 2009 9:20 PM
17	3	Dec 22, 2009 3:04 AM
18	Four	Dec 22, 2009 9:17 PM
19	Two of the members must be attorneys who are not contract attorneys of the organization.	Dec 31, 2009 9:44 PM
20	2 of 5	Jan 11, 2010 11:41 PM
21	1	Jan 12, 2010 2:51 PM
22	No Board members are PDSLCL employees.	Jan 12, 2010 5:25 PM

Response Text		
23	None	Jan 12, 2010 7:27 PM
24	None, although we made provision for our CPA to be on the board.	Jan 14, 2010 5:04 PM
25	one	Jan 15, 2010 2:50 AM
26	0	Jan 15, 2010 5:54 PM
27	Four	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

What is the role of your board?		
		Response Count
		27
<i>answered question</i>		27
<i>skipped question</i>		14

Response Text		
1	To determine compensation, scheduling, court policy, review of attorney performance.	Dec 16, 2009 9:55 PM
2	Governance, set policies for the organization, fiscal oversight, consultation on management issues, fundraising, public relations, etc.	Dec 16, 2009 10:09 PM
3	Oversee all issues related to the administration of the contract, including meeting with the court when necessary, management of administrative assistant for case assignment, determination of payment to the attorneys, and dealing with complaints against members, including potential removal of any member where needed.	Dec 16, 2009 11:40 PM
4	Overseeing and endorsing major business decisions of the corporation. Supervising and evaluating the actions of the executive director. Setting the executive director's salary.	Dec 16, 2009 11:44 PM
5	The Board hires, evaluates and oversees the Executive Director and sets the compensation of the director. The Board sets policy and reviews budgets, state contracts and audits. The Board is available for consultation with the Executive Director and for advocacy for the organization. The Board serves as an "appeal" forum for personnel problems or issues.	Dec 16, 2009 11:47 PM
6	Contract negotiation. Discussing policy for defense bar in Washington county and directing Director to convey that to Bench and DA offices. Determine caseloads for individual providers. Do annual reviews of providers and ODAC executive director and secretary.	Dec 16, 2009 11:49 PM
7	To oversee the office, advise the director, establish policies	Dec 16, 2009 11:58 PM
8	Hire and oversee executive director. Review and set policies of the agency. Trustee of the retirement plan. Ultimately approve contracts with the state and union.	Dec 17, 2009 12:34 AM
9	review budget assist in selection of new members provide advice on a variety of issues including quality assurance	Dec 17, 2009 1:50 AM
10	To set policy for the consortium, review problems arising under the contract or with entities we work with under the contract and to review any internal disciplinary action which may need to be taken against any of our attorneys	Dec 17, 2009 4:53 PM
11	They advise the director. They only get involved in the bigger decisions such as the contract, hiring more staff, moving the office.	Dec 17, 2009 6:24 PM
12	YCD is a board run entity, we have a strong Board that makes most decisions and an Executive Director to respond to issues requiring quick intervention and to run the day-to-day operations of YCD. For example, the Executive Director can remove any YCD attorney immediately, but if that occurs expedited board review is required.	Dec 17, 2009 8:19 PM

Response Text		
13	I meet with the board every other month. If there are problems over and above day-to-day issues, I may bring it to their attention. If there is a large purchase (eg, computers) I will bring the request to them for approval.	Dec 17, 2009 9:08 PM
14	oversight and set policy for the administrator	Dec 17, 2009 9:52 PM
15	To manage the law office.	Dec 17, 2009 10:17 PM
16	Supervisory	Dec 18, 2009 12:21 AM
17	they meet monthly. Every meeting includes a review of the monthly budget and the monthly case count. They advise on policy decisions. They perform annual evaluations of the Exec. Dir. they approve the contract with OPDS. They do not take an active role in the day to day operation. They are prevented by Art. 5, Section 15, from interfering in cases.	Dec 18, 2009 9:20 PM
18	To oversee and advise the members of the corporation.	Dec 22, 2009 3:04 AM
19	The board is a corporate board of directors overseeing operations of the not for profit Columbia County Indigent Defense Corporation.	Dec 31, 2009 9:44 PM
20	Handle disciplinary or performance issues with contractors that have not been adequately remedied by the administrator or are of such a nature that they require board intervention, to set policies and procedures for the operation of the consortium, to approve contract negotiations with the state, and to review the administrator's performance	Jan 11, 2010 11:41 PM
21	To review performance of attorneys, supervise the administrator and the administrative assistant, approve contract negotiations and budgets, etc	Jan 12, 2010 2:51 PM
22	The Board hires the Executive Director and sets his/her salary, approves contracts with OPDS, oversees the finances of the corporation, votes on policy matters and financial decisions appropriate for Board approval, advises the ED on matters brought before it, acts as a liaison between the office and the larger legal community.	Jan 12, 2010 5:25 PM
23	Oversee administration and quality of services rendered under the Contract and the operation of the corporation.	Jan 12, 2010 7:27 PM
24	Our board meets pretty much every week, reviews case assignments, case counts and any problems brought to our attention.	Jan 14, 2010 5:04 PM
25	The board handles all significant decision-making of the consortium: hiring, compensation, all activities of the committees, including membership, responsibilities, and reporting requirements.	Jan 15, 2010 2:50 AM
26	Our Board of Directors must vote on certain key decisions taken by the law firm, although many times these votes are done informally. The Board of Directors also has the ability to elect executive officers to manage day to day operations of the law firm.	Jan 15, 2010 5:54 PM
27	The classic "sword and the shield". they also supervise the Administrator and are available to SOPD employees who have complaints about management.	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

How often does your board meet?		
		Response Count
		28
		answered question 28
		skipped question 13

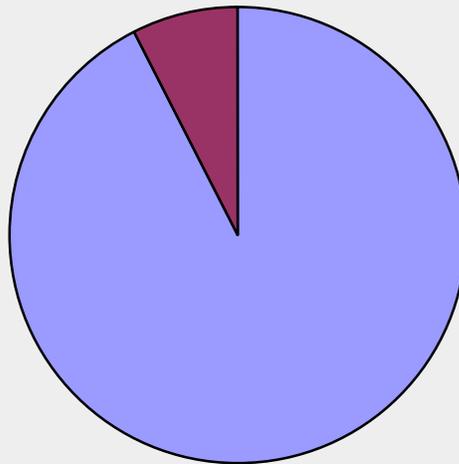
Response Text		
1	Twice a year.	Dec 16, 2009 9:55 PM
2	11 times per year	Dec 16, 2009 10:09 PM
3	Generally 5 to 6 times per year, as needed, plus regular contact by email and phone.	Dec 16, 2009 11:40 PM
4	Quarterly	Dec 16, 2009 11:44 PM
5	The Board is scheduled to meet quarterly. The Board occasionally meets between quarters when dealing with specific issues. The Board receives quarterly reports from the Executive Director and may decide not to physically meet at each quarter.	Dec 16, 2009 11:47 PM
6	Other than the annual meeting, there is no regular schedule, and we meet on an as needed basis. However, the entire membership tries to meet quarterly.	Dec 16, 2009 11:49 PM
7	3-4 times per year	Dec 16, 2009 11:58 PM
8	Quarterly	Dec 17, 2009 12:34 AM
9	quarterly	Dec 17, 2009 1:50 AM
10	At least quarterly	Dec 17, 2009 4:53 PM
11	Quarterly or when needed	Dec 17, 2009 6:24 PM
12	Every two weeks and emergency meetings can be called with very little notice.	Dec 17, 2009 8:19 PM
13	Every other month.	Dec 17, 2009 9:08 PM
14	quarterly and as needed	Dec 17, 2009 9:52 PM
15	Atleast twice per year and as needed.	Dec 17, 2009 10:17 PM
16	once a year	Dec 18, 2009 12:21 AM
17	Monthly.	Dec 18, 2009 9:20 PM
18	At least annually.	Dec 22, 2009 3:04 AM
19	Quarterly at a minimum.	Dec 22, 2009 9:17 PM
20	At least quarterly and often monthly.	Dec 31, 2009 9:44 PM
21	once a quarter	Jan 11, 2010 11:41 PM
22	quarterly, and on an as needed basis	Jan 12, 2010 2:51 PM
23	Five times per year, with additional meeting as required.	Jan 12, 2010 5:25 PM
24	3 to 4 times per year	Jan 12, 2010 7:27 PM
25	Pretty much every week.	Jan 14, 2010 5:04 PM
26	Approximately every other month, or as issues require, but the schedule varies.	Jan 15, 2010 2:50 AM
27	We have weekly informal meetings, and annual formal meetings.	Jan 15, 2010 5:54 PM
28	Quarterly at a minimum	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

Does your board select the director/administrator of the public defense office or group that you represent?

Answer Options	Response Percent	Response Count
Yes	92.6%	25
No	7.4%	2
<i>answered question</i>		27
<i>skipped question</i>		14

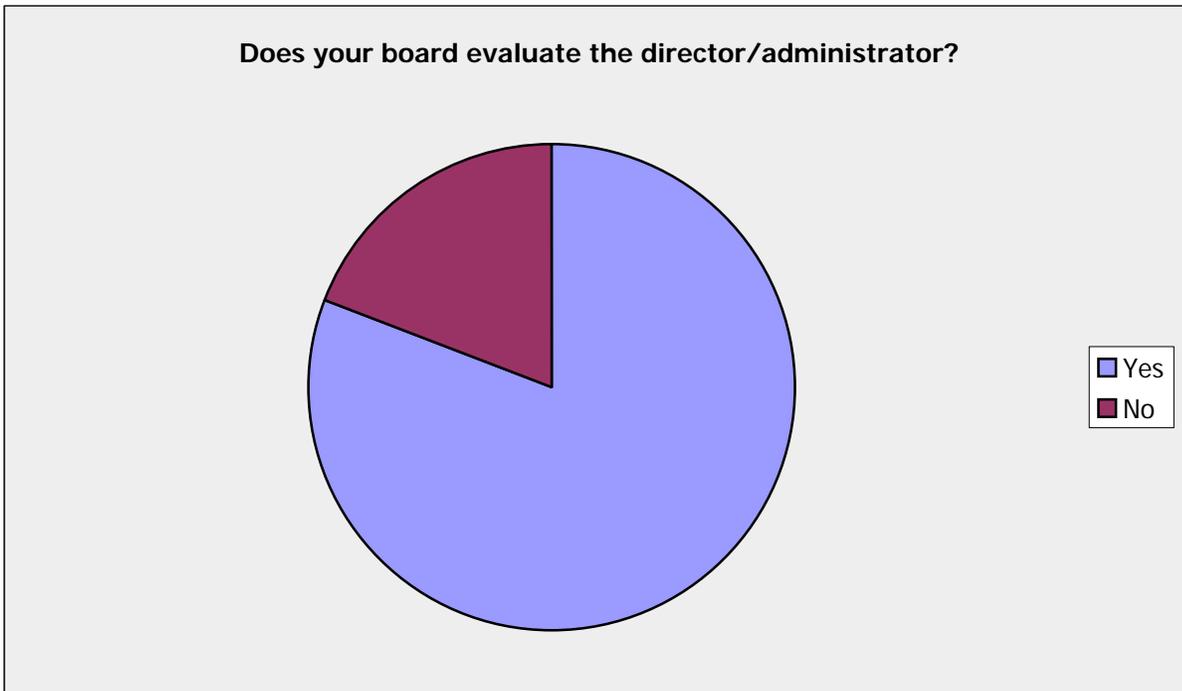
Does your board select the director/administrator of the public defense office or group that you represent?



■ Yes
■ No

Contractor Boards & Attorney Evaluations

Does your board evaluate the director/administrator?		
Answer Options	Response Percent	Response Count
Yes	80.8%	21
No	19.2%	5
<i>answered question</i>		26
<i>skipped question</i>		15



Contractor Boards & Attorney Evaluations

How often does your board evaluate the director/administrator?		
		Response Count
		25
<i>answered question</i>		25
<i>skipped question</i>		16

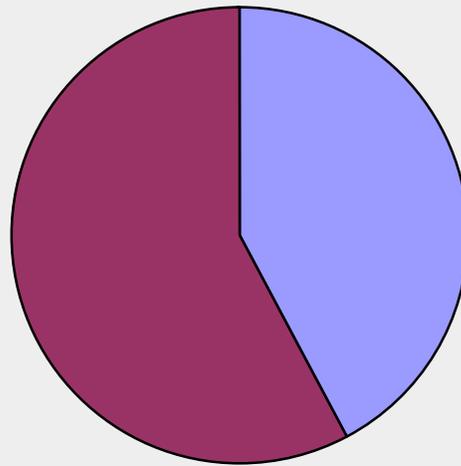
Response Text		
1	Annually	Dec 16, 2009 9:55 PM
2	Every one to two years.	Dec 16, 2009 10:09 PM
3	I answered no in #10, but the director/administrator could be removed by the membership each year when the board is voted on	Dec 16, 2009 11:40 PM
4	Continuously	Dec 16, 2009 11:44 PM
5	Periodically	Dec 16, 2009 11:47 PM
6	Annually	Dec 16, 2009 11:49 PM
7	Not in a formal sense, but in approving the budget and salary they indicate whether they are pleased with his performance or not	Dec 16, 2009 11:58 PM
8	Well I have been here just over a year and the board president is in the process of starting that review now. The goal is some sort of review annually.	Dec 17, 2009 12:34 AM
9	Has not yet occurred but is intended to occur annually	Dec 17, 2009 1:50 AM
10	This has been done annually but on an informal basis. We would like to formalize this as well as other evaluations of our attorneys	Dec 17, 2009 4:53 PM
11	Annual Performance Evaluation.	Dec 17, 2009 8:19 PM
12	Yearly	Dec 17, 2009 9:08 PM
13	informally each contracting period	Dec 17, 2009 9:52 PM
14	once a year	Dec 18, 2009 12:21 AM
15	Annually	Dec 18, 2009 9:20 PM
16	We are in the processo of developing an evaluation process.	Dec 22, 2009 3:04 AM
17	Annually	Dec 22, 2009 9:17 PM
18	Currently an ongoing process. The Board of Directors is in the process of establishing a formal evaluation.	Dec 31, 2009 9:44 PM
19	We are in the process of developing a procedure for this which will be discussed at our next meeting in Feb. I anticipate is will be bi-annually	Jan 11, 2010 11:41 PM
20	Every new contract period	Jan 12, 2010 2:51 PM
21	I have been evaluated twice in my five years at this job.	Jan 12, 2010 5:25 PM
22	On a yearly basis	Jan 12, 2010 7:27 PM
23	Pretty much every week, but no formal evaluation. She is awesome.	Jan 14, 2010 5:04 PM
24	Once per year.	Jan 15, 2010 5:54 PM
25	Annually	Jan 19, 2010 11:03 PM

Contractor Boards & Attorney Evaluations

Do your board members have directors' and officers' liability insurance?

Answer Options	Response Percent	Response Count
Yes	42.3%	11
No	57.7%	15
<i>answered question</i>		26
<i>skipped question</i>		15

Do your board members have directors' and officers' liability insurance?



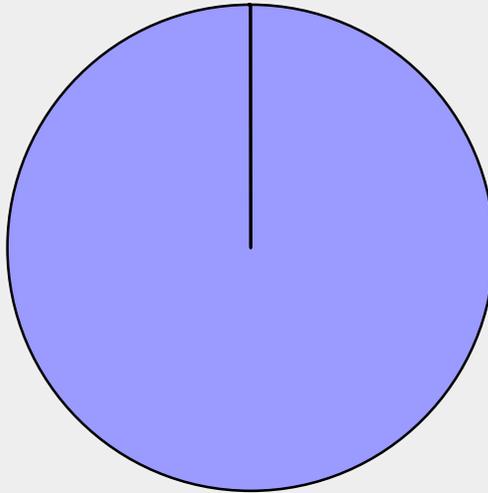
■ Yes
■ No

Contractor Boards & Attorney Evaluations

Has your board been of benefit to the operation of your entity?

Answer Options	Response Percent	Response Count
Yes	100.0%	27
No	0.0%	0
<i>answered question</i>		27
<i>skipped question</i>		14

Has your board been of benefit to the operation of your entity?



■ Yes
■ No

Contractor Boards & Attorney Evaluations

Please describe in what ways the board has been of benefit to your entity. If the existence of a board has caused any difficulties for your entity, please describe.		
		Response Count
		24
<i>answered question</i>		24
<i>skipped question</i>		17

Response Text		
1	JRP's Board has evolved over many years. It has increased in size and diversity. Board members provide valuable expertise in the areas of law, management, fiscal management, business practices, development, marketing and strategic planning. The Board also drives the fundraising efforts to support services that JRP provides in addition to the OPDS contract.	Dec 16, 2009 10:09 PM
2	The board is the place that all community partners know they can go with issues, complaints, concerns, suggestions, etc. Members of the board at different times sit on various committees related to the types of cases we carry (juvenile agency committee, bench-bar committee, law library committee, etc) Also, it is much easier to have decisions made quickly by the board than having to convene all of the consortium members. And, the board can make emergency type decisions (suspension of a member, for instance) that can later be re-evaluated by the entire group.	Dec 16, 2009 11:40 PM
3	Except for the executive director, IPD's board has always been completely independent of the organization. They have brought a knowledge base to the organization that extend far beyond that of our staff and attorneys, especially in areas such as employee benefits and financial accountability.	Dec 16, 2009 11:44 PM
4	The Board has given input/wisdom on budget, personnel and management issues and has been available when asked to assist in supporting the organization politically.	Dec 16, 2009 11:47 PM
5	Gives us more gravitas (Though I hate that word) with the Bench and DA office. Acts as a sounding board of ideas for Executive Director.	Dec 16, 2009 11:49 PM
6	It has been extremely beneficial to me. It has aided us at times when the judges have been overbearing and making unreasonable demands; it has been helpful in making contacts with legislators they know personally; it has helped advise during a tense time when an employee needed to be terminated; it helped in getting us a line of credit when the BRAC reductions hit; it has helped in so many ways they can't all possibly fit in this box.	Dec 16, 2009 11:58 PM
7	The most recent example of leadership was the role it played in executing a succession plan for the executive director. It has also been active in developing policies around professional management and retirement plan policies. So far I am not aware of deficulties, but you might ask Jim.	Dec 17, 2009 12:34 AM
8	The board has been a good sounding board for the administrator to discuss issues as to the contract, policy and discipline.	Dec 17, 2009 4:53 PM
9	My board is a mix of lawyers and business people. I understand the legal stuff, but they have been a lot of help with the buisness aspects of running the firm.	Dec 17, 2009 6:24 PM

Response Text		
10	We have a small consortium and at times must deal with personnel issues. Difficult decisions are made by the board to ensure complete consideration by a group. There have been no significant difficulties as board members can be excluded from meetings when the board must consider that particular board member. I wholeheartedly endorse having a strong board of directors as opposed to an entity run by one person. I also personally believe having non-provider representatives on the board is beneficial, but the YCD Board of Directors has not supported amending our bylaws to allow board membership outside YCD.	Dec 17, 2009 8:19 PM
11	When I first became director, there was an employee that I thought was embezzling money. It was a very difficult time and I asked the board for their input on a monthly basis. They were very helpful in working through the issues this involved. They also help with other employee issues that have arisen.	Dec 17, 2009 9:08 PM
12	addressing issues of quality control, case distribution, contract preparation and reporting numbers to PDSC and distribution of payments. advice of independent members very helpful on business issues.	Dec 17, 2009 9:52 PM
13	business planning	Dec 18, 2009 12:21 AM
14	They have been of invaluable service to the organization in advising on issues that arise and actively intervening when necessary with the local judicial system and on one occasion members of the board appeared at a commission meeting. They provide a channel of information to and from the community. One member is the ED of a large non-profit and another is a banker. Their advice on financial and administrative issues is invaluable. I can think of no downside to having an activist board such as ours.	Dec 18, 2009 9:20 PM
15	I believe the board has benefited our corporation as we have been able to discuss have the benefit of their advice and direction.	Dec 22, 2009 3:04 AM
16	General oversight of the corporate operations, review of current attorneys and consideration of staffing new attorneys. Establishment of a formal subcontract and standards and terms thereof. Review and consideration of contracting needs.	Dec 31, 2009 9:44 PM
17	The board has assisted the administrator in acting as a "check" for the day to day operations of the consortium and in developing operation policies and procedures for the consortium. Our board members have also acted as a liaison with other entities (such as the DA's office) when issues have arisen that could not be easily addressed in another manner.	Jan 11, 2010 11:41 PM
18	The Board is directly involved in the selection of new CIDC attorneys, attorney reviews and feedback on all budget negotiations. There have been no "difficulties" caused by the Board	Jan 12, 2010 2:51 PM
19	The Board is made up of members with different backgrounds in law and business and collectively has much wisdom, equipping it to provide valuable guidance to management in many areas. The Board, being informed and involved in the office, provides support for the ED when difficult decisions must be made.	Jan 12, 2010 5:25 PM
20	They make suggestions on the operation of the corporation and discuss the relationships with the Court, District Attorney's office, jail, investigators and other personnel as well as the members' employees. They discuss the overall quality of representation among the members of the Corporation.	Jan 12, 2010 7:27 PM
21	Oversight of the consortium.	Jan 14, 2010 5:04 PM
22	The Board's existence has helped to create structure for decision-making and determining policy for the group.	Jan 15, 2010 2:50 AM
23	We do not have a Board of Directors that is independent of the shareholders of the law firm. Thus, our Board of Directors basically provides a formal mechanism for making certain key business decisions. We have a Board of Directors to comply with Oregon corporation laws. In most cases, however, business decisions are made informally by the shareholders, in consultation with various key employees.	Jan 15, 2010 5:54 PM

Response Text		
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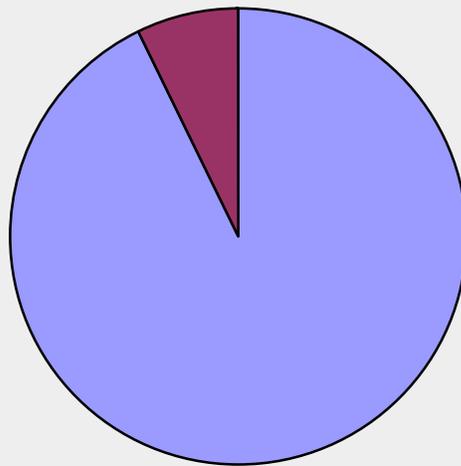
24	The Board has been helpful in management of reserves, budget allocations and have sent a number of potential employees our way.	Jan 19, 2010 11:03 PM
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Contractor Boards & Attorney Evaluations

Would you recommend that other public defense providers have boards of directors?

Answer Options	Response Percent	Response Count
Yes	92.9%	26
No	7.1%	2
<i>answered question</i>		28
<i>skipped question</i>		13

Would you recommend that other public defense providers have boards of directors?



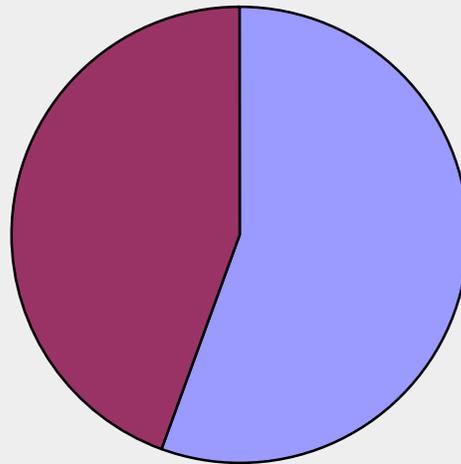
■ Yes
■ No

Contractor Boards & Attorney Evaluations

Does your public defense office or group conduct regular evaluations of the work of the attorneys in the office or group?

Answer Options	Response Percent	Response Count
Yes	55.6%	20
No	44.4%	16
<i>answered question</i>		36
<i>skipped question</i>		5

Does your public defense office or group conduct regular evaluations of the work of the attorneys in the office or group?



■ Yes
■ No

Contractor Boards & Attorney Evaluations

How often do these evaluations occur?		
		Response Count
		27
<i>answered question</i>		27
<i>skipped question</i>		14

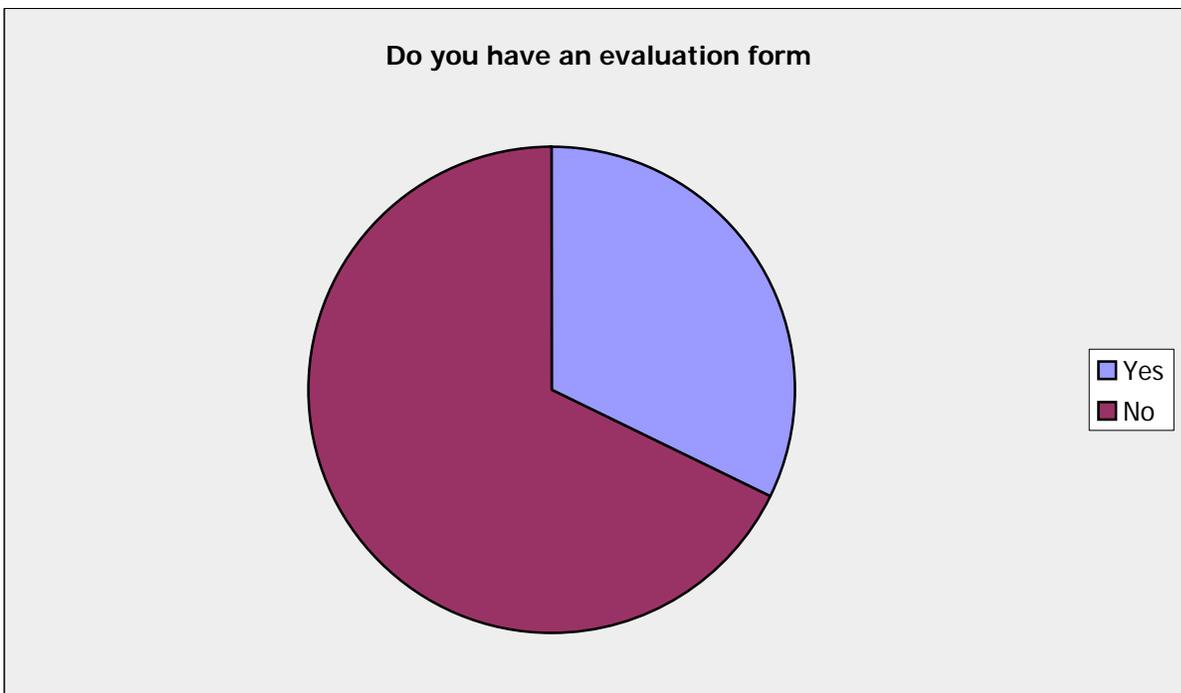
Response Text		
1	Semi-annually	Dec 16, 2009 9:57 PM
2	Six months after hire. Annually in years 1-4. Every 2-3 years for more experienced attorneys.	Dec 16, 2009 10:20 PM
3	n/a	Dec 16, 2009 11:43 PM
4	Annually	Dec 16, 2009 11:53 PM
5	Daily on an informal basis. Yearly, for a formal evaluation.	Dec 17, 2009 12:01 AM
6	They are not regular and are sporadic.	Dec 17, 2009 12:02 AM
7	We do informal discussions, don't know if I would call them "evaluations" but we get together usually on a monthly basis and discuss cases, practices, issues, concerns with the court and each other.	Dec 17, 2009 12:23 AM
8	Ideally yearly, but that is not always met.	Dec 17, 2009 12:42 AM
9	Informally during the year	Dec 17, 2009 5:06 PM
10	There is one formal review of everyone each year with the exception of the new hires who get lots of reviews. The established lawyers have periodic case reviews.	Dec 17, 2009 6:43 PM
11	As Executive Director, I supported attorney and Executive Director evaluations. The Board approved evaluations for the Executive Director. However, the issue of attorney evaluations was raised at an annual meeting and were rejected by the membership. Currently the only evaluation process for YCD attorneys is informal real time evaluation by the Executive Director through direct observation and discussion with various other players in the system, with a report of personnel issues to the Board of Directors and the attorney. The Executive Director can remove any YCD attorney from case assignments immediately subject to rapid consideration by the Board of Directors. This is not a common occurrence.	Dec 17, 2009 8:34 PM
12	I strive for yearly evaluations.	Dec 17, 2009 9:50 PM
13	We constantly "staff" or consult about our cases with one another and thereby evaluate the quality of our work. We have a firm belief that family's lives are at stake and it's always best, given the seriousness of the work, to consult one another frequently.	Dec 17, 2009 11:04 PM
14	monthly	Dec 18, 2009 12:22 AM
15	Ongoing review of appellate briefs filed by consortium attorneys.	Dec 18, 2009 2:18 AM
16	informal eval at three months, a formal evaluation at six months, an annual evaluation and then annually thereafter.	Dec 18, 2009 9:28 PM
17	We do not have an evaluation process; however, the administrator receives client evaluations on the attorneys that are forwarded to the attorney being evaluated.	Dec 22, 2009 3:07 AM

Response Text		
18	Annually	Dec 22, 2009 10:10 PM
19	Every one to two years, although I have begun meeting more often with all lawyers individually, but not necessarily to discuss evaluation type issues.	Dec 23, 2009 10:01 PM
20	Ongoing informal process by the board of directors and the executive director. Subcontract sets references practices standards and caseload standards.	Dec 31, 2009 10:10 PM
21	We have opportunities for informal feedback on a very regular basis. As far as formal evaluations, so far we have only conducted 1, in June 2008 and we plan to conduct them every other year.	Jan 3, 2010 4:00 PM
22	Our Board is in the process of developing a procedure to evaluate our attorneys.	Jan 11, 2010 11:43 PM
23	Systematic reviews started in 2009, and are expected to take place every couple of years, in addition to the regular monitoring process by the administrator and President	Jan 12, 2010 2:57 PM
24	Evaluations are not yet a scheduled written process, but such a process will soon be implemented.	Jan 12, 2010 5:50 PM
25	N/A	Jan 12, 2010 7:33 PM
26	We have six month evaluations of all staff, in January and July. We used to have 90 day evaluations, but found that this was too frequent.	Jan 15, 2010 6:03 PM
27	Annually	Jan 19, 2010 11:08 PM

Contractor Boards & Attorney Evaluations

Do you have an evaluation form that is used to conduct the evaluation? (OPDS would appreciate your providing a copy of your form and any written instructions or commentary that accompanies it. Please email it separately to Paul Levy, OPDS General Counsel, at paul.levy@opds.state.or.us)

Answer Options	Response Percent	Response Count
Yes	32.3%	10
No	67.7%	21
<i>answered question</i>		31
<i>skipped question</i>		10



Contractor Boards & Attorney Evaluations

Who in your office or group conducts the evaluations?		Response Count
		26
<i>answered question</i>		26
<i>skipped question</i>		15

Response Text		
1	Administrator, firm owner and/or firm partner. Feedback from judiciary is also considered.	Dec 16, 2009 9:57 PM
2	Two supervising attorneys conduct evaluations of staff attorneys. A third supervising attorney evaluates the legal assistants, paralegals and investigators.	Dec 16, 2009 10:20 PM
3	n/a	Dec 16, 2009 11:43 PM
4	Board Members. Because board members are also providers, that board member steps out when they are evaluated.	Dec 16, 2009 11:53 PM
5	Clerical staff: Operations Manager Trial Assistants: Trial Assistant manager Criminal Attorneys: Chief Criminal Attorney Juvenile Attorneys: Executive Director Investigators: Executive Director	Dec 17, 2009 12:01 AM
6	The form is under revision; the three that conduct the evaluations are the director, deputy director and office manager.	Dec 17, 2009 12:02 AM
7	Direct supervisors of the staff.	Dec 17, 2009 12:42 AM
8	The administrator	Dec 17, 2009 5:06 PM
9	The formal evaluation is done by the director. I've been doing the case evaluations also, but I am in the processes of creating a peer review system. We haven't worked out all the kinks in the system, but were trying to have a group of lawyers review one lawyers each month.	Dec 17, 2009 6:43 PM
10	See 2 above.	Dec 17, 2009 8:34 PM
11	Director evaluates the attorneys, office manager, and chief investigator. Director and office manager evaluate support staff. Director and chief investigator evaluate investigator.	Dec 17, 2009 9:50 PM
12	Chris L. Lillegard	Dec 18, 2009 12:22 AM
13	Director, James Varner	Dec 18, 2009 2:18 AM
14	the Executive Director	Dec 18, 2009 9:28 PM
15	I do.	Dec 19, 2009 4:54 AM
16	Each attorney and myself	Dec 22, 2009 10:10 PM
17	me.	Dec 23, 2009 10:01 PM
18	Ongoing informal process by the board of directors and the executive director. Subcontract sets references practices standards and caseload standards.	Dec 31, 2009 10:10 PM
19	Executive director	Jan 3, 2010 4:00 PM
20	Our Board is in the process of developing a procedure to evaluate our attorneys.	Jan 11, 2010 11:43 PM

Response Text		
21	Two person teams from the Board evaluated a proportionate group of the attorneys and reported findings and recommendations back to the Board	Jan 12, 2010 2:57 PM
22	Assistant Director Bob Homan and I.	Jan 12, 2010 5:50 PM
23	N/A	Jan 12, 2010 7:33 PM
24	No regular evaluations, but problems are addressed by the board or our advisory board made up of 1 lay person and 2 private attorneys.	Jan 14, 2010 5:10 PM
25	I (Grant Burton) evaluate attorneys. David McCaffery evaluates support staff.	Jan 15, 2010 6:03 PM
26	The Administrator	Jan 19, 2010 11:08 PM

Contractor Boards & Attorney Evaluations

Who reviews the results of the evaluations?		
		Response Count
		25
<i>answered question</i>		25
<i>skipped question</i>		16

Response Text		
1	Board of Directors	Dec 16, 2009 9:57 PM
2	Supervisors and the Executive Director	Dec 16, 2009 10:20 PM
3	n/a	Dec 16, 2009 11:43 PM
4	Board Members	Dec 16, 2009 11:53 PM
5	Employee Executive Director	Dec 17, 2009 12:01 AM
6	See #4	Dec 17, 2009 12:02 AM
7	County Directors, HR and Me.	Dec 17, 2009 12:42 AM
8	The board if there are any perceived problems.	Dec 17, 2009 5:06 PM
9	See 2 above.	Dec 17, 2009 8:34 PM
10	Director	Dec 17, 2009 9:50 PM
11	attorneys and staff	Dec 18, 2009 12:22 AM
12	It is still an informal review.	Dec 18, 2009 2:18 AM
13	the Exec. Dir. reviews the results of the evaluation with the employee	Dec 18, 2009 9:28 PM
14	no one.	Dec 19, 2009 4:54 AM
15	Myself	Dec 22, 2009 10:10 PM
16	me and the person who is reviewed.	Dec 23, 2009 10:01 PM
17	Board of Directors. The Board of directors are currently all attorneys, only one who currently contracts with the Columbia County Indigent Defense Corp for 2008/2009.	Dec 31, 2009 10:10 PM
18	Board and to some extent the entire consortium	Jan 3, 2010 4:00 PM
19	Our Board is in the process of developing a procedure to evaluate our attorneys.	Jan 11, 2010 11:43 PM
20	The Board as a whole	Jan 12, 2010 2:57 PM
21	Management team.	Jan 12, 2010 5:50 PM
22	N/A	Jan 12, 2010 7:33 PM
23	We note the recommendation of the advosiry board, bring in the attorney, discuss whatever issues are involved, ask how the issues are going to be resolved, suggested resolution and review compliance, put all relevant documents in the individual personnel file.	Jan 14, 2010 5:10 PM
24	The person giving the evaluation and the person receiving the evaluation.	Jan 15, 2010 6:03 PM
25	The Administrator and the employee being evaluated.	Jan 19, 2010 11:08 PM

Contractor Boards & Attorney Evaluations

How do you use the results of evaluations?		
		Response Count
		23
<i>answered question</i>		23
<i>skipped question</i>		18

Response Text		
1	To determine whether attorney needs mentoring or whether an attorney can continue to provide indigent defense services.	Dec 16, 2009 9:57 PM
2	If evaluations identify specific areas of improvement, then plans for improvement, including timelines and follow-up are often included in the evaluation. The evaluation also solicits feedback from the employee on their training and professional development needs, as well as any suggestions for improving the organization's systems or procedures.	Dec 16, 2009 10:20 PM
3	n/a	Dec 16, 2009 11:43 PM
4	We're pretty new, and have pretty good providers (I believe). But we have had a couple of problems with providers, and as a result of the reviews, the executive director did talk to these providers about improvement in their delivery of services. We intend to use the evaluations to determine what are proper caseloads for providers, whether the providers case load should be curtailed, or terminated, or increased.	Dec 16, 2009 11:53 PM
5	For training purposes, quality control and merit pay increases.	Dec 17, 2009 12:01 AM
6	Discuss them with employees let them know the areas that are going well and the ones that need improvement.	Dec 17, 2009 12:02 AM
7	I have met with staff after the annual review, we have used them in reviewing moves between sections of the office, we have used them in making lay off decisions, and we have reviewed them in discipline matters in the office.	Dec 17, 2009 12:42 AM
8	I only refer the yearly review as an evaluation. The other is ment as a learning tool. I want the lawyers to meet and talk about what is working, whats not and exchange ideas.	Dec 17, 2009 6:43 PM
9	As a tool to improve services.	Dec 17, 2009 8:34 PM
10	To determine training needs.	Dec 17, 2009 9:50 PM
11	To maintain a high level of competency	Dec 18, 2009 12:22 AM
12	We try to make them a positive experience, addressing areas that need work but emphasizing progress made and goals to be achieved in the coming year.	Dec 18, 2009 9:28 PM
13	Talk to the attorneys.give suggestions. guidance.	Dec 19, 2009 4:54 AM
14	To identify strengths and weaknesses so an attorney knows what they need to work on.	Dec 22, 2009 10:10 PM
15	I try to use them in my regular meetings with individual lawyers, and then I review them with the lawyer at the time of the subsequent evaluation.	Dec 23, 2009 10:01 PM
16	Considering current and future caseloads and case types for attorneys. Also to determine whether to continue to subcontract with particular attorneys.	Dec 31, 2009 10:10 PM

Response Text		
17	To give feedback to individual attorneys about their performance, areas of concern and strengths. It also gives information to the Board and ED about personnel issues.	Jan 3, 2010 4:00 PM
18	Our Board is in the process of developing a procedure to evaluate our attorneys.	Jan 11, 2010 11:43 PM
19	First, to encourage improvements, goals are set, some with timelines. Second, a follow up review of those processes will be conducted by the Board as a whole. If progress is not made, then, the Board reserves the right to discipline or terminate.	Jan 12, 2010 2:57 PM
20	Attorneys are verbally rewarded for successes and assisted in areas needing improvement.	Jan 12, 2010 5:50 PM
21	N/A	Jan 12, 2010 7:33 PM
22	<ol style="list-style-type: none"> 1) Give positive feedback on things the employee is doing well. 2) Identify any concerns management may have regarding the employee's performance. 3) Discuss ideas the employee may have for making the firm better. 4) Identify specific goals for the employee over the next six months. 5) Discuss any changes to employee compensation. 	Jan 15, 2010 6:03 PM
23	To point out employee strengths and to determine how to work on and improve employee weaknesses.	Jan 19, 2010 11:08 PM

Contractor Boards & Attorney Evaluations

Whether or not your entity conducts regular attorney evaluations, please describe how your entity identifies and addresses problems with attorney performance.		
		Response Count
		32
<i>answered question</i>		32
<i>skipped question</i>		9

Response Text		
1	Meet with attorney. Discuss issues. Closely monitor attorney performance.	Dec 16, 2009 9:57 PM
2	<p>We are a small (5-person), close-knit group. If a problem comes to our attention, we either meet and discuss it over lunch, route around a relevant email, or discuss it directly with the person. A board or other oversight isn't practical (or necessary) in our situation. Many years ago, we had a situation arise concerning a former member of our group. We addressed it by having the more senior members of our group meet with the person directly (as they had known the person the longest, and felt comfortable doing so), and the person ultimately decided to retire for health reasons. We are sensitive to the need to provide competent counsel, and believe the best approach is the direct approach.</p> <p>By the way - I have indicated "no" on question #8, not because there is something wrong with our process, but because it wouldn't work in all situations.</p>	Dec 16, 2009 10:17 PM
3	<p>Newer attorneys are supervised more closely and evaluated more frequently. JRP also receives feedback from judges, foster parents, CASAs and others on attorney performance. Feedback is formally sought during the evaluation process.</p> <p>There is a range of potential responses to attorney performance problems: Counseling Adjustment to the attorney's assigned duties or caseload Additional Supervision Providing or referring to additional training Corrective Action Plans Verbal Warnings Written Warnings Termination</p>	Dec 16, 2009 10:20 PM
4	Per JCDL by-laws, the board can suspend a member, and subject to notice and a hearing, the entire group can then terminate a member from the group, which has been done. Also, when the situation isn't quite so severe, the board has scheduled meetings with members, given them "performance standards" that need to be met, sent reminders of issues and/or concerns brought to the groups attention in terms of performance improvement.	Dec 16, 2009 11:43 PM
5	The executive Director talks to the provider. Confirms the discussion by email, and places email in providers file. So far, I don't know that we've had more than one or two times this has been necessary.	Dec 16, 2009 11:53 PM
6	<p>Calls from judges, DA's or clients raise issues which are investigated.</p> <p>Staff regularly identify problems which they observe which need evaluation, including self criticism.</p>	Dec 17, 2009 12:01 AM

Response Text		
7	By talking with the employee, identifying areas of concern; suggesting ways of improving performance; scheduling regular meetings to deal with the issues that give rise to the concerns.	Dec 17, 2009 12:02 AM
8	IPD is currently undergoing an HR audit which will result in the creation of attorney evaluation forms and procedures as provided in our policy manual. We anticipate beginning this more formal evaluation process in January, 2010. It would be helpful for OPDS to share materials and insight gained in this survey as we move forward.	Dec 17, 2009 12:04 AM
9	<p>If a supervisor receives a complaint either internally, externally, or from their own observation, they will investigate as necessary and make a decision about whether it is coaching or discipline, and if discipline notify the employee of rights to union representation. The in conjunction with HR, if discipline, decide what level of discipline, then execute the plan. If it involves probation, the staff member will be required to meet with supervisor during probation. If further problems develop then staff member can be terminated, or extended in probation, or if successful taken off probation.</p> <p>During this last year we have had all levels of discipline from verbal warning to termination, the process is controlled by a collective bargaining agreement.</p>	Dec 17, 2009 12:42 AM
10	We rely upon contacts with judges, other attorneys and other agencies to provide feedback as to their observations of attorney performance or perceived problems. The point person for the contact is the administrator. Upon receiving information, the administrator contacts the attorney to discuss the issue(s) and to investigate the allegations. If they appear to be founded, then the board discusses how the problem could be resolved and what steps need to be taken by the board and the attorney to ensure that the problem does not reoccur.	Dec 17, 2009 5:06 PM
11	At the yearly review, I contact the Judges, their staff, the jail staff, the DA's etc and get input. We are a small town so for example if someone is always late for court I will know about it long before this review. I then pull a random selection of their cases and review those. I then meet with the lawyer and discuss my findings. We try to come up with a plan for matters that need addressing. I also try to learn what their long term plans are with the firm (other than money) what do they want to keep their career going.	Dec 17, 2009 6:43 PM
12	<p>Attorney performance issues are discovered or brought to the attention of the Executive Director. Some issues are handled ad hoc by the Executive Director and others brought before the Board of Directors for guidance.</p> <p>I would recommend this process only if a formal evaluation process is not in place for whatever reason.</p>	Dec 17, 2009 8:34 PM
13	If there are problems with an attorney, several steps can be taken: assigning cocounsel, listening to tapes of court hearings and reviewing with the attorney; review progress of a case; talk with judges.	Dec 17, 2009 9:50 PM
14	pdc conducted its' own survey with multnomah county court system	Dec 17, 2009 9:54 PM
15	We talk	Dec 18, 2009 12:22 AM
16	As Director, in addition to having a good idea of attorney performance due to ongoing review of appellate briefs (our consortium does only appeals), I respond to any concerns communicated by OPDS or clients or (in one instance due to bar complaints) to me. I respond by reviewing the situation, and take appropriate action (including if just talking to the attorney or removing the attorney from the consortium, as I have had to do twice now, since 2002. The group of attorneys in the consortium now are all experienced, competent appeal attorneys.	Dec 18, 2009 2:18 AM
17	I am a sole practitioner. If there are issues with my performance my clients, judges or other local attorneys bring those concerns to my attention.	Dec 18, 2009 6:58 PM

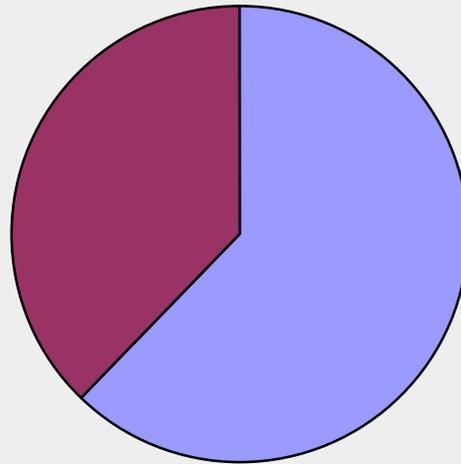
Response Text		
25	We have a very small legal community. Because we have only three judges and seven defense lawyers, I hear very quickly if there are issues. I have an excellent relationship with the Presiding Judge and the elected DA, both of whom do not hesitate to call me if they see an issue that needs to be brought to my attention.	Jan 11, 2010 11:43 PM
26	Information from judges, prosecutors, court personnel, and other attorneys, are brought to the attention of the administrator. Usually the information is reviewed with the President. The attorney is consulted and asked to explain and address the problem. If further work is required, a second interview with the President and the administrator takes place. If that process fails, then the Board may discipline or terminate the attorney. If the problem is an emergency, it goes directly to the Board.	Jan 12, 2010 2:57 PM
27	Currently management relies on feedback from other staff attorneys, mentor attorneys, co-counsel, judges and prosecutors to evaluate the performance of attorneys. Management also tracks motion practice, trial rates and successes, results of sentencings, dismissals, to evaluate effectiveness of staff attorneys.	Jan 12, 2010 5:50 PM
28	The administrator receives copies of written complaints against any attorney and contacts the attorney to discuss the resolution of any problems. The administrator makes certain these problems are resolved.	Jan 12, 2010 7:33 PM
29	Usually, we get a complaint from the court, staff, the DA or another member. We determine if it needs to be referred to the advisory board or handled by the board. This probably wouldn't work in all areas, but in smaller communities it might work. We just have never really had a problem that did not result in the member resigning. It is not that formal obviously, but we pay pretty close attention to what is going on.	Jan 14, 2010 5:10 PM
30	As administrator, performance problems that are communicated from outside the group come to me. I present them to the Board, and appropriate remedial measures are determined by the board, and handled either by me or by another board member and myself together.	Jan 15, 2010 2:56 AM
31	Attorney evaluations are the primary manner in which problems with attorney performance are addressed. In addition, when specific problems arise, I usually meet with attorneys to discuss the problem. I try to follow up any meeting with an email to memorialize the discussion. In general, I try to be proactive in dealing with employee concerns.	Jan 15, 2010 6:03 PM
32	We identify problems through performance evaluation, personal observation and by being in contact with other members of the local criminal justice system.	Jan 19, 2010 11:08 PM

Contractor Boards & Attorney Evaluations

Would you recommend that other public defense offices use a process like yours to evaluate their attorneys?

Answer Options	Response Percent	Response Count
Yes	62.1%	18
No	37.9%	11
<i>answered question</i>		29
<i>skipped question</i>		12

Would you recommend that other public defense offices use a process like yours to evaluate their attorneys?



Attachment 4

[Excerpt from OPDS Appellate Division Attorney Manual]

Chapter 1 Performance Reviews

8.1 On-going Assessments

To support our attorneys and foster their professional development, the office strives to provide regular feedback to attorneys. The feedback comes from team leaders, who work closely with the attorneys, and from the managing attorneys.

Because they work with their team members in team meetings and edit their team members' meritorious briefs, team leaders are well-positioned to give regular feedback about an attorney's work. Team leaders should meet with their attorneys to discuss edited briefs as necessary. In addition, team leaders should check-in with team members outside of team meetings to discuss their work and how the team and its members can work best together.

Team members are responsible for ensuring that they submit their written work to their team leader so that the team leader can provide accurate and meaningful feedback.

8.1.1 Oral argument

A managing attorney attends the monthly oral arguments at the Court of Appeals and, when possible, specially set oral arguments. After the arguments, the managing attorney will meet with the attorneys who argued cases to discuss the arguments.

In addition, team leaders should attend team members' arguments when possible and meet with the team members afterwards to review the argument.

The office will get a recording of the oral arguments each month for the library, so that attorneys can review their own arguments.

8.1.2 Production reports

The office provides each attorney with reports summarizing the attorney's filings and backlog each month. The attorney should review the reports for accuracy and use them to assess his performance in light of the office's expectations with respect to filings and to schedule his upcoming work. Attorneys should remember that the reports are just one tool to assess performance. They are intended to provide accessible information for the attorney and management to

use so that they are aware of certain quantifiable aspects of the attorney's performance.

If an attorney has concerns about the information in the reports, the attorney should speak with the Chief Deputy responsible for the reports.

8.2 Annual Reviews

The office conducts annual performance reviews for all of its employees. Attorneys who have been with the office for more than six months are reviewed on an annual basis.¹ The annual review is intended to:

- Promote regularly-scheduled and purposeful discussions between attorneys and management and, thereby, create open lines of communication for constructive feedback;
- Serve as a tool for assessing attorney performance, using information from the attorney, the attorney's team leader, samples of the attorney's written work, and quantitative measures of the attorney's work;
- Identify and promote attorney performance that meets or exceeds the office's standards;
- Identify and improve attorney employee performance that does not meet the office's standards;
- Help attorneys identify, plan for, and meet future performance goals, and
- Help management identify and implement ways that it can assist the attorneys in meeting their performance goals.

Annual reviews include written evaluations and in-person meetings. The evaluations are to be based on the "Performance Criteria for Attorneys" and, if the attorney is a Senior Deputy or Chief Deputy, the additional "Performance Criteria for Senior Deputies" and "Performance Criteria for Chief Deputies."

Annual reviews for Deputy I, Deputy II and Senior Deputy attorneys are conducted in February before team rosters are changed in March, so that team leaders and members will have worked together for almost a year before the review.

Annual reviews for Chief Deputies and the Chief Defender are conducted in November. The review schedule for the managing attorneys corresponds with the schedule for other OPDS managers.

¹ Attorneys who have been with the office for less than six-months are trial service employees. They are evaluated during the third and six month of the trial service. See Chapter 7 : New Attorney Training.

Annual reviews for secretaries are conducted in the month preceding the secretary's "salary eligibility date."

8.2.1 Annual Review Process for Deputy I and Deputy II attorneys

The steps of the review process for Deputy I and Deputy II attorneys:

1. Management sets the evaluation schedule, *i.e.*, the due dates for the written evaluations. Management also provides each attorney with a report detailing the attorney's filings, arguments and appellate court opinions in the preceding calendar year.
2. The attorney completes a written self-evaluation and submits it to his team leader along with one brief of his own choosing and a second brief that is to serve as a random sample, *i.e.*, the first brief filed in a particular month. (Management announces the criteria for selecting the second brief when it sets the evaluation schedule.) The self-evaluation and briefs should be submitted to the team leader electronically.
3. The team leader prepares a written evaluation of the attorney and meets with the attorney in person. The team leader's evaluation should be based on his direct experiences with the attorney and should be specific, honest, and constructive. The team leader may meet with the attorney before or after writing the evaluation; different team leaders have successfully employed different approaches.
4. The team leader forwards the written materials (the attorney's self-evaluation, the writing samples, and the team leader's evaluation) to the Chief Deputy assigned to the team. The materials should be submitted electronically.
5. The Chief Deputy prepares a written evaluation of the attorney, which must be approved by the chief defender. The Chief Deputy then delivers the written evaluation to the attorney and schedules an in-person meeting.
6. Management meets with the attorney to review the attorney's performance, set goals for the coming year, and receive feedback from the attorney. The attorney signs a copy of the management's evaluation. The signed evaluation and all other written materials are forwarded to the attorney's personnel file.

An attorney may prepare a written response to any of the written evaluation materials. The response must not exceed five pages and must be received by the chief defender within 30 calendar days of the in-person meeting between the

attorney and management. The response will be forwarded to the employee's personnel file.

Management welcomes input regarding the work of all employees. An employee may submit written comments regarding another employee's performance. The comments will be shared with the employee whose performance is being reviewed, but will not be forwarded to the attorney's personnel file.

8.2.2 Annual Review Process for Senior Deputies

The steps of the review process for senior deputies parallel those for Deputy I and II attorneys, except that senior deputies are not evaluated by a team leader; they are evaluated directly by management. They submit their self-evaluations to the Chief Deputy assigned to their team. In addition, they do not need to submit writing samples.

8.2.3 Annual Review Process for Chief Deputies and Chief Defender

The chief defender and Chief Deputy defenders are evaluated each November along with other OPDS managers. They are to be evaluated in light of the office's mission, goals and strategic plan and the "Performance Criteria for Managing Attorneys."

All employees are encouraged to provide feedback about the performance of the managing attorneys.

The chief deputies will write self-evaluations and participate in a peer review with the other managing attorneys. The chief defender will prepare a written evaluation of each Chief Deputy, which the chief will sign.

8.3 Performance Criteria

8.3.1 Performance Criteria for Deputy I & II

8.3.1.1 BRIEFING AND DRAFTING

Legal Knowledge – An attorney should:

- Be familiar with state and federal substantive and procedural criminal law, including the state and federal constitutions, statutes, case law, administrative rules, and court rules;
- Stay abreast of developments in criminal law; and
- Be willing and able to understand novel or complex areas of criminal law.

Ability to Identify and Assess Appellate Issues – An attorney should:

- Be able to identify appellate issues, including novel ones;
- Be able to assess the merits of appellate issues; and
- Allocate time appropriately when deciding whether to file briefs, including reply and supplemental briefs.

Legal Research – An attorney should:

- Be able to research the law, from administrative rules to constitutional provisions;
- Be skilled at using the office library and computer research tools;
- Be familiar with the resources available at the state law library and archives (both in the physical collections and online), including, for example, the library's collection of appellate briefs and archives' collection of legislative records, and
- Conduct legal research that is appropriate to the legal issues in a case, given their novelty and complexity.

Legal Writing – An attorney's legal writing should:

- Contain well-reasoned and persuasive arguments that are based on the evidence in the appellate record and supported by accurate statements of relevant law;
- Be clear and well-organized;
- Comply with rules regarding citation and formatting; and
- Be carefully edited and proofread, so that it is free of misspellings, typographical errors, and grammatical errors before it is submitted to the attorney's in-house editor.

8.3.1.2 ORAL ARGUMENT

Preparation – To prepare for oral argument, an attorney should:

- Review the briefs and appellate record and discuss the case in team meeting;
- Understand the strengths and weaknesses of both sides' arguments;
- Be able to persuasively state the defense arguments and respond to the state's arguments, with appropriate references to, and discussions of, the relevant facts and law;
- Anticipate the court's questions and be prepared to respond to them in a way that advances the client's case;
- Determine whether there have been any changes in the law that affect the case and file timely memoranda of additional authority; and
- Make appropriate decisions regarding whether to argue.

Presentation – At oral argument, an attorney should:

- Confidently present a clear, well-organized, and persuasive argument;
- Be able to understand and effectively address the court's concerns; and
- Be aware of the court's time limits and use the allotted time, including rebuttal, appropriately.

Professionalism – At oral argument, an attorney should also:

- Treat the court and opposing counsel with respect;
- Appear on time and ready to present the argument.

8.3.1.3 CLIENT COMMUNICATIONS

To effectively communicate with clients, an attorney should:

- Inform clients of the status of their cases at all stages of the appellate process in accordance with office policy;
- Send clients copies of all significant filings;
- Be alert to any limits on a particular client's ability to communicate and make appropriate arrangements to compensate for those limitations;
- Protect confidential communications between clients and the office;
- Be cognizant of any issues that require decisions by clients, clearly communicate the nature and ramifications of the decisions to clients, and ensure that clients have the ability and opportunity to make the decisions;
- Be available for telephone calls from clients;
- Respond promptly and professionally to clients' calls and correspondence; and
- Maintain current contact information for clients by promptly following-up on returned mail or other indicators that the client's contact information may have changed.

8.3.1.4 CASE MANAGEMENT

To effectively manage a caseload, an attorney should:

- Be aware of and meet all office and court due dates;
- Schedule briefs to ensure that the attorney has sufficient time to carefully review case records, consider and discuss potential issues, conduct all necessary research, and edit and proofread all briefs;
- Alert management when assistance is needed in order to meet office or court due dates;
- Prioritize different duties and allocate time accordingly;
- Identify cases that do not present any meritorious issues and dispose of such cases promptly without unnecessary use of the client's or attorney's time;
- Identify cases where the clients' legal claims may be resolved through motions, as opposed to full briefing;
- Assess the merits and complexity of appellate issues and allocate time accordingly;

- Use office resources, including the office database and computerized legal research tools, to maximize efficiency;
- Use the office's standard letters and forms for routine correspondence and motions; and
- Utilize office secretaries and paralegals to perform standard, non-legal tasks.

8.3.1.5 SERVICE AS A LEGAL RESOURCE

To serve as a legal resource both inside and outside the office, an attorney should:

- Come prepared to team meetings and provide constructive, focused responses to other team member's questions;
- Carefully edit other attorneys' briefs, both for substance and form;
- Be open to questions from other attorneys, secretaries, and other staff members;
- Be willing to share his or her knowledge, experience, and work;
- Be willing to take on special projects, such as serving on moot courts, preparing standard motions or briefs, and giving continuing legal education presentations; and
- Represent the office in a helpful, professional manner when responding to inquiries from trial attorneys and the public.

8.3.1.6 COOPERATION WITH CO-WORKERS

To cooperate with co-workers, an attorney should:

- Treat all co-workers with respect;
- Communicate with his or her secretary to establish a good working relationship, where both parties understand what is expected of them;
- Be open to questions from his or her secretary and other co-workers, and respond to the questions promptly and completely;
- Advise his or her secretary about upcoming work needs, so that the secretary can schedule his or her own work in advance;
- Address problems that arise with co-workers in a direct and constructive manner, enlisting management assistance as needed;
- Be available for "Officer of the Day" duties when scheduled, or arrange coverage and notify both the intake specialist and receptionist; and
- Inform his or her secretary when they will be out of the office, and comply with office procedures for scheduling leave.

8.3.1.7 PROFESSIONAL AND OFFICE DEVELOPMENT

To help improve his or her work, as well as the office, an attorney should:

- Set goals for self-improvement;
- Ask for assistance from others when needed;
- Seek and accept feedback from co-workers and supervisors;
- Participate in the office's performance evaluation process;
- Take advantage of opportunities to learn and to teach within the office;

- Attend continuing legal education programs that are relevant to the office's work; and
- Be willing to work on legal issues or tasks that will improve their legal skills and knowledge.

8.3.2 Performance Criteria for Senior Deputies

Because of their experience and talents, senior deputies are particularly well-suited to help the office meet its goals of providing high-quality representation to our clients and serving as a valued resource to office employees, as well as those outside the office, from the legislature to the trial bar. The majority of the senior deputies serve as team leaders. Those that do not are responsible for important office projects, such as conducting trainings, managing the office website, developing office procedures, training individual attorneys, and serving as back-up team leaders.

The following performance criteria apply to all senior deputies and are based on the many roles that senior deputies perform in the office.

8.3.2.1 Leadership

As experienced and talented appellate attorneys, senior deputies are leaders both inside and outside the office. A Senior Deputy should:

- Lead by example, by performing high-quality work, developing new legal arguments, successfully handling complex cases, and striving for continual improvement,
- Be a positive force in the work environment; help foster an environment that is respectful and collaborative and that reflects a commitment to high-quality work and the development of its employees,
- Inspire critical thinking, the exploration of legal issues, and the development of the law,
- Be willing and able to take on special projects, such as CLE presentations and articles, and
- Serve as a valued resource on legal and appellate issues, both inside and outside the office.

8.3.2.2 Legal Support and Case Review

Senior Deputies assist attorneys by answering questions about legal issues and by reviewing cases to determine whether they should be briefed. To do so, a Senior Deputy leader should:

- Be easily accessible to attorneys, either on a drop-in or regularly scheduled basis,
- Have attorneys structure presentations of cases or issues in an organized fashion to help ensure that all potentially meritorious arguments are identified and considered,

- Be a focused and patient listener when an attorney presents a case or issue,
- Ask questions to help ensure that the attorney has presented all necessary information for analysis of the case or issue,
- Have the attorney analyze the case or issue, ask questions or offer suggestions to further the analysis,
- Have the attorney conduct further research as necessary, and
- Reach a clear understanding about the next steps the attorney is to take.

8.3.2.3 Team Meetings

One of the strengths of our office is that, as attorneys, we can work together and benefit from each other's legal knowledge, analytical abilities, advocacy skills, creativity and enthusiasm. Senior deputies who serve as team leader (either regularly or on a back-up basis) help us do this by facilitating team meetings where team members come together to explore legal issues and develop legal arguments. To do so, a team leader should:

- Hold weekly team meetings according to office policy and schedule replacement or additional meetings as necessary,
- Clearly communicate expectations about team meetings and editing,
- Lead focused, productive discussions about legal issues; help the team explore issues as fully as necessary, while being mindful of the demands on everyone's time and the need for efficiency,
- Encourage all team members to participate in team meetings in a constructive manner,
- Promote zealous advocacy, foster creative and independent thinking,
- Create a respectful and cooperative environment where opposing viewpoints can be expressed so that legal arguments are tested before they are presented to the court,
- Help team members assess the strengths and weaknesses of legal arguments so that they can allocate their time efficiently,
- Schedule moot courts so that the team has sufficient time to prepare team members for oral arguments, taking into consideration the complexity of the case and the experience of the team member,
- Conduct moot courts in a manner that helps to ensure that each team member who argues a case is well-prepared and able to answer the court's questions and advance the client's interests; work with the team to help team members identify the strongest arguments, persuasive methods for presenting those arguments, responses to the state's counterarguments, and answers to likely questions from the court,
- Attend team members' oral arguments and provide constructive feedback, and
- Meet with team members on an individual basis as needed to ensure that they are contributing to and benefiting from team meetings.

8.3.2.4 Editing

Senior deputies are strong writers whose editing and training talents are critical to our success. Senior deputies edit attorney's written work to ensure that it meets office standards and help the attorneys continually improve their writing. To do so, a Senior Deputy should:

- Carefully review all written work submitted by attorneys for both substance and form,
- Provide specific constructive comments about the substance of the written work, including whether the legal argument needs additional support, development, or organization,
- Proofread the written work, checking for compliance with rules of grammar, citation, style, and appellate procedure,
- Return the edited work promptly (within one week),
- Discuss corrections and suggestions with attorneys in person as necessary,
- Clearly inform the attorney of what additional steps must be taken, if any, *i.e.*, whether the work must be submitted for editing again, and
- Note recurring errors or problems, call them to the attorney's attention, and work with the attorney to correct them.

8.3.2.5 Training and Supervising

Senior Deputies are knowledgeable appellate advocates who can draw on their own experience to improve the work of other attorneys in all areas of practice, from briefing and oral argument to client communications to caseload management. They serve as brainstorming partners, editors, coaches, and mentors. When serving as team leaders, senior deputies help improve the quality of the office's work by assessing the work of their team members and providing constructive feedback about how it can be improved. The same is true for senior deputies serving as trainers. To do so, a team leader or trainer should:

- Be available to discuss team members' performance with them,
- Check-in with team members on an on-going basis to ensure that the team is functioning well, and make changes as appropriate (for 2008),
- Keep records (notes of case reviews, copies of edited briefs, etc.) in order to assess the quality of team member's work and changes in that quality over time,
- Review a sufficient sample of each team member's work,
- Recognize and acknowledge team member's good work and achievements,
- Identify areas in which team members can improve and provide specific suggestions or plans for improvement,
- Work with chief deputies to address performance issues (for 2008),
- Prepare written evaluations that are honest, specific and helpful, and
- Enlist management help to address team member's needs when appropriate.

8.3.2.6 Office Development

Senior Deputies are called upon to help management develop and implement office policies and procedures. To do so, a Senior Deputy should:

- Be committed to the office's mission and invested in its continuous improvement,
- Participate in Senior Deputy meetings, provide suggestions and feedback about office policies, procedures and actions (including, for example, such as responses to significant legal decisions), and
- Clearly relay office policies and procedures to team members.

8.4 Chief Defender Open Door Policy

The Chief Defender maintains an open door policy for all attorneys in the office. Should any attorney have questions or concerns about their performance, performance evaluation, team leader or any other issue, that attorney is invited to discuss their concerns directly with the

4. List actions you can take to help improve your performance.

5. Are you kept busy at all times, or could your responsibilities be increased?

SATISFACTIONS & EXPECTATIONS

1. Are you satisfied with the type of work you are doing? If no, please explain.

2. What changes, if any, would you like to see made in your job? (e.g., responsibilities, procedures, reports, etc.)

3. Are you interested in additional responsibilities? If so, give examples of types of responsibility which you might be qualified to perform. Indicate any additional skills and training you might need.

ADDITIONAL COMMENTS:

Employee's Signature

Date

PERFORMANCE APPRAISAL FORM

ATTORNEY PERFORMANCE APPRAISAL METROPOLITAN PUBLIC DEFENDERS

Name:

Job Title:

Section:

Manager:

Last Performance

Appraisal Meeting Date:

Appraisal Period:

Date of Appraisal Meeting:

PART 1

The following sections are referenced by applicable sections of the Performance Standards adopted by the Oregon State Bar.

I. WORK MANAGEMENT

A. CASE-LOAD MANAGEMENT – Standard 2.1

Skill in planning, organizing, documenting, and implementing work assignments; Notice of court dates to clients; File organization (log notes, documentation, etc.); Call calendar management; Calendaring; Effective team meetings.

COMMENTS: _____

B. CLIENT RELATIONS – Standard 1.4

Timely client contact; Rapport with clients; Inform clients of the status of their cases; Be available for telephone calls from clients; Willingness to sign in and out; Maintain current contact information for clients.

COMMENTS: _____

PERFORMANCE APPRAISAL FORM

C. USE OF RESOURCES - Knowledge and use of office equipment including but not limited to: Computers, Phones, Voicemail; Relationship with secretarial staff.

COMMENTS: _____

D. ABILITY TO WORK WITHIN TEAM/GROUP - Demonstrates a commitment to meeting and exceeding client's needs; Is responsive to client's concerns; Communicates expectations clearly; Meets on regular basis; Supportive of team efforts; Delegates appropriate tasks; Flexible on job description when necessary; Willing to address problems within team; Tactful in suggestions for improvement; Accepts criticism; Dependable; Copes with stress.

COMMENTS: _____

II. CASE PREPARATION

A. CASE PREPARATION – Standards 1.5, 2.4, 2.5, 2.6

Ability to recognize issues; Development of defenses and case theories; Interviewing techniques with clients and witnesses; Investigation—timely and clear requests and willingness to participate; Use of experts; Development and use of demonstrative evidence; Discovery—ability to get evidence and strategize about turning over evidence; Witness preparation; Use and development of alternatives.

COMMENTS: _____

B. CASE NEGOTIATIONS – Standard 2.8

Use of, and ability in, the plea negotiation process.

COMMENTS: _____

PERFORMANCE APPRAISAL FORM

III. LEGAL ANALYSIS AND PRACTICES

A. MOTION PRACTICE – Standards 2.7, 1.5

Knowledge of procedural and substantive law; Research and writing skills; Effectiveness; Creativity; Availability to others.

Each attorney is expected to submit and discuss some motions that were litigated over the previous year.

COMMENTS: _____

B. TRIAL PRACTICE – Standards 1.5, 2.9

Knowledge of procedural and substantive law; Knowledge and use of the rules of evidence; Courtroom practices; Ability in making a record; Willingness to go to trial; Ability in voir dire, direct examination of witnesses, cross-examination, and opening and closing arguments.

COMMENTS: _____

C. SENTENCING PRACTICE – Standard 2.10

Knowledge of alternatives; Protection from inaccurate or inadmissible sentencing information; Presentation of mitigating and favorable information; Knowledge of applicable law.

COMMENTS: _____

PERFORMANCE APPRAISAL FORM

IV. DEVELOPMENT AND GROWTH

- A. TRAINING** - Involvement with office training, especially concerning the following areas: Attendance Participation; Availability to others and to put on training sessions; Attitude – willingness to learn and listen and motivation to improve.

COMMENTS: _____

B. ETHICS – Standards 2.1, 2.2, 2.3

Awareness of ethical considerations; Zealousness; Availability to discuss issues; Professionalism.

COMMENTS: _____

- C. OFFICE CONTRIBUTION** - Pride in work; Motivation to improve; Willingness and timeliness of evaluation; Supportive of others; Willingness to provide coverage; Contributes ideas for the growth of the office; Positive relationships within the system; Represents office well to the community; Utilizes foreign language skills.

COMMENTS: _____

- D. INITIATIVE & RESOURCEFULNESS**– Volunteers for additional assignments, make suggestions for improving work flow, and is resourceful. Demonstrates drive, creativity, and ability to start and accomplish work with minimal supervision.

COMMENTS: _____

PERFORMANCE APPRAISAL FORM

PART 2

MUTUALLY AGREED-UPON OBJECTIVES FOR NEXT REVIEW PERIOD:

Step	Target Date
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PART 3

EMPLOYEE'S GOALS AND INTERESTS:

PART 4

MANAGER'S SUMMARY & ADDITIONAL COMMENTS:

PART 5

SIGNATURES: (Note: Employee's signature indicates understanding of contents, not necessarily agreement.)

Appraising Manager

Date

Employee

Date

Next Level of Management

Date

Human Resources Representative

Date

PERFORMANCE APPRAISAL FORM

Name:

Job Title:

Section:

Manager:

Last Performance
Appraisal Meeting Date:

Appraisal Period:

Date of Appraisal Meeting:

PART 1

PERFORMANCE CHARACTERISTICS

1. **ADAPTABILITY** – Extent to which employee is able to perform a variety of assignments within the scope of his or her job duties. Efficiency under stress. Receptiveness to change.

Comments: _____

2. **ATTITUDE & COOPERATION** - Degree to which employee is supportive of organization's objectives, decisions, and policies. Accepts and profits from constructive criticism. Amount of interest and enthusiasm shown in work.

Comments: _____

3. **COMMUNICATION** – Ability to express thoughts and ideas effectively with peers and management. Consider oral, written and listening skills.

Comments: _____

PERFORMANCE APPRAISAL FORM

4. **CLIENT SERVICE** – Demonstrates a commitment to meeting and exceeding client's needs. Is responsive to client's concerns.

Comments: _____

5. **CO-WORKER / CRIMINAL JUSTICE CONTACTS** - Accessibility, cooperation, willingness to cover, sharing of information, timeliness, courtesy and professionalism.

Comments: _____

6. **DEPENDABILITY** – Extent to which employee can be counted upon to carry out assignments to completion. Include comments on attendance if appropriate.

Comments: _____

7. **INITIATIVE & RESOURCEFULNESS**– Volunteers for additional assignments, make suggestions for improving work flow, and is resourceful. Demonstrates drive, creativity, and ability to start and accomplish work with minimal supervision.

Comments: _____

8. **JUDGMENT** – Demonstrates ability to make well-reasoned, objective, and timely decisions that favorably affect our business.

Comments: _____

PERFORMANCE APPRAISAL FORM

9. **ORGANIZATIONAL SKILLS** – Skill in planning, organizing, documenting, and implementing work assignments. Timeliness.

Comments: _____

10. **QUANTITY / QUALITY OF WORK** – Volume of work regularly produced. Speed and consistency of output. Extent to which work produced meets quality requirements of accuracy, thoroughness and effectiveness.

Comments: _____

11. **TEAMWORK** – Establishes and maintains cooperative and productive work relationships with all employees.

Comments: _____

12. **JOB KNOWLEDGE** - Demonstrates the skills needed to perform the job. Understands the work environment and the job requirements.

Comments: _____

13. **USE OF RESOURCES** - Knowledge and use of office equipment including but not limited to: Computers, Phones, Voicemail; Relationship with secretarial staff;

Comments: _____

PERFORMANCE APPRAISAL FORM

PART 2

MUTUALLY AGREED-UPON OBJECTIVES FOR NEXT REVIEW PERIOD:

<i>Step</i>	<i>Target Date</i>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

PART 3

EMPLOYEE'S GOALS AND INTERESTS:

PERFORMANCE APPRAISAL FORM

PART 4

MANAGER'S SUMMARY & ADDITIONAL COMMENTS:

EMPLOYEE'S COMMENTS:

PART 5

SIGNATURES: (Note: Employee's signature indicates understanding of contents, not necessarily agreement.)

Appraising Manager

Date

Employee

Date

Next Level of Management

Date

Human Resources Representative

Date

**[Juvenile Rights Project form
For newer attorneys (less than 5 years experience)]**

**ATTORNEY EVALUATION
[NAME]**

Meeting with Supervisors: [DATE]

Rating Scale:

E – Exceeds Performance Criteria

M – Meets Performance Criteria

N – Needs Improvement

1. File review:

Overall rating:

2. Input from other staff, the Court, and opposing counsel:

Overall rating:

3. Self-evaluation:

Overall rating:

4. Review of written work:

Overall rating:

5. Observation of advocacy:

Overall rating:

Areas of Performance

6. Work Habits:

Overall rating:

7. Teamwork:

Overall rating:

8. Ethics and Professionalism:

Overall rating:

9. Training and Professional Growth:

Overall rating:

10. Attorney-Client Relationships:

Overall rating:

11. Factual Investigation and Client Interview:

Overall rating:

12. Legal Issues:

Overall rating:

13. Case Preparation:

Overall rating:

14. Negotiation:

Overall rating:

15. Trials and Hearings:

Overall rating:

16. Disposition:

Overall rating:

17. Post-disposition and Review:

Overall rating:

18. Additional Activities on behalf of JRP

Overall rating:

Comments of Supervisors:

Comments of Attorney:

Signatures:

_____ Date: _____
_____ Date: _____
_____ Date: _____

**[Juvenile Rights Project form
For experienced attorneys (5 years or more)]**

Juvenile Rights Project, Inc.

Evaluation of Attorney with Five or More Years of Experience

Self Evaluation:

1. What are your areas of greatest strength as an attorney? Be specific, ex. Negotiations on behalf of delinquency clients, legal research, client management, service identification, working with teens, trial practice in dependency cases, etc.

2. In what areas and how would you like to improve your practice in the coming year? Again, be specific.

3. What are your long term (5 to 10 years) professional development goals?

4. How can JRP help you achieve your goal for the coming year and your long term goals?

Supervisor evaluation/comments:

Public Defender of Marion County, Inc

ATTORNEY EVALUATION

For Appraisal Period: _____ - _____ Date of Evaluation: _____

Attorney: _____

All PDMC attorneys will participate in an annual performance evaluation conducted by PDMC's Executive Director. Evaluations will occur within thirty days of the attorney's anniversary date. Evaluations may include: the attorney's self evaluation; observations of the attorney in court; review of files; input from other staff, the court and opposing counsel; and review of written work. The following is the form used to conduct an attorney evaluation.

Certain categories below reference sections of the Performance Standards adopted by the Oregon State Bar.

Areas of Performance

Rating Scale: **O** – Outstanding Performance **E** – Exceeds Performance Criteria **M** – Meets Performance Criteria **N** – Needs Improvement **U** - Unacceptable

Work Habits _____
_____ Overall rating: _____

Compliance with Office Policy/Procedure _____
_____ Overall rating: _____

Teamwork _____
_____ Overall rating: _____

Ethics and Professionalism (Stan. 1.1-1.3, 2.1–2.3) _____
_____ Overall rating: _____

Training and Professional Growth _____
_____ Overall rating: _____

Caseload management (Stan. 2.1) _____
_____ Overall rating: _____

Relationship with Client (Stan. 1.4) _____

Overall rating: _____

Factual Investigation and Client Interview _____

Overall rating: _____

Legal Issues _____

Overall rating: _____

Case Assessment (Stan. 1.5) _____

Overall rating: _____

Case Preparation (Stans. 2.4 – 2.7) _____

Overall rating: _____

Motion practice (Stan. 2.8) _____

Overall rating: _____

Negotiation (Stan. 2.9) _____

Overall rating: _____

Trials and Hearings (Stan. 1.5, 2.10) _____

Overall rating: _____

Sentence/Disposition (Stan. 2.10a, 2.11) _____

Overall rating: _____

Additional Activities on behalf of PDMC _____

Overall rating: _____

SUMMARY

1. Input from other staff, the Court, and opposing counsel _____

_____. Overall rating: _____

2. Self-evaluation _____
_____. Overall rating: _____

3. Review of written work _____
_____. Overall rating: _____

4. Observation of advocacy _____
_____. Overall rating: _____

Meeting with Executive Director

Strengths _____

Improvement since last evaluation _____

Areas needing improvement _____

Professional development goals _____

Comments of Supervisor _____

Comments of Attorney _____

Mutually agreed-upon work plan:

Step

Target Date

Attorney's Goals for Coming Year

SIGNATURES: (Note: Employee's signature indicates understanding of contents, not necessarily agreement.)

Executive Director

Date

Employee

Date

**Public Defender of Marion County, Inc
Attorney Self-Evaluation**

Attorney: _____

Date: _____

Discuss each of the areas of practice below. Explain your strengths or weaknesses in each.

1. Interviewing clients

2. Assessing Case

3. Negotiating Case

4. Motion Practice

5. Trial work:

Voir Dire

Opening Statement

Cross Examination

Knowledge of Evidence and Objections

Expert Witnesses

Closing Argument

6. Use of PDMC Staff and Resources

7. Knowledge of Office Equipment
Telephone/voice mail

Computer-case management program

Computer-research/information resources

Copier/Printer/FAX/ Scanner

8. Conformity with office Procedures

9. Relations with Office Staff

10. Relations with Other Attorneys in Office

11. Contributions to improvement of Office Operations

12. Relations with Judges

13. Relations with Court Staff

14. Relations with prosecutors

15. Relations with Jail Staff/Transport

16. What aspect of your practice of the law are you planning to improve in the next year?

Signed: _____

Dated: _____

To: Member of the Juvenile Court Community

Enclosed are evaluations of the members of Lane Juvenile Lawyers Consortium. I am hoping that you will take the time to complete these evaluations. Your feedback is important in helping us understand the perceptions of our colleagues and to identify areas that we can improve as individuals and as a group.

There is a one-page evaluation on each member of the consortium. The name of the person is on the top right-hand corner. If you have not had adequate experience with an individual lawyer to form an opinion about their work, please indicate so on their form.

If you wish, you may identify yourself by name and/or agency but you do not need to do so. I will keep the evaluations anonymous unless you request that I do otherwise. I will share the results with each lawyer, but not the actual forms. I addressed the envelope to you with a sticky note, which can be removed when returning the envelope so as to protect your identity from me.

Please feel free to include any additional feedback or comments.

Thank you for your time. Please call or email with any questions. You may return the completed evaluations to my box in the courthouse, drop them by my office, or mail them to the address below.

Karen M. Stenard

343-9909

sabsten@aol.com

747 Willamette St

Eugene OR 97401

ATTORNEY BEING EVALUATED: _____

1. This attorney is a zealous and reasonable advocate in the courtroom.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
2. This attorney knows the applicable cases, laws, OAR's and local policies which govern juvenile court.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
2. This attorney attends to aspects of her/his case between hearings. (For example: attends meetings when appropriate, contacts involved parties for information.)
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
3. This attorney seems to have good relations with her/his clients.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
4. This attorney returns phone calls and is generally accessible.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
5. This attorney seems to have good relations with community partners such as DHS, DYS, OYA, Counselors, Therapists
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
6. This attorney has adequate contact with their child clients.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
7. This attorney seems to be committed to her/his job and clients.
- | | | | | | |
|-----|--------|---------|-----------|--------------|-------|
| N/A | Always | Usually | Sometimes | Infrequently | Never |
|-----|--------|---------|-----------|--------------|-------|
8. Overall, this attorney is:
- | | | | | | |
|-----------|-----------|------|----|------|----------|
| Excellent | Very Good | Good | OK | Poor | Horrible |
|-----------|-----------|------|----|------|----------|

Comments:

My attorney was: _____

1. My attorney returned my phone calls in a timely manner.

Always Usually Sometimes Infrequently Never

2. My attorney did a good job representing me at court hearings.

Always Usually Sometimes Infrequently Never

3. My attorney was helpful to me between court hearings.

Always Usually Sometimes Infrequently Never

4. I felt like my attorney listened to me.

Always Usually Sometimes Infrequently Never

5. Generally, I felt my attorney was:

Excellent Very Good Good O.K. Not Very Good Bad Horrible

6. I really wish my attorney would have: _____

7. I really liked it when my attorney: _____

8. If I were to need an attorney again, I would like this attorney to represent me.

Yes No

CIDC

Clackamas Indigent Defense Corporation

294 Warner Milne
Oregon City, OR 97045
503-722-4000

March 17, 2009

Dear Former CIDC Client

Clackamas Indigent Defense Corporation (CIDC) is composed of local criminal defense attorneys who assist eligible persons charged with crimes in Clackamas County. You were recently prosecuted for a crime(s) in Clackamas County and qualified for a court-appointed attorney. Because it is CIDC's desire to ensure that it's attorneys are handling assigned cases in a courteous, timely and professional manner, CIDC would ask that you take a moment from your busy schedule to answer the attached survey and return it in the enclosed, self-addressed and stamped envelope at your earliest convenience.

Your courtesies and assistance are greatly appreciated,

Respectfully,

CIDC Board of Directors.

CIDC Client Survey 03/2009

Your Name: _____

Your lawyer's name: _____

What were you charged with? _____

Please circle your answer -

next
Your court date or other
first court
~~date~~

Did your lawyer contact you before the Case Management date? Yes No

Did you meet to review your case before the Case Management date? Yes No

If you were jailed, did your lawyer visit you before your court hearing? Yes No

Probation violation – did you review your case with lawyer before court? Yes No

Did your lawyer listen to you? Yes No

Was your lawyer helpful? Yes No

Was your lawyer prepared? Yes No

Were you satisfied with your lawyer's advice? Yes No

Were you treated fairly? Yes No

Would you recommend your lawyer to others? Yes No

Comments:

OK!

To: Clackamas County Circuit Court Judges
From: Brad Jonasson, President CIDC Board of Directors

July 22, 2009

Re. Evaluation of CIDC Contractors

Your Honors,

CIDC has never asked the Circuit Court judges for their opinions about the performance of the entire group of CIDC contracting defense attorneys. Hence, Brad Jonasson (Board President) and Ron Gray (CIDC Administrator) are now asking each and every one of you to complete the attached questionnaire to help the CIDC Board to evaluate it's contractors and make improvements where appropriate. Please take the time necessary to do a thoughtful and candid job and feel free to attach comments. The effectiveness of this project requires 100% participation. (Note: it is my intention to keep the identity of the author of each survey confidential.)

Thank you for your assistance.

Very Respectfully,

Brad Jonasson

(Note: I will stop by your office to pick up the completed survey in 5 days.)

Evaluation - CIDC Contracting Defense Attorneys

July, 2009

Rating Scale: High=3, Average=2, Low=1, No Opinion=0

Please rate the named defense attorneys as to their effectiveness in the indicated areas:

	Linda Beloof	Jack Bernstein	Jim Bernstein	Rhett Bernstein	Karen Brisbin
Case Preparedness					
Creative Resolutions					
Motion Practice					
Plea Practice					
Trial Practice					
Sentencing/Disposition					
Post-Trial Issues					
P.V. Practice					
Preserve Issues for Appeal					

Please rate each attorney for the following professional traits:

	Linda Beloof	Jack Bernstein	Jim Bernstein	Rhett Bernstein	Karen Brisbin
General Competency					
Technical Knowledge					
Thoroughness					
Professionalism					
Credibility/Integrity					
Zeal					
Ethics					

Please rate the named defense attorneys as to their effectiveness in the indicated areas:

	Mike Czaiko	Ron Gray	Michael Haines	Bart Herron	Brad Jonasson
Case Preparedness					
Creative Resolutions					
Motion Practice					
Plea Practice					
Trial Practice					
Sentencing/Disposition					
Post-Trial Issues					
P.V. Practice					
Preserve Issues for Appeal					

Please rate each attorney for the following professional traits:

	Mike Czaiko	Ron Gray	Michael Haines	Bart Herron	Brad Jonasson
General Competency					
Technical Knowledge					
Thoroughness					
Professionalism					
Credibility/Integrity					
Zeal					
Ethics					

COMMENTS

Linda Beloof

Jack Bernstein

Jim Bernstein

Rhett Bernstein

Karen Brisbin

Mike Czaiko

Ron Gray

Michael Haines

Bart Herron

Brad Jonasson

Heather Karabeika

WILLIAM J. CONDRON
ATTORNEY AT LAW
311 NW BEAVER STREET
PO BOX 133
PRINEVILLE, OREGON 97754
(541) 447-2959
Fax:(541) 447-7897

April 30, 2007

Dear Community Partner:

The 22nd Circuit Defenders, LLC, is a professional consortium of attorneys who accept court appointed cases in Crook and Jefferson Counties. The attorneys of the consortium are Bill Condron, Jeff Miller, Jennifer Kimble, David Pardo, and Rachel Marshall

We strive to provide professional advocacy on behalf of our clients. In order to ensure our we are providing the best legal representation, we are conducting the enclosed survey.

Please help us improve the quality of our services by completing the attached evaluation form, and return it to the 22nd Circuit Defenders, LLC, in the enclosed stamped envelope by May 25th, 2007.

Your confidential response is important to us. We value your opinion very much. Thank you for helping improve the quality of legal services in Central Oregon.

Very Truly Yours,

William J. Condron
Contract Administrator
22nd Circuit Defenders, LLC

A.	Appear to be proficient in the applicable law?				
Always	Most of the time	Sometimes	Rarely	N/A	
B.	Abide by the Oregon Rules of Professional Conduct and the rules of the Court?				
Always	Most of the time	Sometimes	Rarely	N/A	
C.	Devote adequate time and resources to their cases?				
Always	Most of the time	Sometimes	Rarely	N/A	
D.	Engage in the case preparation necessary for quality representation?				
Always	Most of the time	Sometimes	Rarely	N/A	
E.	Appear to maintain a relationship of trust and open communication with their clients?				
Always	Most of the time	Sometimes	Rarely	N/A	
F.	Return telephone calls within a reasonable period of time?				
Always	Most of the time	Sometimes	Rarely	N/A	
G.	Respond to requests for information from you within a reasonable period of time?				
Always	Most of the time	Sometimes	Rarely	N/A	
H.	Make accommodations when necessary due to a client's special circumstances, such as youth, mental or physical disability or language barrier?				
Always	Most of the time	Sometimes	Rarely	N/A	
I.	Dress appropriately and professionally for court?				
Always	Most of the time	Sometimes	Rarely	N/A	
J.	Treat their clients with dignity and respect?				
Always	Most of the time	Sometimes	Rarely	N/A	
K.	Show appropriate respect to the Court and other parties?				
Always	Most of the time	Sometimes	Rarely	N/A	
L.	Work with others, such as the D.A., CASA, and DHS to seek mutually satisfactory resolutions to problems?				
Always	Most of the time	Sometimes	Rarely	N/A	

Thank you for completing this survey. Please return it in the attached self-addressed stamped envelope to the 22nd Circuit Defenders, LLC, PO Box 133, Prineville, OR 97754.

[The Arneson Group]

Lawyer Evaluation

General Factors

- Reliability
- Relationship with other staff
- Treatment of clients
- Office and Client confidentiality
- Judgment/Decision Making
- Initiative/Creativeness
- Prioritizing Work
- Promptness in completing work

Lawyer

- Advocacy
- Use of Support Staff
- Trial and Courtroom Skills
- Organization and Case Management
- Client Relationships
- Income Generation
- Does the lawyer “lead by example?”

Goals

1. Does lawyer meet income and hourly goals and, if not, why not?
2. What specific skills need the least improvement?
3. What specific skills need the most improvement?
4. On what goals would you like to work in the next year?

Attachment 5

Statutes pertaining to financial eligibility for court-appointed counsel

151.485 Financial eligibility; determination; financial statement; termination of appointed counsel.

(1) For purposes of determining the financial eligibility for appointed counsel of persons with a constitutional or statutory right to counsel in matters before the state courts and whose counsel is authorized to be paid by the public defense services executive director under ORS 151.219, a person is financially eligible for appointed counsel if the person is determined to be financially unable to retain adequate counsel without substantial hardship in providing basic economic necessities to the person or the person's dependent family under standards established by the Public Defense Services Commission under ORS 151.216.

(2) A determination of financial eligibility shall be made upon the basis of information contained in a detailed financial statement submitted by the person for whom counsel is requested or appointed or, in an appropriate case, by the person's parent, guardian or custodian. The financial statement shall be in the form prescribed by the Public Defense Services Commission. The form shall contain a full disclosure of all assets, liabilities, current income, dependents and other information required by ORS 135.050 (4) and, in addition, any information required by the commission and state courts as necessary to determine eligibility. The commission shall adopt uniform statewide guidelines and procedures that prescribe how to use the form and determine financial eligibility for appointed counsel.

...

151.487 Ability to pay; effect.

(1) If in determining that a person is financially eligible for appointed counsel under ORS 151.485, the court finds that the person has financial resources that enable the person to pay in full or in part the administrative costs of determining the eligibility of the person and the costs of the legal and other services to be provided at state expense that are related to the provision of appointed counsel, the court shall order the person to pay to the Public Defense Services Account in the General Fund, through the clerk of the court, the amount that it finds the person is able to pay without creating substantial hardship in providing basic economic necessities to the person or the person's dependent family. The amount that a court may order the person to pay is subject to the guidelines and procedures issued by the Public Defense Services Commission as provided in subsection (4) of this section.

(2) Failure to obey an order under this section is not grounds for contempt or grounds for withdrawal by the appointed attorney, but any part of the amount ordered under this section and not paid may be:

(a) Enforced against the person as if the order is a civil judgment; or

(b) Enforced as otherwise permitted by law.

(3) Except as authorized in this section, no person, organization or governmental agency may request or accept a payment or promise of payment for assisting in the representation of a person by appointment.

(4) The commission shall promulgate and issue guidelines and procedures:

(a) For the determination of persons provided with appointed counsel who have some financial resources to pay in full or in part the administrative, legal and other costs under subsection (1) of this section; and

(b) Regarding the amounts persons may be required to pay by a court under subsection (1) of this section.

(5) The determination that a person is able to pay or partially able to pay, or that a person no longer has the ability to pay the amount ordered in subsection (1) of this section, is subject to review at any time by the court. [1989 c.1053 §§14; 1993 c.33 §§305; 1997 c.761 §§3; 2001 c.962 §§34]

MISCELLANEOUS

151.505 Authority of court to order repayment of costs related to provision of appointed counsel.

(1) At the conclusion of a case or matter in which the first accusatory instrument or petition in the trial court was filed after January 1, 1998, and in which the court appointed counsel to represent a person, a trial, appellate or post-conviction court may include in its judgment an order that the person repay in full or in part the administrative costs of determining the eligibility of the person for appointed counsel and the costs of the legal and other services that are related to the provision of appointed counsel.

(2) Costs repayable under this section include a reasonable attorney fee for counsel appointed to represent the person and a reasonable amount for expenses authorized under ORS 135.055. A reasonable attorney fee is presumed to be a reasonable number of hours at the hourly rate authorized by the Public Defense Services Commission under ORS 151.216. For purposes of this subsection, compensation of counsel is determined by reference to a schedule of compensation established by the commission.

(3) Costs repayable under this section do not include costs imposed and paid under a previous order under ORS 151.487, but may include costs imposed under an order under ORS 151.487 that are unpaid at the time the judgment is filed.

(4) The court may not order a person to pay costs under this section unless the person is or may be able to pay the costs. In determining the amount and method of payment of costs, the court shall take account of the financial resources of the person and the nature of the burden that payment of costs will impose.

(5) A person who has been ordered to pay costs under this section and who is not in contumacious default in the payment of the costs may at any time petition the court for remission of the payment of costs or any unpaid portion of the costs. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the person ordered to repay or on the immediate family of the person, the court may remit all or part of the amount due or modify the method of payment.

(6) Except for moneys payable under subsection (1) of this section pursuant to an order under ORS 151.487, all moneys collected or paid under this section shall be paid into the General Fund and credited to the Criminal Fine and Assessment Account.

(7) Any part of the costs ordered to be paid under this section that is not paid may be enforced against the person as provided in ORS 137.450 if the judgment is a judgment in a criminal action or in the same manner as unpaid costs may be enforced under ORS 151.487. [1997 c.761 §§2; 2001 c.962 §§39; 2003 c.334 §§§§1,2; 2003 c.449 §§§§18,19]

FEE CALCULATOR

Applicant's Name
John Smith

Case Number
12345CR

Enter	
Private Attorney Fee Schedule	\$500
Private Attorney Fee Amt	\$500
ACP Contribution Schedule	\$225
Interpreter add: \$150 if yes	
Household Size	
Applicant	1
Spouse	
Dependents	
Other	
TOTAL	1

Determining Eligibility	
Monthly NET Household Income	\$1,500
Liquid Assets/Alternative Assets	\$0
SUBTOTAL	\$1,500
Monthly Expenses	\$904
Available Resources	\$596

Privately-Hired Attorney Fee Schedule \$500

Monthly NET Household Income	
Applicant	\$1,500
Spouse (if applicable)	
Alimony	
Child Support (received)	
Social Security	
Unemployment (if receiving)	
Veterans Benefits (if receiving)	
Other	
TOTAL	\$1,500

CAC RECOMMENDATION DENY

Total Available Resources	\$596
ACP Guideline Maximum Contribution	\$225
APPLICATION FEE RECOMMENDATION	ORDER

Income Guideline	\$904
True Living - Rent / Mortgage	\$700
True Living - Utilities	\$200
True Living - Credit Card Payment	\$40
True Living - Vehicle Payment(s)	\$260
True Living - Transportation / Vehicle Insurance	\$100
True Living - Food	\$200
True Living - Misc	
Lesser of Income Guide or True Living	\$904
Plus Medical / Insurance Monthly Payments	
Plus Court Payments (need receipt)	
Plus Wage Garnishment or Support	
Plus Child Care	
Total Eligible Expenses	\$904

Application Fee	\$20
Available Resources	\$576
Allowed Assets	\$100
Remaining Resources to Contribute	\$476
CONTRIBUTION AMOUNT RECOMMENDATION	\$0

Liquid Assets	
Real Estate (equity)	
Vehicle(s) (Equity over \$4,650)	
ATVs, recreational equipment, RVs, etc.	
Cash	
Savings	
Bank Account(s)	
Stock / Bonds / Securities	
Other	
TOTAL	\$0

Unemployed Applicant w/Assets n/a

FEE CALCULATOR

Applicant's Name
John Smith

Case Number
12345CR

Enter	
Private Attorney Fee Schedule	\$750
Private Attorney Fee Amt	\$750
ACP Contribution Schedule	\$225
Interpreter add: \$150 if yes	
Household Size	
Applicant	1
Spouse	
Dependents	
Other	
TOTAL	1

Determining Eligibility	
Monthly NET Household Income	\$1,500
Liquid Assets/Alternative Assets	\$0
SUBTOTAL	\$1,500
Monthly Expenses	\$904
Available Resources	\$596

Privately-Hired Attorney Fee Schedule \$750

Monthly NET Household Income	
Applicant	\$1,500
Spouse (if applicable)	
Alimony	
Child Support (received)	
Social Security	
Unemployment (if receiving)	
Veterans Benefits (if receiving)	
Other	
TOTAL	\$1,500

CAC RECOMMENDATION ALLOW

Total Available Resources	\$596
ACP Guideline Maximum Contribution	\$225
APPLICATION FEE RECOMMENDATION	ORDER

Income Guideline	\$904
True Living - Rent / Mortgage	\$700
True Living - Utilities	\$200
True Living - Credit Card Payment	\$40
True Living - Vehicle Payment(s)	\$260
True Living - Transportation / Vehicle Insurance	\$100
True Living - Food	\$200
True Living - Misc	
Lesser of Income Guide or True Living	\$904
Plus Medical / Insurance Monthly Payments	
Plus Court Payments (need receipt)	
Plus Wage Garnishment or Support	
Plus Child Care	
Total Eligible Expenses	\$904

Application Fee	\$20
Available Resources	\$576
Allowed Assets	\$100
Remaining Resources to Contribute	\$476
CONTRIBUTION AMOUNT RECOMMENDATION	\$225

Liquid Assets	
Real Estate (equity)	
Vehicle(s) (Equity over \$4,650)	
ATVs, recreational equipment, RVs, etc.	
Cash	
Savings	
Bank Account(s)	
Stock / Bonds / Securities	
Other	
TOTAL	\$0

Unemployed Applicant w/Assets n/a

COUNTY	AG MUR	FEL MUR	MAN 1	MAN 2	CRM NG HM	ATT MUR	ASLT1	ASLT 2	ASLT 3	RES ARST	ASLT 4	MEN
BAK	\$50,000	\$20,000	\$5,000	\$5,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,000	\$1,000	\$1,000	\$750
BEN	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$2,500	\$2,500	\$1,000	\$1,000	\$750
CLA	\$40,000	\$25,000	\$10,000	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$1,000	\$1,000	\$1,000
CLT	\$25,000	\$20,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$4,000	\$2,500	\$1,000	\$1,000	\$1,000
COL	\$25,000	\$20,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$4,000	\$2,500	\$1,000	\$1,000	\$1,000
COO/CUR	\$25,000	\$20,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$750
CRO/JEF	\$25,000	\$25,000	\$5,000	\$5,000	\$4,500	\$5,000	\$3,000	\$2,500	\$1,500	\$1,000	\$1,000	\$750
DES	\$25,000	\$25,000	\$10,000	\$10,000	\$5,000	\$5,000	\$3,000	\$2,500	\$1,500	\$1,000	\$1,000	\$750
DOU	\$25,000	\$20,000	\$8,000	\$8,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,200	\$1,000	\$1,000
GRA	\$50,000	\$20,000	\$5,000	\$5,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,000	\$1,000	\$1,000	\$750
HAR	\$50,000	\$20,000	\$10,000	\$8,000	\$5,000	\$5,000	\$5,000	\$4,000	\$3,000	\$1,500	\$1,000	\$1,000
JAC	\$25,000	\$20,000	\$10,000	\$10,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$750
JOS	\$25,000	\$25,000	\$10,000	\$10,000	\$5,000	\$5,000	\$5,000	\$2,500	\$2,500	\$1,000	\$1,000	\$750
KLA/LAK	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$1,000	\$750
LAN	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,000	\$1,200	\$1,000	\$1,000
LNN	\$25,000	\$20,000	\$15,000	\$10,000	\$5,000	\$5,000	\$5,000	\$4,000	\$3,500	\$1,000	\$900	\$750
LIN	\$25,000	\$15,000	\$8,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$1,200	\$1,000	\$1,000
MAL	\$50,000	\$20,000	\$10,000	\$8,000	\$5,000	\$5,000	\$5,000	\$4,000	\$3,000	\$1,500	\$1,000	\$1,000
MAR	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$2,500	\$3,000	\$1,000	\$750	\$750
MCR	\$25,000	\$25,000	\$10,000	\$8,000	\$5,000	\$5,000	\$4,000	\$3,000	\$2,500	\$1,500	\$1,000	\$1,000
PLK	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$750
TIL	\$25,000	\$20,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$4,000	\$2,500	\$1,000	\$1,000	\$1,000
UMA/MOR	\$25,000	\$20,000	\$15,000	\$10,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$1,000	\$750
UNI/WAL	\$25,000	\$25,000	\$5,000	\$5,000	\$2,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$1,000	\$750
JUDIST 7	\$25,000	\$20,000	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$1,500	\$1,000	\$1,000
WSH	\$50,000	\$25,000	\$10,000	\$10,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$1,000	\$1,000	\$1,000
YAM	\$25,000	\$15,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$750
MAXIMUM	\$50,000	\$25,000	\$15,000	\$10,000	\$5,000	\$5,000	\$5,000	\$5,000	\$3,500	\$1,500	\$1,000	\$1,000
MINIMUM	\$25,000	\$15,000	\$5,000	\$5,000	\$2,000	\$2,500	\$2,500	\$2,500	\$1,500	\$1,000	\$750	\$750

COUNTY	HRSMT	RAPE 1	RAPE 2	RAPE 3	SEX AB 3	M/DCS 1	M/DCS 2	M/DCS 3	PCS 1	PCS 2	F/DWS	M/DWS	DUII
BAK	\$750	\$5,000	\$4,000	\$3,000	\$2,000	\$3,000	\$2,500	\$2,000	\$2,000	\$2,000	\$750	\$750	\$1,000
BEN	\$750	\$5,000	\$3,500	\$3,000	\$2,000	\$2,000	\$1,500	\$1,500	\$1,000	\$1,000	\$750	\$750	\$850
CLA	\$800	\$5,000	\$5,000	\$3,000	\$2,500	\$3,000	\$3,000	\$3,000	\$1,500	\$1,500	\$1,000	\$750	\$1,000
CLT	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,000	\$2,000	\$1,000	\$750	\$850
COL	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,000	\$2,000	\$1,000	\$750	\$850
COO/CUR	\$750	\$5,000	\$5,000	\$2,500	\$2,000	\$2,500	\$2,500	\$2,500	\$1,500	\$1,250	\$750	\$750	\$750
CRO/JEF	\$750	\$5,000	\$3,000	\$2,500	\$2,000	\$2,500	\$2,500	\$2,000	\$1,500	\$1,500	\$750	\$750	\$1,000
DES	\$750	\$5,000	\$3,000	\$2,500	\$2,000	\$2,500	\$2,500	\$2,000	\$1,500	\$1,500	\$750	\$500	\$750
DOU	\$750	\$4,000	\$3,000	\$3,000	\$2,500	\$2,500	\$2,500	\$2,500	\$1,500	\$1,500	\$750	\$750	\$1,000
GRA	\$750	\$5,000	\$4,000	\$3,000	\$2,000	\$3,000	\$2,500	\$2,000	\$2,000	\$2,000	\$750	\$750	\$1,000
HAR	\$750	\$7,500	\$5,000	\$5,000	\$3,000	\$3,500	\$3,500	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$1,000
JAC	\$750	\$4,000	\$3,000	\$2,500	\$1,500	\$2,500	\$2,500	\$2,000	\$1,500	\$1,000	\$750	\$750	\$750
JOS	\$750	\$5,000	\$5,000	\$3,000	\$2,000	\$2,500	\$2,500	\$2,000	\$1,500	\$1,200	\$1,000	\$750	\$750
KLA/LAK	\$750	\$3,500	\$3,000	\$2,500	\$1,500	\$2,000	\$2,000	\$2,000	\$1,500	\$1,000	\$1,000	\$750	\$850
LAN	\$750	\$4,000	\$3,000	\$3,000	\$2,000	\$2,500	\$2,500	\$2,500	\$1,500	\$1,500	\$750	\$750	\$1,000
LNN	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$2,000	\$2,000	\$1,500	\$1,500	\$750	\$750	\$900
LIN	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$2,500	\$2,500	\$1,000	\$1,000	\$750	\$750	\$850
MAL	\$750	\$7,500	\$5,000	\$5,000	\$3,000	\$3,500	\$3,500	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$1,000
MAR	\$750	\$4,000	\$3,500	\$3,000	\$1,500	\$2,000	\$1,500	\$1,500	\$1,000	\$1,000	\$750	\$500	\$850
MCR	\$1,000	\$5,000	\$5,000	\$3,000	\$2,500	\$3,000	\$3,000	\$2,500	\$1,500	\$1,500	\$1,000	\$750	\$1,000
PLK	\$750	\$4,000	\$3,000	\$2,500	\$1,500	\$2,500	\$2,000	\$2,000	\$1,000	\$1,000	\$750	\$750	\$850
TIL	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$2,500	\$2,500	\$2,000	\$2,000	\$1,000	\$750	\$850
UMA/MOR	\$750	\$5,000	\$5,000	\$3,000	\$1,500	\$5,000	\$2,500	\$2,500	\$1,500	\$1,500	\$750	\$750	\$1,000
UNI/WAL	\$750	\$5,000	\$3,000	\$2,500	\$2,000	\$3,000	\$3,000	\$2,500	\$1,500	\$1,500	\$750	\$750	\$850
JUDIST 7	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$1,000
WSH	\$750	\$5,000	\$5,000	\$3,000	\$2,500	\$3,000	\$3,000	\$2,500	\$1,500	\$1,500	\$750	\$750	\$1,000
YAM	\$750	\$4,000	\$3,000	\$2,500	\$1,500	\$2,500	\$2,000	\$2,000	\$1,000	\$1,000	\$750	\$750	\$850
MAXIMUM	\$1,000	\$7,500	\$5,000	\$5,000	\$3,000	\$5,000	\$5,000	\$3,000	\$2,500	\$2,500	\$1,000	\$750	\$1,000
MINIMUM	\$750	\$3,500	\$3,000	\$2,500	\$1,500	\$2,000	\$1,500	\$1,500	\$1,000	\$1,000	\$750	\$500	\$750

COUNTY	DIV ELG	F/PV	M/PV	VRO	A/FEL	B/FEL	C/FEL	A/MIS	B/MIS	C/MIS	EXTR
BAK	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$2,000	\$750	\$750	\$500	\$500
BEN	\$350	\$500	\$500	\$500	\$3,000	\$2,500	\$1,500	\$750	\$500	\$500	\$500
CLA	\$700	\$750	\$500	\$500	\$5,000	\$3,500	\$2,000	\$750	\$750	\$500	\$500
CLT	\$500	\$500	\$500	\$500	\$5,000	\$3,000	\$2,000	\$750	\$500	\$500	\$500
COL	\$500	\$500	\$500	\$500	\$5,000	\$3,000	\$2,000	\$750	\$500	\$500	\$500
COO/CUR	\$500	\$750	\$500	\$500	\$3,000	\$2,000	\$1,500	\$750	\$500	\$500	\$500
CRO/JEF	\$500	\$500	\$500	\$500	\$3,000	\$2,500	\$2,000	\$750	\$500	\$500	\$500
DES	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$1,500	\$750	\$500	\$500	\$500
DOU	\$500	\$750	\$500	\$500	\$3,000	\$2,000	\$1,500	\$750	\$500	\$500	\$500
GRA	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$2,000	\$750	\$750	\$500	\$500
HAR	\$500	\$750	\$500	\$500	\$3,500	\$3,000	\$2,500	\$1,000	\$800	\$500	\$500
JAC	\$500	\$500	\$500	\$500	\$2,000	\$1,500	\$1,000	\$750	\$500	\$500	\$750
JOS	\$400	\$750	\$500	\$500	\$2,000	\$1,500	\$1,500	\$750	\$500	\$500	\$750
KLA/LAK	\$500	\$500	\$500	\$500	\$1,500	\$1,500	\$1,000	\$750	\$500	\$500	\$750
LAN	\$500	\$500	\$500	\$500	\$3,000	\$3,000	\$1,500	\$750	\$500	\$500	\$750
LNN	\$500	\$750	\$500	\$500	\$2,500	\$1,800	\$1,000	\$750	\$500	\$500	\$500
LIN	\$500	\$500	\$500	\$500	\$3,500	\$3,000	\$1,500	\$750	\$500	\$500	\$750
MAL	\$500	\$750	\$500	\$500	\$3,500	\$3,000	\$2,500	\$1,000	\$800	\$500	\$500
MAR	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$1,000	\$500	\$500	\$500	\$500
MCR	\$500	\$500	\$400	\$500	\$3,500	\$3,000	\$2,500	\$1,000	\$800	\$500	\$1,000
PLK	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$1,500	\$750	\$500	\$500	\$750
TIL	\$500	\$500	\$500	\$500	\$5,000	\$3,000	\$2,000	\$750	\$500	\$500	\$500
UMA/MOR	\$750	\$750	\$500	\$500	\$5,000	\$3,500	\$2,500	\$750	\$500	\$500	\$500
UNI/WAL	\$500	\$750	\$500	\$500	\$3,000	\$2,000	\$1,000	\$750	\$500	\$500	\$500
JUDIST 7	\$500	\$500	\$500	\$500	\$5,000	\$3,500	\$2,500	\$1,000	\$800	\$500	\$500
WSH	\$750	\$500	\$500	\$500	\$3,500	\$3,000	\$2,000	\$750	\$750	\$500	\$500
YAM	\$500	\$500	\$500	\$500	\$3,000	\$2,000	\$1,500	\$750	\$500	\$500	\$750
MAXIMUM	\$750	\$750	\$500	\$500	\$5,000	\$3,500	\$2,500	\$1,000	\$800	\$500	\$1,000
MINIMUM	\$350	\$500	\$400	\$500	\$1,500	\$1,500	\$1,000	\$500	\$500	\$500	\$500

Calculation methodology of privately hired attorney fee guidelines

Jackson County, Class A misdemeanor

	Attorney	Expenses	Total
1	\$500		\$500
2	\$500		\$500
3	\$750		\$750
4	\$750	\$250	\$1,000
5	\$1,000		\$1,000
6	\$1,000		\$1,000
7	\$1,500	\$500	\$2,000
8	\$2,000		\$2,000
9	\$2,500		\$2,500
10	\$2,500	\$500	\$3,000
11	\$3,000		\$3,000
12	\$2,500	\$1,000	\$3,500
13	\$6,000	\$1,000	\$7,000

	Attorney	Expenses	Total
Average*	\$1,636		\$1,841
Median	\$1,500		\$2,000
25th percentile	\$750		\$750

Multnomah County, Class A misdemeanor

	Attorney	Expenses	Total
1	\$500		\$500
2	\$750	\$750	\$1,500
3	\$750		\$750
4	\$750		\$750
5	\$750		\$750
6	\$750	\$250	\$1,000
7	\$1,000		\$1,000
8	\$1,000		\$1,000
9	\$1,500		\$1,500
10	\$1,500		\$1,500
11	\$1,500		\$1,500
12	\$1,500		\$1,500
13	\$1,500		\$1,500
14	\$1,500		\$1,500
15	\$2,000		\$2,000
16	\$2,000	\$500	\$2,500
17	\$2,000		\$2,000
18	\$2,000		\$2,000
19	\$2,500	\$500	\$3,000
20	\$2,500		\$2,500
21	\$2,500	\$1,000	\$3,500
22	\$2,500	\$500	\$3,000
23	\$2,500		\$2,500
24	\$3,000		\$3,000
25	\$3,000		\$3,000
26	\$5,000	\$1,000	\$6,000
27	\$5,000	\$1,000	\$6,000
28	\$6,000	\$1,000	\$7,000

	Attorney	Expenses	Total
Average*	\$1,971		\$2,183
Median	\$1,750		\$1,750
25th percentile	\$1,000		\$1,000

Marion County, Class A misdemeanor

	Attorney	Expenses	Total
1	\$200		\$200
2	\$500		\$500
3	\$500		\$500
4	\$500		\$500
5	\$750		\$750
6	\$750	\$250	\$1,000
7	\$1,000		\$1,000
8	\$1,000		\$1,000
9	\$1,500		\$1,500
10	\$1,500		\$1,500
11	\$1,500		\$1,500
12	\$2,000		\$2,000
13	\$2,000		\$2,000
14	\$2,500	\$1,000	\$3,500
15	\$2,500	\$500	\$3,000
16	\$6,000	\$1,000	\$7,000

	Attorney	Expenses	Total
Average*	\$1,321		\$1,446
Median	\$1,250		\$1,250
25th percentile	\$500		\$1,000

*Highest and lowest removed

**ACP and Verification Program Statewide Summary
For Affidavits Filed Between 1/1/2009 and 12/31/2009**

Please note the information captured in this report only includes data entered through the GUI OJIN 'Appoint Attorney' module. Refer to the 'Chapter 11 Statistics' and 'Development of ACP and Verification Program Summary Report' documentation for more information.

Judicial District	Court Location	Court Description	Affidavits Filed	No Rec	Approved	Denied	AFIN	ORAC	ORDY	VRFD	Felony	Misdemeanor	Other
1	JAC	Jackson	4,039	40	3,609	390	4,046	3,391	165	960	1,712	1,710	617
2	LAN	Lane	3,747	6	3,602	139	3,757	88	130	62	118	98	3,531
3	MAR	Marion	4,009	2,573	1,370	66	3,998	3,850	110	3,363	1,603	2,311	95
4	MCR	Multnomah	8,202	8,189	9	4	8,183	7,603	558	3,628	1,664	6,486	52
5	CLA	Clackamas	4,902	40	4,549	313	4,931	4,534	105	2,509	1,806	2,719	377
6	MOR	Morrow	46	13	25	8	44	29	8	15	12	25	9
6	UMA	Umatilla	1,051	7	976	68	1,041	972	57	780	399	605	47
7	GIL	Gilliam	5	0	5	0	5	5	0	0	2	3	0
7	HOO	Hood River	510	20	466	24	511	496	9	4	117	380	13
7	SHE	Sherman	21	0	21	0	21	21	0	2	12	9	0
7	WAS	Wasco	770	13	718	39	765	737	26	101	304	454	12
8	BAK	Baker	210	7	164	39	200	174	29	153	97	104	9
9	MAL	Malheur	1,040	15	964	61	1,043	969	57	569	331	691	18
10	UNI	Union	544	35	479	30	535	500	31	393	191	339	14
10	WAL	Wallowa	97	0	94	3	97	91	1	34	36	55	6
12	PLK	Polk	1,450	8	1,223	219	1,452	1,340	58	0	604	791	55
14	JOS	Josephine	2,384	2,384	0	0	2,369	2,247	103	18	828	1,476	80
15	COO	Coos	836	3	827	6	842	165	0	742	49	106	681
15	CUR	Curry	72	3	45	24	69	45	10	0	9	46	17
16	DOU	Douglas	1,196	116	1,059	21	1,197	1,163	22	655	570	610	16
17	LNN	Lincoln	773	11	745	17	813	738	29	352	286	463	24
18	CLT	Clatsop	798	11	738	49	796	748	37	0	373	408	17
19	COL	Columbia	705	11	672	22	727	607	24	0	330	295	80
20	WSH	Washington	8,413	39	8,193	181	8,400	8,185	183	175	3,126	5,180	107
21	BEN	Benton	1,152	700	416	36	1,186	1,051	88	756	405	723	24
22	CRO	Crook	794	281	431	82	869	694	45	29	202	530	62
22	JEF	Jefferson	695	200	491	4	716	668	2	0	207	452	36
23	LIN	Linn	2,394	60	2,176	158	2,425	2,301	80	2,169	1,273	1,097	24
24	GRA	Grant	113	8	88	17	117	95	17	0	37	72	4
24	HAR	Harney	125	0	119	6	131	117	6	104	86	36	3
25	YAM	Yamhill	1,772	8	1,466	298	1,784	1,549	185	1,684	618	1,107	47
26	LAK	Lake	223	55	156	12	221	213	4	0	71	143	9
27	TIL	Tillamook	753	7	696	50	781	712	34	3	218	516	19

Attachment 6

OPDS Diversity Survey - Email Message Sent to PDSC Contractors on January 5, 2010

Dear PDSC Contractors:

Thanks to everyone who responded to our survey regarding diversity in the public defense workforce. We were very disappointed not to have heard from all of you. Non-respondents included some relatively large providers and their lack of participation severely limited the value of the data obtained. Enough of you did participate to allow us to draw some tentative conclusions, however and those are set forth below.

1. Response Rate: 52% of contractors responded (a total of 51 contractors)
2. Responses were received from all provider types.
3. There are almost twice as many male attorneys in responding offices as female attorneys and three times as many female support staff members as male support staff members.
4. While the “graying” of the defense bar has been a concern in the defense community, survey results indicate that it may not be as gray as assumed. 10% of respondents were under 30, 37% were under 40, a total of 63% were under 50 and 37% were 50 and older.
5. Unfortunately, because only half of our contractors responded, the cultural diversity of our defense community is still unknown. In the offices that did respond, there were 10 African American attorneys (out of a total number of 438 attorneys) and 12 African American support staff members (out of a total of 311). There were 16 Hispanic lawyers and 23 support staff members, 8 Asian American lawyers and 14 support staff members, 3 Native American attorneys and 4 support staff members, 5 attorneys reporting more than one race and 11 support staff members. US Census Bureau data for 2008 indicates that 2% of Oregon’s population is African American (but 10% of Multnomah County's population), 11% Hispanic, 3.6% Asian, 1.4% Native American and 2.5% of two or more races. Based only on the limited data provided, Hispanic attorneys are the most dramatically underrepresented. Asians, Native Americans, multiracial attorneys and women are also significantly underrepresented. Support staff in responding offices was generally more diverse than the attorney population.

We also asked you to provide data on the number of disabled workers you had in your offices and how many openly gay employees. Among the respondents, there was a total of 3 disabled attorneys, and 2 support staff members. There were 15 openly gay attorneys and 5 staff members. Studies estimate that between 10 and 20% of Americans are gay. Definitions of both “gay” and “disabled” vary from one study to another making comparisons

difficult.

6. 57% of respondents had boards of directors, 59% had written bylaws, 49% conduct regular employee evaluations.

As indicated in PDSC's Affirmative Action Plan for 2009-2011, PDSC is committed to helping public defense providers attract and retain attorneys and staff that more closely reflect the diversity of their communities. While we had hoped to start with reliable information about the composition of the present workforce so that we could measure the impact of particular recruitment and retention efforts, we certainly have enough information to know that some of you have been very successful in achieving and sustaining diversity in your offices and a positive next step would be to have successful contractors share their experience and strategies with others at the next OCDLA/OPDS management conference. We would welcome any other ideas you have about how public defense providers in Oregon can move toward a more representative workforce.

Ingrid

Ingrid Swenson
Executive Director
Office of Public Defense Services

COUNTY	COURT NAME
Baker	Adult Drug Court
Baker	Juvenile Drug Court
Benton	Adult Drug Court
Benton	Juvenile Drug Court
Clackamas	Adult Drug Court
Clackamas	Community Court
Clackamas	Restitution Court
Clackamas	DUII Court
Clackamas	Family Dependency Treatment Drug
Clackamas	Juvenile Drug Court
Clackamas	Mental Health Court
Clatsop	Adult Drug Court
Clatsop	Family Dependency Treatment Court
Clatsop	Juvenile Drug Court
Clatsop	Mental Health Court (Just found out about this one. Not included in Byrne Grant application.)
Columbia	Adult Drug Court
Columbia	Family Dependency Treatment Court (will start soon)
Columbia	Juvenile Drug Court
Coos	Family Dependency Treatment Court
Coos	Mental Health Court
Crook	Adult Drug Court
Deschutes	Domestic Violence Court
Deschutes	Family Court
Deschutes	Family Drug Court
Deschutes	Mental Health Court
Douglas	Adult Drug Court
Douglas	Domestic Violence Court
Grant	Adult Drug Court
Harney	Adult Drug Court
Hood River	Adult Drug Court
Jackson	Adult Drug Court
Jackson	Family Dependency Treatment Court
Jackson	PROPOSED Mental Health Court
Jefferson	Adult Drug Court
Josephine	Adult Drug Court
Josephine	PROPOSED Mental Health Court
Klamath	Adult Drug Court
Klamath	Family Dependency Treatment Court
Klamath	Juvenile Drug Court
Lane	Adult Drug Court
Lane	Juvenile Drug Court (RAP Court)
Lincoln	Adult Drug Court
Linn	Adult Drug Court
Linn	Domestic Violence Court
Linn	Family Dependency Treatment Court
Linn	Juvenile Drug Court
Malheur	Adult Drug/DUII Hybrid (SAFE Court)
Malheur	Juvenile Drug Court
Malheur	Mental Health Court
Marion	Adult Drug Court
Marion	Family Dependency Treatment Court
Marion	Juvenile Drug Court

COUNTY	COURT NAME
Marion	Mental Health Court
Multnomah	Adult Drug Court (STOP Court)
Multnomah	Child Support Court
Multnomah	Domestic Violence Court
Multnomah	DUII Court
Multnomah	Family Court (Wrap Around Oregon)
Multnomah	Mental Health Court
Polk	Adult Drug Court
Umatilla	Adult Drug Court
Union	Adult Drug Court
Union	Juvenile Drug Court
Wallowa	Adult Drug/DUII Hybrid
Wallowa	Juvenile Drug Court
Wasco	Adult Drug Court
Wasco	Family Dependency Treatment Court (Mid Columbia Dependency)
Washington	Adult Drug Court
Washington	Domestic Violence Court
Washington	Juvenile Drug Court
Washington	Mental Health Court
Yamhill	Adult Drug Court
Yamhill	Family Drug Court
Yamhill	Juvenile Drug Court
Yamhill	Mental Health Court (Court Coordinated Services)
Yamhill	Restitution Court

Attachment 7

Contracts Recommended for Approval by the Public Defense Services Commission at its January 28, 2010 Meeting

	Coverage	Contractor	Workload	Total value	Case types
1	Lane County	Lane County Defense Consortium	3,168 cases	\$1,810,320	Criminal, excluding murder
2	Statewide	Jeffery Ellis	3,375 hours	\$378,975	Capital Resource Center
3	Statewide	Bronson James	3,527 hours	\$317,430	Death Sentence Post-Conviction Relief Appeals