

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Monday, April 29, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEETING AGENDA

- | | |
|--|---------------------------------|
| 1. Action Item: Approval of minutes - PDSC meeting held on March 22, 2013 (<i>Attachment 1</i>) | Chair Ellis |
| 2. PDSC Budget Update | Nancy Cozine
Kathryn Aylward |
| 3. HB 3463 – Public Defender Pay Parity (<i>Attachment 2</i>) | Kati Dunn, MPD |
| 4. Chief Justice’s Task Force on Appointment of Counsel in Juvenile Delinquency Proceedings; juvenile dependency law updates | Michael Livingston |
| 5. Action Item: Approval of PDSC Request for Proposals (<i>Attachment 3</i>) | Kathryn Aylward |
| 6. Action Item: Approval of PDSC Payment Policies & Procedures (<i>Attachment 4</i>) | Kathryn Aylward |
| 7. OPDS Monthly Report | OPDS Management Team |
| 8. Thank you to Lorrie Railey | Chair Ellis |

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: June 13, 2013, 9:00 a.m. – 12:30 p.m. at the Seventh Mountain Resort, 18575 SW Century Drive, Bend, Oregon 97702. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, March 22, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Per Ramfjord
Janet Stevens (via phone)
Hon. Elizabeth Welch
Chief Justice Balmer

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Amy Jackson
Caroline Meyer

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on January 23, 2013

MOTION: Commissioner Potter moved to approve the minutes. Commissioner Welch seconded the motion; hearing no objection, the motion carried. **VOTE 6-0.**

Agenda Item No. 2 Discussion and approval of Service Delivery Plan for Linn County

Commission members discussed the draft final report. Commissioner Welch noted extreme concern over DHS's inability to provide discovery earlier in the case, and wondered whether any progress had been made, either through the electronic discovery process or some other way. Ms. Cozine offered to check in with DHS and the consortium administrator, and to include an update in the final report. Commissioner Lazenby suggested that it was particularly important to follow up with the consortium in order to get a sense of the impact on their practice.

Commissioner Welch also suggested that the report should more clearly emphasize the need for appointment of counsel in juvenile cases.

Chair Ellis suggested approval of the report with the suggested additions.

MOTION: Commissioner Welch moved to approve the Service Delivery Plan, Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried:
VOTE 6-0.

Agenda Item No. 4

Commission Approval of Certification Process for Capital Providers

Paul Levy reminded Commission members of last year's review of five death penalty contract providers, and the recommendation to revise the process for reviewing certificates of attorney qualification from other capital lawyers. Louisiana's process was suggested to be an excellent model, and after further investigation, Mr. Levy used that model to develop the proposed certification process that is now before the Commission.

Mr. Levy provided an overview of Oregon's current certification process, which is the same for all case types - misdemeanors to capital murder. He explained that both the old and new proposed certification processes apply to both contract and non-contract providers. The current version is a one page form and the lawyer checks a box for the types of cases for which they meet the qualification standards; they also check a box indicating that they have read the qualification standards. The current process includes a questionnaire for background information about the attorney's practice, pending bar complaints, criminal actions, and a few questions relevant to their qualifications. In Mr. Levy's experience, there are attorneys who check the boxes without reading the qualification standards. Mr. Levy notes that at some point, a revised process may be recommended for all case types, but for now, the Commission is being asked to approve a new process applicable only to death penalty providers.

Mr. Levy summarized the types of information required in the new process and noted that it shifts to the provider the burden of demonstrating their qualifications, rather than requiring the agency to verify attorneys' stated qualifications. He also noted that all of the information is exactly what was requested from the five lawyers reviewed last year, and that those individuals would not be required to resubmit the information prior to the next contracting cycle. Implementation of the new model would allow the agency (with outside help if necessary) to review the remaining contract providers.

Mr. Levy reminded Commission members that the death penalty peer panel is responsible for reviewing requests from applicants who do not meet the minimum qualifications, and noted that the peer panel, including Jeff Ellis, did have an opportunity to review and comment upon the new proposed process. Mr. Ellis and Matt Rubenstein both support the proposed revision. Commissioner Potter asked whether attorneys who are new to death penalty practice but want to get into the work as co-counsel would be able to demonstrate their qualifications through other work experiences, or by promising to fulfill an unmet qualification standard within a specific time period in advance of trial. Mr. Levy indicated that the standards would allow for that type of modification. Commissioner Ramfjord supported the idea of allowing providers to demonstrate qualifications through experiences other than those enumerated on the form. Commissioner McCrea suggested the forms include hyperlinks or location references to the qualification standards. Commission members had a brief discussion about whether the proposed process creates the potential for undesirable use of records in future post conviction relief proceedings and concluded that it did not.

MOTION: Commissioner Lazenby moved to approve the Certification Process materials; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried:
VOTE 7-0.

Agenda Item No. 3

Loan Repayment and Forgiveness Options for Public Defenders

Bill Penn, Director of Public Interest Law at Lewis & Clark Law School, offered background information about his work helping students navigate student loan repayment programs. He

began this work in 2007, when Congress passed “The College Cost Reduction in Access Act” which created new ways for students to tie their loan payments to their salary. One program, the “John R. Justice Loan Repayment Program” was created specifically for public defenders and district attorneys, but this program was poorly funded for its first few years and now has no funding.

The programs students use now are part of the “Income Based Repayment,” which authorizes payment amounts at 15% of the borrower’s disposal income, and loan forgiveness after 25 years of payments. Another new program is the “Income Contingent Repayment Type Pay” informally called “pay as you earn,” which authorizes payment amounts at 10% of the borrower’s disposable income, and loan forgiveness after 20 years of payments. To be eligible, the borrower must have had at least one loan disbursement after October of 2011, and have had a zero student loan balance on October 1, 2007.

Both programs allow people to work any kind of job and provide forgiveness after a specified number of years. They also offer special treatment for people who work in “public service jobs,” which is any kind of government job other than getting elected to U.S. Congress, any kind of 501(c)(3) non-profit, and a few other smaller categories. For those individuals, loans are forgiven after 10 years of payments. The programs apply to all federal student loans, so can include both undergraduate and graduate loans.

One big difference between the John R. Justice Loan Repayment Program and the Income Based Repayment is that the “Income Based Repayment” and the “pay as you earn” do not require the U.S. Congress to appropriate funds. Rather, they reduce the amount of money collected by the Department of Education because borrowers are paying at a lower rate and eventually the loans will be forgiven entirely. Congress could change the rules in the future, and law students are counseled regarding this potential risk. For students who are not able to cover interest within the payment amount, the risk of Congress repealing these loan repayment plans, or the forgiveness in 10 years for public defense workers, could be an enormous burden.

Mr. Penn explained that people who graduated prior to 2008 or 2009 often have significant law school student loan balances in private loans which do not qualify for any repayment or forgiveness programs. He suggested that it would be helpful to have a loan repayment assistance program focused directly on attorneys at the five to seven year experience level who have private loans. Mr. Penn also noted that public defense providers working at private firms or consortia only see a portion of the benefits. They can get their current loan payments down based on their salary, but they need to wait around for that 20 or 25 year mark to get out of their loans instead of at the 10 year mark.

Mr. Penn indicated that the median law school debt nationally is \$125,000; Lewis & Clark’s median law student loan balance is about \$109,400. Between 90 and 95% of students have at least one loan; some students have a very small amount, but some have \$200,000 to \$250,000 in loans. Stafford loans, which students usually take first, have a good rate at 6.8%. The grad plus loans, which are commonly used to cover living expenses, books, and excess tuition, have a rate of 7.9%. Some of the earlier loans have a higher rate of 8.5%. The only way to discharge student loans in bankruptcy is to show that the person will never be able to use the skill, knowledge, or achievement gained through the education.

Mr. Penn pointed out that in the current economy people stay with employers longer than during a better economy. He expressed concern that, as the economy improves, there will be additional pressure to leave private public defense jobs where the

people are essentially doing 100% public defense work but don't qualify for loan repayment or forgiveness programs, and that there is a higher level of concern about how this will impact communities outside of the Portland metro area.

Mr. Penn explained that outside of having to administer Perkins loans, colleges and universities do not offer student loans; the Department of Education is the direct lender. However, there are law school repayment assistance programs, which are often structured as a forgivable loan program. Graduates who work in public interest jobs at the lower end of the pay structure can apply for and receive an award that is issued as a loan that will be forgiven (and not taxed as income) if the individual continues in public interest employment for a specified number of years and does not have an income that rises above the income cap. Graduates must apply each year and can receive assistance throughout the loan assistance program for up to the first five years after graduation, but they must get into the program within the first three years of graduation. The income cap is currently \$45,000, but the last two years the school has allowed an income level of \$50,000. Lewis & Clark funds the program through an endowment, a series of annual gifts, interest on the school's rainy day fund, and a dedicated student fee. The law school distributed just under \$100,000 among 19 participants this year. Commissioner Potter asked about the number of students graduating from law school each year, and Mr. Penn indicated that the class of 2012 was 209, 2011 was 233, and 2013 will be about 275 graduates.

Chair Ellis thanked Mr. Penn for his contributions.

Agenda Item No. 5

PDSC Budget Update

Kathryn Aylward provided an update regarding the budget for the current biennium and the next biennium. She explained that the Joint Ways and Means Committee met that morning and approved House Bill 5052, the "rebalance bill," which included an appropriation of \$1.5 million to the PDSC for this biennium. This amount is the remainder of the \$3.5 million special purpose appropriation. The PDSC will need additional funds to cover expenses for the remainder of the biennium, which was made clear by the Legislative Fiscal Office Analyst when the bill passed through the Joint Ways and Means Subcommittee on Public Safety. House Bill 5041 is the bill for the PDSC budget for 2013-15. PDSC's budget hearings before the Joint Ways and Means Subcommittee on Public Safety are scheduled for Monday and Tuesday afternoon, March 25th and 26th. These days are part of "Phase I." Some agencies will be asked to provide additional information during Phase II, which gets into more detail regarding the agency budget. Ms. Cozine provided an overview of what is planned for the PDSC budget hearings on March 25th and 26th.

Agenda Item No. 6

Annual Survey Results

Mr. Levy provided a summary of the sixth annual statewide survey, which suggests that public defense lawyers are providing quality services in all areas of practice across the state. Mr. Levy explained that the comments are the most valuable piece of information collected through the survey, and that considerable effort is spent following up on comments. Chair Ellis noted concerning comments regarding death penalty providers. Mr. Levy provided additional details learned after inquiring about those comments, and assured Chair Ellis that there would be further follow-up. He also noted that many comments regarding death penalty representation were very favorable, including one from a judge who said that OPDS should be congratulated for its work in the past 10 years to improve the quality of capital representation.

Chair Ellis suggested that questions 5 and 7 are arguably duplicative, question 8 (which is repeated throughout) not entirely helpful, and suggested that it might be time to reevaluate the structure of survey questions. Commissioner Potter noted that each year he reviews the

survey results there are questions he would like to change, but noted that the Commission has resisted this in the interest of comparing results from year to year.

Agenda Item No. 7

Juvenile Appellate Section Senior Attorney

Peter Gartlan set forth the history and evolution of the senior attorney position in the juvenile appellate section, noting that the position now includes responsibilities beyond what is expected of a senior attorney in OPDS's criminal section. He requested that the Commission approve a new compensation plan that includes a position that is unique to the juvenile appellate section that more accurately reflects the responsibilities of that position.

MOTION: Commissioner Potter moved to approve the position; Commissioner Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Agenda Item No. 9

OPDS Monthly Report

Mr. Gartlan provided the Commission with an update regarding the appellate division. There will be two lawyers joining OPDS to fill current vacancies. The division had five Supreme Court arguments in March. In three of the five it was the attorney's first time before the Supreme Court, and each did very well. Commissioner Welch asked about the high number of termination reversals. Mr. Gartlan explained that those reversals are the outcome of increased litigation and clarification of the law surrounding termination proceedings. He noted that this area had been driven by an equitable decision-making process with very little case law available and low adherence to the statutory requirements outlined in the juvenile code. Mr. Gartlan explained that these termination cases are a success in that they are giving courts and practitioners around the state a very clear indication of what the law requires.

Chair Ellis asked whether OPDS had been requested to provide funding for representation in the Haugen versus Kitzhaber dispute. Mr. Levy indicated that OPDS had been asked, that the request had been denied in Oregon courts and taken up to the U.S. Supreme Court, which denied Mr. Haugen's petition for certiorari.

Mr. Levy provided a brief update on the effort to revise the performance standards for criminal and juvenile delinquency practice. He mentioned that Commissioner McCrea is on the small task force that is examining the current performance standards and bringing them into conformance with national standards. The task force now has the additional benefit of new National Juvenile Defense Standards from the National Juvenile Defender Center, which are excellent. Mr. Levy has ordered a copy for each Commission member and will circulate those at the next meeting. He outlined some of the more important standards, including the obligation of juvenile defenders to engage in system reform when there are practices, such as waiver of counsel and shackling, that work to the disadvantage of the client. Ms. Cozine noted that the standards also include a provision about the assumption of indigence for youth, and gave a brief update regarding efforts to start the work of the Chief Justice's Task Force on Juvenile Delinquency. She noted that she is hoping to have a more thorough update provided by Mr. Livingston at the Commission's April meeting.

Commissioner Potter shared information about OCDLA's legislative drive-in at the Capitol. The focus was on the 50th anniversary of *Gideon*. Former Justice Mick Gillette spoke to the Senate Judiciary Committee. There were presentations in Room 50 later that morning by Justice Gillette, Rob Carey (a lawyer from Washington, D.C. who specializes in Brady litigation), Representative Jennifer Williamson, and Attorney General Ellen Rosenblum. Members then had private meetings with their representatives. The day was a benefit to both legislators and OCDLA members.

Ms. Cozine provided a summary of several bills being considered by the Legislature that could impact public defense. She first described House Bill 2548, which would allow bail

bondsman to operate in Oregon. Second, she mentioned Senate Bill 622, a juvenile records bill sponsored by the Oregon Law Commission, which attempts to align juvenile statutes with the new eCourt system so that documents have a designated file location in the electronic system. House Bill 3259 is a bill that would give the circuit courts jurisdiction over certain post prison individuals, and could trigger the right to court appointed counsel for individuals on post prison supervision. House Bill 3463 directs the Public Defense Services Commission to adopt policies and negotiate contracts that provide for compensation of appointed counsel at a rate equivalent to assistant or deputy district attorneys at comparable experience practicing within the same county as appointed counsel.

Agenda Item No. 8

April PDSC Meeting – change of date

Commission members agreed to move the April meeting to April 29, 2013. It will be held at the OPDS office, from 10 a.m. until 2:00 p.m.

MOTION: Commissioner Potter moved to adjourn the meeting; Commissioner Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Meeting adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, March 22, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Per Ramfjord
Janet Stevens (via phone)
Hon. Elizabeth Welch
Chief Justice Balmer

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Amy Jackson
Caroline Meyer

The meeting was called to order at 10:00 a.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on January 23, 2013

0:44 Chair Ellis Call the meeting to order. The first item is the minutes from January 23, 2013. Are there any additions or corrections? If not, I would entertain a motion to approve.

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

Agenda Item No. 2 Discussion and approval of Service Delivery Plan for Linn County

1:22 Chair Ellis Then the Linn County plan. It is at the point we have had the session in Linn County. We have had a discussion at our last meeting that got incorporated into the document that seems to be sort of a growing document. Anyone have any comments or corrections to the plan as it now exists? I gave mine last time and I have no more. If that is ...

2:09 Hon. Elizabeth Welch I'm sorry, what is new in this material?

2:11 Chair Ellis The last couple of pages.

2:15 Hon. Elizabeth Welch Just 35 and 36. I don't know that there is any point in saying anything more about it, but as I read this over again last week on page 16, there is a reference in the first paragraph on the page to the fact that DHS indicates they are unable to provide discovery earlier due to work load issues. That is outrageous.

2:45 Chair Ellis Where are you on page 16?

2:45 Hon. Elizabeth Welch On page 16, the first paragraph, there is a sentence that begins, "The Department of Human Services....." It is the last couple of sentences. I don't know where their electronic thing – you make reference in there to their electronic discovery model in December. I don't know whether that has happened and, therefore, the issues have been resolved? That is impossible. There is no way to represent people in juvenile court if the lawyers don't have the information about what the case looks like. It is impossible. They say they can't do it until maybe the settlement conference. That is like New York City for goodness sakes. That is just intolerable.

3:31 J. Potter So what has happened with their electronic discovery model?

3:37 N. Cozine Chair, members of the Commission, I have not had an update on whether or not they have sped up their discovery processes.

3:52 Hon. Elizabeth Welch Is there internal pressure in the system there to deal with this?

4:01 N. Cozine I don't know that I can answer that. I do have a meeting scheduled with an individual who would be in a position to assert such pressure, but I don't know that that will happen.

4:08 Chair Ellis Do you see a role for us to play in this?

4:15 Hon. Elizabeth Welch Well other than maybe making a further point about it in the final report. I know it is here. But then it isn't repeated and the issue about counsel isn't repeated either in the final comments. They are a jurisdiction in which there is definitely a continuing issue about the right to counsel, or the manner in which to right to counsel is managed. I think this is my job here.

4:56 Chair Ellis Why don't you include in the final report Commissioner Welch's expression of concern, and be sure that we send it to the people at DHS and just say you might want to focus on the passage on page 16 and the expression of concern from the Commission.

5:21 N. Cozine I would certainly be happy to follow up. I did send this draft final report to everyone in Linn County who participated in the service delivery review. I received comment back from only one individual. That was Judge Murphy. I would be happy to touch base with DHS and see if they have an update and with our consortium provider.

5:40 Chair Ellis It is just a point of pressure on them. They live in a kind of an immune cocoon for much of the time.

5:50 C. Lazenby I think it is especially important for you to follow up with the consortium lawyers so that we get a sense of what the impact is in their practice.

6:02 Chair Ellis With that addition is there anything else on the Linn County plan? If not, I would entertain a motion to approve with the addition.

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

Agenda Item No. 3 Loan Repayment and Forgiveness Options for Public Defenders

6:22 Chair Ellis Item 3 is the loan forgiveness and piece.

6:28 N. Cozine I received an email this morning from Mr. Penn and he is expecting to be here between 10:30 and 11:00, so we need to take agenda items out of order.

Agenda Item No. 4 Commission Approval of Certification Process for Capital Providers

6:40 Chair Ellis Alright, Mr. Levy, do you want to address the capital providers certificate process?

6:48 P. Levy I would be happy to. You may recall that in the report to the Commission on our review of five capital defense contractors, one of the recommendations was that we revise the process
....

(Janet Stevens via phone)

7:34 J. Stevens Good morning, all.

7:40 Chair Ellis Just so you can find where we are. We approved the minutes. If you had any changes it is not too late. We would let you do that. We have approved the Linn County plan, including comments from Commissioner Welch that pointed out the passage on page 16 relating to the inadequate discovery from DHS. It is a little out of our bailiwick, but we are going to send them a letter pointing that out to them anyway.

8:16 J. Stevens Okay.

8:17 Chair Ellis We are now on Item 5. Paul Levy was just beginning when you got patched in.

8:25 J. Stevens Okay. Thank you.

8:26 P. Levy Good morning, Janet. Paul Levy here.

8:29 J. Stevens Good morning, Paul.

8:35 P. Levy So as I was saying, the report that I made to the Commission last year on our review of five contractors included a recommendation that we revise the manner in which we review certificates of attorney qualification from lawyers wishing to do capital work on appointed cases. In that report I mentioned that we had been recommended to look at the model that Louisiana had developed. Since then I have followed up with the people who are administering the Louisiana model. That is the basis for what you have here. I will explain it in detail and why this makes more sense than what we have now. What we have now for all lawyers who want to do public defense work of any sort from misdemeanors to capital murder, is a one page form. This is something that the Commission has approved. It is part of your qualification standards. The lawyer checks a box for the type of case that they are certifying that they meet the qualifications to handle. Then there is a questionnaire that the Commission has also approved that mostly asks about background information about their practice. It asks if they have pending bar complaints or criminal actions and then a few questions relevant to their qualifications. What I have found in getting these certificates from lawyers is they will check a box which actually includes a representation that they have read the qualification standards. But in my conversations with them I learn that they haven't read the qualification standards, but they know how to check a box for what they want to do. What I have proposed here a form that requires lawyers wanting to do work in capital cases, and it

is a form that we may be recommending that you adopt at some later point for all case types, where lawyers actually show us that they meet the minimum qualifications rather than just check a box and ask us to trust that they have read what is required and that they actually meet the qualifications. So for capital murder you have to be murder qualified. Among other things you have to have tried five major felony cases, one of which is depending on whether you are lead or co-counsel, one of which was a murder or a homicide. We are asking that lawyers tell us what are those five measure felony cases that you have tried. We are asking that lawyers tell us what type of CLE programs were attended that meet the requirements that you have attended a comprehensive training program. We are asking lawyers to set out the information that establishes that they meet the minimum qualifications. Your qualification standards permit us to ask lawyers upon request, they are required to submit reference letters and other supporting information about their qualifications. We are asking that they do that with this process now. Frankly, it is shifting some of the burden of being qualified to do this work from us and from me, to the lawyer who wants to the work.

13:05 Chair Ellis

So you are moving from a trust but verified to a verified.

13:08 P. Levy

Yes. Among the reasons is we simply don't have the time and resources here to call references in every case. We are asking the lawyers to provide them to us. We have the authority to ask for these things and this is a way of getting the information. I think it will provide a more meaningful review of the attorney qualifications in capital cases. All of the information that this process seeks, it just so happens, is exactly the information that we asked for from the five lawyers we reviewed last year, including a statement from them as to why they meet the proficiencies that the qualifications

14:10 Chair Ellis

Where are we on that? I have a memory that when we agreed it was appropriate to review the five that was to be the first step and then there would be follow up on reviews of other capital providers. Where are we on that?

14:29 P. Levy

As I just said this process is asking for the same information that we asked those five to submit. We will be asking all of the lawyers who want to continue doing capital representation, including contractors, to complete this new certificate of attorney qualification. We are applying essentially the same process to all of the lawyers wanting to do the work now. There is still sort of a big question, and it was a major question in the review of the five if I can call them that, one of them is here.

15:20 Chair Ellis

You didn't call them the, "Gang of Five."

15:23 P. Levy

And they were a gang of five.

15:24 Chair Ellis

There is one right there.

15:30 P. Levy

The gang leader. The qualification standards provide for our agency to review the information that is submitted, except for those who do not meet the minimum qualifications, and your qualification standards require us to submit those applications to our peer panel for their input or prescreening is the word used here. How new applications will be reviewed, if not by us, and I am proposing for now for the time being that it be reviewed by us and that we not follow the process that we did before which was to contract with another lawyer to assist in that review. That may change.

16:31 Chair Ellis

That was Dennis?

16:31 P. Levy

That was Dennis Balske. It was good to have his input. I think I am willing to say on the record, and I would say it to him and he probably understands this, it was not the most searching review by him. I think that we are essentially just as capable of reviewing and evaluating the materials that were submitted as he was.

17:17 Chair Ellis I assume in the process of going through this if you find a situation where you want some outside help you can do it.

17:27 P. Levy Absolutely. We are required to go to our peer panel for those applicants who don't meet the minimum qualifications. That turns out to be most people seeking to do this work. Now we are applying this to all our contractors. They do meet the minimum qualifications and we don't want to ask contractors to review contractors. I think we should see how the process goes and if we need outside help we will seek it. What you have before you we did review this with our death penalty peer panel, which consists of many of our contractors, and I think a fair report of their impressions of this process was a grudging acceptance because it is work. If I can just say another point on this, some of them were offended, one, that we would ask him to prove his worth when we all know how great he is. We all do know how great he is, but it is a process we would like to see equally applied to all of our providers. I am recommending, though, because it is a significant amount of work and this is really an agency matter that we won't be requiring this of the gang of five because they have just given us all of this information.

19:07 Chair Ellis That is fair enough. This may be getting a little out of sequence, but in the survey there were some comments specifically on death penalty providers. Let me just read the ones that really bothered me. No. 7 said, "Only have experience with 2 attorneys; one was excellent, one should not be allowed to represent anyone...." I don't know what the rest of the sentence was. No. 12 said, "Some of the attys who are appointed from out of county are in over their heads, are unethical, wasteful, and only marginally competent." No. 23, it is too long to read it all but it identifies a specific lawyer that this – I believe it was a judge – was not satisfied...

20:06 P. Levy It was actually a prosecutor.

20:08 Chair Ellis That helps. Then 28 may be moot because it sounds like the lawyer that the judge was critical of has moved out of state, but at least the first two of those it is very troublesome. I hope there is going to be follow up to try to identify who it is that they are concerned about and that we do a thorough review.

20:40 P. Levy I am glad that you jumped to the survey because I actually had meant to start with a comment about the survey. You have identified the four or so concerning comments.

20:53 Chair Ellis They do kind of leap out at you.

20:53 P. Levy The balance of the twenty some comments are actually quite – they leap a lot of praise on our work and the one that I pulled out and put in the report is from a judge who said that OPDS should be congratulated for the work that we have done in the past 10 years in improving the quality of capital representation. I think that is a fair summation of the direction in which representation has gone. This process that I am proposing to you is to continue that work on improving representation in capital cases. As that report on the survey says, where we can identify who made the comments, and we can in many instances, we are now in the process of contacting the people that made the comments.

21:58 Chair Ellis I am not saying anything that you don't already know or share. I can see a few comments like that on routine misdemeanor or felony defense, but to get them addressed to capital providers is surprising to me.

22:20 P. Levy I can share with you that I know who the lawyer is who moved away. He was a good lawyer. Some would say a very good lawyer. Created a lot of problems for judges in the county where he practiced.

22:45 Chair Ellis Sometimes that is what good lawyers do.

- 22:46 P. Levy Yes. While they were all glad to see him go we were not. Another lawyer who has received a great deal of criticism, well he happened to have won the cases that they are really most concerned about. That is not to say that some of the criticisms don't have some validity. It is an area where the work of the lawyers is not without controversy and challenge. I think on balance, though, it is fair to say that I am impressed by the judge's comments. They appreciate zealous representation. I am actually pleased with the balance of those comments. They do say that the crew of lawyers we have, the "gang" of lawyers we have doing this work now are good, very good.
- 23:52 Chair Ellis But you will follow up on those four?
- 23:55 P. Levy Yes, yes we are. I have a couple of other comments about this proposal. For reasons that I don't entirely understand, we are not requiring new certificates every two years, which had been a practice at one point. We intend to return to that practice of requiring new certificates from lawyers every two years in capital cases. One of the minimum qualifications is that you have obtained 18 hours of CLE instruction in capital cases. Lawyers were doing that seven years ago and sending us a form now saying that they meet the qualifications. We want lawyers who are doing this work to be up to date and receiving training every year on capital cases because the work is changing and they need to stay up to date. That is the overview. I can answer questions about the form if you have them, or I can just be quiet.
- 25:22 Chair Ellis Any thoughts or questions?
- 25:24 J. Potter I had one question. In the qualifications for the death penalty trial level, you have broken it out between lead counsel and co-counsel. Under heading VI, have you attended 18 hours of specialized credit, these are folks who haven't done any of this work yet. They may have not have attended anything that is death penalty related because they haven't done the work. From our experience on the OCDLA side, we tend to attract people who are doing the work. Might that standard be amended slightly to say, "If they haven't attended any, will they attend by the time if they were to get a contract, which would be I am assuming six to eight months in advance of no?"
- 26:22 K. Aylward We are talking about co-counsel qualifications?
- 26:26 J. Potter Co-counsel qualifications.
- 26:27 P. Levy I want to clarify that this is a process that will apply to any lawyer who wants to represent a public defense client in a capital case.
- 26:42 J. Potter Right. Not just ones you might contract with.
- 26:42 P. Levy So it will include contractors but it will also include non-contractors. But your question is actually a very good one because what I had meant to do here is track the qualifications for these particular case types. I am just parodying the language in the qualifications of standards. I actually thought that somewhere we did have language that tracked exactly what you said, which is have you attended or would complete by the time of trial, which, I don't like that idea. You need to know when you start on a case where to go. You can't learn by time of trial. I think that we can ...
- 27:57 J. Potter I think if you look at your post conviction, where you have the standard for both lead and co-counsel, you bundle those together and then you do give options if, no, when are you going to do it?
- 28:19 P. Levy Yes. I think that can be modified and still capture what we are concerned about. There is a reason the post conviction ones aren't broken out. It is because the qualification standards

don't break them out as explicitly as the other case types do. For each of these case types there are these catchalls that if you can't answer, "yes" to all of these questions then show us why you qualify under the equivalent skill and experience provisions, which is how the qualification standards are set out as well.

- 29:05 Chair Ellis Has Jeff Ellis reviewed this?
- 29:07 P. Levy Yes. All of our peer panel members saw it.
- 29:13 Chair Ellis And he supports it?
- 29:15 P. Levy Yes he does, as does Matt Rubenstein, who is sort of the beginning of the chain of people who pointed us to the folks in Louisiana. This is very much like the form or the structure, at least, of the Louisiana process. In fact it looks a little weird because I took their form and modified it.
- 29:46 Chair Ellis You think the law of French was confusing to Oregon?
- 29:50 P. Levy So our final product will look a little different. This has some weird formatting but the substance that you see here is what we will ask lawyers to complete.
- 30:07 J. Potter My only follow up is that there will be times, and you are going to run into these and you have already run into it, where you are looking for people to do death penalty work that don't quite have the exact letter of qualifications and they want to be co-counsel. We want to bring these folks into the fold. I guess the thrust of my comment was just, is there a mechanism on some of these qualifications that allows something to happen, that might happen down the road, when they haven't quite met the qualifications? It sounds like what you are telling me is there is a catchall that allows that to happen and it is not a stickler for the 18 hours or five cases if you can show something that is the equivalent.
- 30:54 P. Levy In fact what happens most often is there are lawyers who either to do the work, or who we want to do the work, who run into exactly the problem you are identifying. They don't meet the minimum qualifications. This can include outstanding lawyers. We are quite use to finding a way to bring people in to do the work. We do review their requests with our peer panel. We are required to do that by the Commission. A couple of years ago I asked you to change the language from "shall" to "may" and you said, "no" with good reason. The peer panel has good recommendations for, sort of, stipulations and requirements that we should attach to new lawyers coming in to do the work. The process is not as rigid as the form might suggest. What the form does do is get us much more information about the applicant than we get now.
- 32:17 Chair Ellis Other questions or comments?
- 32:18 S. McCrea I have a comment.
- 32:20 Chair Ellis Okay.
- 32:21 S. McCrea Paul, I think it would be helpful, and maybe I am just missing this, but under No. 1, instructions, that first paragraph where we reference PDSC's qualification standards. Let's tell them where to find them. Like on the OPDS website. I am assuming that is where it is. We reference these all through it and the person has to say they have read them, so let's make it easy for them to find them to read.
- 32:51 P. Levy Yes. Now this is a part of those qualification standards. If they haven't found the qualification standards they won't have found this. I can easily hyperlink this or drop a footnote.

- 33:14 S. McCrea I think it would be good. In the second paragraph it talks about qualification standard, IV(5)(A)(h). If I am filling this out I may want to be looking at some of the stuff that is referenced here. It is going to be a lot easier to go back and forth assuming we want to make it easy for people.
- 33:40 P. Levy We want to make it a little bit of a challenge, so if they are not up to the challenge of doing this we don't want them handling a capital case. I think your point is well taken. Part of what they are saying when they sign this is that they have read those qualification standards. Just a couple of other things about this, part of what they are also saying is that they agree to these continuing obligations of attorneys. Again, this is taken from the Louisiana model although we have different obligations here that we have set out. With our contractors they agree to most of this through the contract because this applies to more than just contractors. We are making sure that everybody understands that if you are going to do this work you need to observe the things that you agreed to do here in section 7.
- 34:50 P. Ramfjord One other comment. I would echo Commissioner Potter's comment. I applaud the notion of having standards in the first place, but I also applaud the notion of having this catchall question at the end that allows certain types of experience to substitute for of the enumerated experiences that are identified above. I also think that in some ways I am a little sensitive to the comment that the form looks a little bit more rigorous than it really is. I think we should try to make sure that the form is just as rigorous as it is and perhaps saying just "qualifications" as opposed to "minimum qualifications" might be a way of doing that. Then by having the alternatives available that kind of clarifies that to some extent. I wouldn't want the form itself to become an exhibit too frequently in post conviction proceedings, in and of itself. If the form doesn't accurately reflect what we want to have and we what we do, in fact, consider to be the minimum qualification, I am a little concerned that that might be the case.
- 35:53 P. Levy A little of the difficulty here is you are looking at the form and you are not looking at our qualifications. It is because the form and the language including the term "minimum qualifications" just mirror the standards. The standards are a central part of each of the case types for capital representation. It is called, "Procedure for Establishing Equipment, Skill and Experience in Capital Cases." It sets out in detail what is captured by this catchall question at the end of these sections. The language here, for instance, "OPDS may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment if the attorney clearly demonstrates" and there is language like that for each of these. I only meant to say that the form is a little overwhelming at first. I think we have a need to continue applying rigor to the review of lawyers wanting to do capital cases.
- 37:27 P Ramfjord I did note that the Qualification Standards are explicitly referred to here. I think that that is appropriate. They should be referred to in the form as they are and I think that is a good thing. I just think it is important that the form does, in fact, reflect sort of those standards as accurately as it can. That is all.
- 37:48 P. Levy I have tried to be pretty faithful to the structure of the standards. This is what I was intending to do because it is replacing a process that had no rigor at all. You just checked a box and represent that you are not being prosecuted for a crime at the moment. Then the burden does fall on us to contact references. We will still follow up on references. One of the things that was very good about the review that we conducted of the five is that they did provide really helpful and meaningful letters of reference. I think it was an instrumental part of that process and we are incorporating that into this process as well.
- 38:47 Chair Ellis This is an action item. Are there any other comments?

- 38:52 C. Lazenby Can I just ask one simple question and that is I am sympathetic with the graying of the bar and needing to get other people trained and all that. Have you given any thought at all in those situations where someone is coming in and doesn't quite meet all those minimum qualifications, what the impact of these documents would be evidentiary in a PCR?
- 39:24 P. Levy No. I am sensitive to the relevance of our review. What we are told and how we review the qualifications of lawyers. How we handle complaints about that. That consideration is something that caused me to have a little bit of unease about how we conducted our review of the five. We used a lawyer in that review who is sort of the go to lawyer for post conviction attorneys as an attorney expert in post conviction proceedings. We didn't want to force him into a somewhat cursory review of attorneys he might be asked to review much more thoroughly in the contents of the post conviction litigation. I didn't want to put him in that position again.
- 40:40 C. Lazenby Hazards of living in a small state.
- 40:42 P. Ramfjord Commissioner Lazenby, one of the things that I would notice about the standards, and I would assume this is the case. The standards would be looked to by any PCR counsel in any event. The extent to which the lawyers at issue have met those standards would be looked at in any event, so the same substantive issues that are in the form would be examined carefully in any post conviction review in any event. So to some extent, while I had the same thought that you had, as I pondered it a little bit more thoroughly, I thought to myself that realistically I don't think the form itself will have a meaningful impact in the process given that the same issues would be examined in any event.
- 41:26 P. Levy We are trying to ensure representation that meets or exceeds the prevailing – well, I should say exceeds, but satisfies the requirement for constitutional representation and I think assists in that process.
- 41:47 C. Lazenby I have agreed with the need to do a more thorough examination of counsel. I think this is a good product. It is just an issue out there that I thought we should have at least a brief conversation about.
- 42:00 Chair Ellis Going back to the survey, that comment from respondent no. 23, I thought was quite interesting. He says, "I am told there is at least one who has done the opposite I.E: tried to build post conviction issues, that could build reversal, into the record to be used in the event that he was unsuccessful with the jury." I would like to say that I disapprove of that. I think our job is to try to provide counsel that will minimize the potential of post conviction challenge.
- 42:42 P. Levy Absolutely. The lawyer that believes that he or she is benefiting a client by attempting to somehow build post conviction into a trial level case is completely misguided. I don't think that the lawyers that we have doing capital cases are mistaken about how that process works. If you believe that you or your client is being denied some right, you vindicate that right by objecting and preserving issues for direct appeal. It may implicate the right to counsel or due process, but you are not going to assist your client by somehow believing that you will be building a post conviction victory. I think lawyers that know how to do this work don't do that. If I can look at that comment, I think a lawyer is actually named.
- 43:57 Chair Ellis Not the comment that I am looking at.
- 43:58 P. Levy In...
- 44:00 Chair Ellis In a later sentence. I wasn't sure it was identifying that lawyer with the comment that I read. It is a consensus opinion that he is one of the most superb lawyers that we have doing this work.

44:25 Chair Ellis But not for that reason?

44:25 P. Levy No.

44:29 Chair Ellis Okay. Any other comments or questions? If not, I would entertain a motion to approve the material attached at Attachment 4.

MOTION: Chip Lazenby moved to approve the Certification Process materials; Per Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

45:00 Chair Ellis Okay. Paul, why don't we bring you back at a later date to do the rest of the survey. You covered some of it.

Agenda Item No. 3 Loan Repayment and Forgiveness Options for Public Defenders

45:09 Chair Ellis I believe Bill Penn is here. Do you want to come up and talk about loan repayment and forgiveness?

45:17 N. Cozine Chair Ellis, if I might provide a little bit of background. I know that this Commission is aware of the prior discussions, but just to set the stage for Mr. Penn. He and I have spoken at some length but it is always nice to refine the prior discussions, at least for his benefit. For the last several months this Commission has been hearing from providers about the difficulty of attracting and retaining lawyers who are able to provide public defense services. We have talked about the fact that consortium members often aren't able to offer a non-profit status, so the student isn't eligible for loan repayment or forgiveness. We have talked about low compensation rates. We have talked about the fact that in some of the more rural areas it is difficult to get students interested in going out to practice in these areas. Mr. Penn is with Lewis & Clark. He is in their career services office. He is the individual reasonable for public interest and is, I think, very aware of all of these issues. I believe he also works closely with the Oregon State Bar and the other law schools. So he can tell you more about that. I think he is in a good position to answer your questions on recruitment and retention concerns, as well as on these loan repayment issues.

46:41 Chair Ellis Welcome. Thanks for coming.

46:42 B. Penn Thank you. I am the Director of the Public Interest Law at Lewis & Clark Law School. I have been tracking the changes and advising students and graduates of the changes that have been made to student loan repayment programs since the fall of 2007, when Congress sort of started making new ways for students to tie their loan payments to their salary.

47:11 Chair Ellis So 2007 is when you started this?

47:13 B. Penn 2007 is both when I started in my position at Lewis & Clark and when Congress passed what is called "The College Cost Reduction in Access Act" that brought about some of these programs.

47:25 Chair Ellis Which they failed to appropriate very much money for.

47:29 B. Penn There are some programs that have failed to have money appropriated for, and some of the programs are ones where there does not need to be any money to be appropriated for.

47:43 Chair Ellis Okay.

47:44 B. Penn This particular Commission might be familiar with a program that was called "The John R. Justice Loan Repayment Program" that applied to public defenders and to district attorneys.

That program requires annual funding. The program exists in the sense that Congress created it and it got a small hit of funding. That does not appear to be a viable process going forward or a route that Congress is going to move money into. The more likely channels that people are going to be using to pay their loans, and that people have been using to pay their loans for the last several years, are an old program called "Income Based Repayment." They pay 15% of their disposal income. Then a newer program that just started at the beginning of this year that it's marketing name is "Pay As you Earn." Its technical name is "Income Contingent Repayment Type Pay."

48:45 Chair Ellis

What is the difference between those two?

48:50 B. Penn

The difference between the two? The older program, "Income Based Repayment" has a number that is 15% of your disposable income. The new program, "Pay as you Earn" has a number that is 10% of your disposable income. Both of them allow people who work any job to get into those programs. If you are not working a public sector job, each program comes with a sort of stop gap forgiveness. If you hit a certain point in time and you have paid your loans to that point of time, then you do not need to pay anymore. For the income based repayment, 15% is 25 years. For the new pay as you earn it shrinks to 20 years. The reason why the two exist is, obviously, if you can get on 10% for 20 years you should do it. The reason why the two still exist is because of the U.S. Congress balancing budget numbers made two hoops that people using the new program, "Pay as you Earn" need to hop through. One is they have to have had at least one loan disbursement after October of 2011. It means that current students, or at least students who graduated in the class of 2012 or later, will meet that test if they have taken out a loan. Then they must have also had a zero student loan balance on October 1, 2007. That cuts off folks who started in an undergraduate program a while ago, or started a law school program a while ago and had loans prior to 2007 that they had not paid off by October 1 of that year.

50:23 Chair Ellis

Does just apply just to the graduate school loans, or does it pick up college loans?

50:34 B. Penn

It applies to all federal loans. So programs are Stafford loans, Perkins loans, and for graduate school students, Grad Plus loans. Grad Plus loans are a loan program that came in in 2006 that essentially is a soak up loan that a graduate can use to cover the full cost of attendance beyond what the other federal loan programs cover. They sit where people used to take out private loans when they were in law school to cover their living expenses and books and excess tuition that was above the federal loan limits then. Currently, a student can get through with purely federal loan program loans. Those are the ones that these programs apply to.

51:25 Chair Ellis

The justice piece that is directly appropriated money and then the money is applied to reduce the loan for public interest lawyers, either PD's or DA's?

51:42 B. Penn

The "John R. Justice Loan Forgiveness Program" that they had funded for at least a brief time, it was directly appropriated dollars from Congress that were dispersed to the 50 states for them to figure out how they were going to spread them amongst defenders and district attorneys. Then those dollars were paid directly to the student loan funds. The "Income Based Repayment" program and the "Pay as you Earn" program, they have sort of a special treatment for people who work in what they call "public service jobs," which is any kind of government job other than getting elected to U.S. Congress. I would advise you not to do that for at least 10 years, and any kind of 501(c)(3) non-profit. Then there are a couple of other small ways that you can qualify for those programs as well, but they are fairly limited. So folks who are in those kind of public sector careers, their special treatment is those times to getting the loans forgiven shrink to 10 years in both the case of the pay as your earn program and income based forgiveness.

52:57 Chair Ellis

How is the "John R. Justice" being administered in Oregon?

- 53:03 B. Penn When we had dollars in Oregon, the way that “John R. Justice” was administered was the DA’s essentially filled out an application and public defenders filled out an application to partake of the program. The money is split 50/50 between public defenders and district attorneys. Then there was a panel of people who were asked to review the applications and decide how to split that money.
- 53:35 Chair Ellis How much money are we talking about?
- 53:36 B. Penn I believe it was like \$100,000 for the whole state.
- 53:40 J. Potter Is it zero now?
- 53:41 B. Penn It is zero now. It has not been appropriated. For the “Income Based Repayment” and the “Pay as you Earn” and the public service forgiveness that comes with it, those programs do not require the U.S. Congress to ever sign off on an amount of dollars. They influence the inflow of cash into the Department of Education, because the Department of Education has become the only student loan lender in town. So what happens is when someone graduates they set up their payment plan with their lender with the Department of Education. It essentially reduces the amount of money that is coming into the Department of Education because they are paying at a lower rate. When loans are forgiven that stream of cash into the Department of Education ceases for that student. It means that no one needs to sign a check every year. It does mean that at some point in the future someone is going to notice a change in the number of dollars flowing in once we start seeing forgiveness happen. We will see what Congress does at that point. If they notice that, or if they care at that point.
- 54:56 Chair Ellis Commissioner Lazenby and I have had a disagreement. I want you to both educate us and resolve our dispute.
- 55:06 C. Lazenby Follow my hand signals.
- 55:07 Chair Ellis The issue is this: I read somewhere that, it was at the college level, but I am assuming the same is true at the law school level, that if a graduate asked for a transcript if that graduate is behind on loan repayment the college is directed to not give the transcript. I took the view that that is perverse. The graduate may well have an opportunity to get employed and needs the transcript to get the employment. Only with employment will the graduate be able to repay the loan. Commissioner Lazenby, who once wore a hat that put him on the side of one of those institutions, said “you would be amazed how much we collect as we withhold the transcript.” Could you advise us where this issue stands and which of us is right?
- 56:15 C. Lazenby And I will accept your answer no matter how loaded the question.
- 56:18 B. Penn I am not familiar with schools withholding transcripts because of loan repayment not occurring. A very, very, very small portion of student loans are administered through the schools themselves, and those are the Perkins loan programs, which are loans that apply only to very needy students. All the rest of the lending, sort of, prior to two years ago, was through private lenders using federal loan programs, or federal direct lending with the Department of Education. Now it is just the Department of Education. I am not certain that schools would even be aware of whether students were repaying most of their loans or not.
- 57:16 Chair Ellis It may have been a hook where the institution gets federal money from other sources, but are you able to tell us that to the best of your knowledge Lewis & Clark doesn’t follow this practice?
- 57:28 B. Penn To the best of my knowledge Lewis & Clark does not follow that practice.
- 57:33 Chair Ellis And the other two Oregon law schools as far as you know do not?

57:35 B. Penn I have not heard of them doing that.

57:36 Chair Ellis Then I want to commend them.

57:42 B. Penn I do know that Lewis & Clark may give graduates some grief if they have not paid their library fines or parking tickets or those sorts of things. I don't believe they withhold transcripts. I believe they withhold giving you your diploma at the end, which is painful for not having on your wall, but at least you can still get a transcript.

58:05 Chair Ellis Okay.

58:10 J. Potter So we don't have to hear about this dispute anymore?

58:10 Chair Ellis I think I just won.

58:15 Chief Justice Balmer Bill, just out of curiosity, are the colleges and universities out of the loan business now?

58:22 B. Penn Outside of having to administer Perkins loans, they are out of the loan business.

58:30 Chief Justice Balmer They don't make loans anymore like they did in the old days?

58:32 B. Penn They are not making the loans.

58:36 Chief Justice Balmer It is all with the feds.

58:36 B. Penn Both non-profit and private bank lenders that schools have used for a number of years are not making loans either. The federal government has been using some of those companies to service loans, but the lender is direct lending, which is the Department of Education.

58:54 C. Lazenby But there are some public institutions that have off-loaded private loans to foundations. For instance if you wanted to do a race-based loan, a public institution couldn't directly do that, but 501(c)(3) affiliated is free to administer those funds that come in that are earmarked for a specific students of a particular background. To that extent the universities aren't involved, but they are certainly aware that there are some loan pieces going on. The foundations do their sort of own oversight. I don't think they kick them out to the private groups to oversee.

59:40 B. Penn I am not familiar with how those programs work. There is one kind of loan that most law schools are in the business of being offered, and that is connected to their loan repayment assistance programs. It is kind of a way to fix a tax loophole so that the recipient isn't taxed on it. A law school repayment assistance program is often structured as a forgivable loan program. So what we say is we want to help out our graduates who work in public interest jobs at the lower end of the pay structure. They apply and they get an award. That award is issued to them as a loan that will be forgiven at the end of the year or two years or three years, or whatever the terms of the particular program is, if they continue in that public interest employment. Typically, and in the case of Lewis & Clark, if they do not have an income that rises above our income cap. If they hit the end of that year and they can check the box and say, "Yes" I am still in a public interest job. "Yes" I didn't make more than I thought I was going to make. That loan is forgiven and because of the tax loophole they are not taxed on it.

1:00:48 Chair Ellis I think two years ago, I saw data that said that nationally the aggregated amount of student debt exceeded the aggregated amount of consumer debt. Is that still true?

1:01:07 B. Penn

I am not certain what those numbers are. But with the median law student in the nation graduating with \$125,000 in debt that would not be hard to believe.

1:01:24 Chair Ellis

The reason you are here, I am fairly sure, is our good executive director is following up. We had a meeting, I can't remember the date, but it is like six months ago. We had testimony from a Metropolitan public defender in Portland, young, very promising, very bright, very able lawyer, actually working in death penalty which is as extreme as we have. His testimony was that he loves the work. We had heard from a lot of sources that he is really good at the work. But he says, "I can barely make it now as a single person, and if I want to marry and form a family, there is no way I can continue with public defense work given the level of student debt." So that galvanized our thinking. Do you have any thoughts as to what either we as a Commission or Oregon as a state can do to try to address that question. We have a systematic problem of attracting qualified young lawyers into defense work, many of whom would be just like the person that I described. They want to do the work. The state wants them to do it, but this student debt is like a stone around their neck. Any thought as to where we can go from here to try to work through those issues?

1:03:15 B. Penn

I think one of the gaps that exists in programs that are out there are people who graduated prior to around 2008 or 2009, who have a significant law school student loan balance in private loans. Those loans do not qualify for any of the nice treatment. They do not qualify for payment plans based on a percentage of income. They are purely creatures of contract between the graduate and a bank. They have their terms and if you don't pay the bank starts to get agitated and there are issues and the banks do all the things that banks do. Those people who graduated prior to 2008 or 2009, those are also the people who are kind of emerging from that sort of new lawyer phase into the experienced lawyer phase. Because they don't have the new programs to benefit them, they are the ones that are going to have the biggest pressure at their back pushing them out of work like public defense work. The loan burden is high. The payments are high because they are private loans, and regrettably the salaries are not the highest salaries that we have for lawyers in the state. There is a strong pressure at their back to depart from the work. To address that perhaps a loan repayment assistance program focused directly on those attorneys at the five to seven year experience level who have private loans. Have the focus of it being giving them a chunk of money to pay down some of those private loans to help those disappear. That could be beneficial. That could help them reduce the balances and reduce the payments and be able to stick with the work longer. The other hole that exists outside of people who are working at the non-profit public defense providers, or OPDS, the government employees, folks who are working at the consortia, folks who are working at private firms doing public defense work, they only see a portion of the benefits. They can get their current loan payments down based on their salary, but they need to wait around for that 20 or 25 year mark to get out of their loans instead of at the 10 year mark. Currently, with employment issues out there and folks seeking jobs, we are probably not seeing a lot of pressure pushing people out of those positions. People take positions because they are there. As times improve, I would be fearful that we are going to see pressure out of those consortia. The best attorneys are going to find their way to a non-profit, or they are going to find their way to OPDS, or they are going to find their way to the DA's office. In the DA's office, in addition to the higher salary, you are also offering them qualifications for these loan forgiveness programs. In the case the non-profit public defense providers, you are offering them this loan forgiveness qualification as well. So I would be fearful as the economy increases that we are going to see pressure out of consortia, out of those private public defense jobs where the people are essentially doing 100% public defense work anyway and into kind of bins. In places like Multnomah County where there is every kind of player in the public defense market, it is likely people will get good public defense services. In parts of the state where there may be only consortia or there may be only private firms that are doing that, we are essentially saying that there is going to be pressure to move good public defenders out of those areas.

1:07:37 Chair Ellis You gave a figure that is actually higher than thought, \$125,000 as a median debt level. What percentage of the Lewis & Clark graduates, just to start there, are on student loans with that kind of level versus those that are funded from other sources?

1:07:59 B. Penn Lewis & Clark's median student loan balance is slightly lower than the average. It is about \$100,000.

1:08:09 Chair Ellis For those who have loans?

1:08:12 B. Penn For those who have loans.

1:08:12 Chair Ellis And what percentage of the student body are we talking about?

1:08:14 B. Penn It is typically between 90 and 95% have at least one loan.

1:08:20 Chair Ellis Amazing.

1:08:20 B. Penn There are some students who have just a very small amount. For all of them there are people with \$200,000 - \$250,000 in loans.

1:08:29 Chair Ellis And that is just law school debt, or does that mean the aggregate debt including their college and what else they may have done before law school?

1:08:39 B. Penn The \$100,000 figure for Lewis & Clark is just law school debt.

1:08:45 Chair Ellis Okay. Other questions?

1:08:50 J. Potter Could you enlighten me a little bit more on the loan forgiveness program at Lewis & Clark and how many people are benefiting from that program?

1:08:59 B. Penn Yeah, so, Lewis & Clark's loan assistance program, we have currently, this year, 19 people participating in it. We handed out just under \$100,000 between those 19 people. The way the program is administered is graduates apply every year to ask us to assist them. The requirement is that they be working at a public interest job using their law degree to advocate on behalf of underrepresented people underrepresented causes. We sort of interpret that pretty broadly. It covers folks from environmental organizations to public defense to legal services. We will cover people doing policy work as well as sort of full on attorney representation work. Those people apply. We additionally have an income cap which is how we sort of sculpt our number of applications to meet the number of dollars that we have to dole out. Everyone who is under that income cap we guarantee that we are going to help them some if they are qualified. We have occasionally asked for folks to apply slightly above that income cap. The income cap is currently \$45,000. The last two years we have said apply up to an income level of \$50,000, and we have been able to help folks up to that limit. The graduates can receive assistance throughout loan assistance program for up to the first five years after graduation. They must first get into the program in the first three years after graduation in order to continue on. Like many law schools across the country, when the new method of adjusting loan payments to income level came out, we kind of made some adjustments that we administer our loan repayment assistance program. Our endeavor is to help graduates cover all of their loan servicing need for the year. The way that we calculate that is we start off saying, "Alright, we know how much you are making. This is how much you would be asked to pay under income based (inaudible)." As long as there is not a compelling reason to give them a difference amount, that is what we base our aware amount on.

1:11:17 C. Lazenby What is your source of funds for all this?

1:11:21 B. Penn Lewis & Clark's source of funds are there are three components to it, actually four components to it. There is a hard endowment that was donated by an alumni. There are a series of annual gifts. Then 40% of the funding comes from the school's budget in a form that is sort of the interest on the school's rainy day fund. They have committed the rainy day fund interest towards the LRAP. Then another about 40% of the funding comes from a student fee. Seven years ago students at Lewis & Clark said, "We want to support LRAP more." They voted amongst themselves and said, "Charge us money every semester."

1:12:18 Chair Ellis So they borrow that to put it into the funds.

1:12:24 B. Penn That is what they do. The faculty listened to them and they implemented it, so \$25 each semester each student lays down which turns into \$35,000 or \$40,000 a year for the LRAP.

1:12:37 Chair Ellis What is the interest charged on student loans?

1:12:41 B. Penn If they are Stafford loans, which are the sort of first line of loans that folks take out, and have a good rate, it is 6.8% for graduate students. The grad plus loans that they are offering now are 7.9%. Some of the earlier ones were 8.5%. They are not good interest rates compared to what market interest rates are.

1:13:11 Chair Ellis So for someone who makes \$50,000 and applies 10%, they don't quite cover the interest?

1:13:21 B. Penn Correct.

1:13:23 Chair Ellis That sounds like a squirrel in a cage.

1:13:27 B. Penn It is a squirrel in a cage and that is why the kind of stop gaps at 20 and 25 years exist. But it means that the risk of Congress repealing those loan repayment plans, or the forgiveness in 10 years for public defense workers, could be an enormous burden on people who started at low salaries, paid an amount that was less than even the interest on their loans, and if the programs evaporate they are looking at a balance that is enormous.

1:14:03 J. Potter Losing money as they work. Go back to your loan forgiveness program at Lewis & Clark. You have 19 a year. How many graduates are you graduating for law school per year?

1:14:17 B. Penn The class of 2012 was 209. The class of 2011 was 233. This current year we are moving through a bumper size class. I think our expectation is to have about 275 graduates this year. Three years ago all law school admissions math did not work. Law, and pretty much every school's admission process works if you offer out and say we will admit this many people and you expect a certain percentage will come back. Those percentages did not match up with history three years ago and most law schools ended up with an enormous incoming class and Lewis & Clark did as well.

1:15:01 Chair Ellis They hit the market just right.

1:15:07 B. Penn Yes.

1:15:07 Chair Ellis Come to law school and incur an enormous debt and graduate into a down economy and good luck to you.

1:15:12 Hon. Elizabeth Welch Is anybody doing anything in this country to deal with this that you have heard of that inspiring or hopeful? Is there any kind of activity anywhere that we should hear about?

1:15:28 B. Penn The introduction of the plans to pay back loans based on a percentage of income that changed the formula for quite a few people. It made it affordable for those people who graduated like

2009, and later to say, "I can do whatever I want to do and my loan payment will not be a burden out of proportion with my salary." That is inspiring and working with law students and helping them to see these programs and understand the risks of not paying even the interest. If Congress makes things go away, making sure they see all the risk, they still say, "You know what, today I am going to be heading down the path to do the job that I came to law school to do to help people. To do a public interest career and I am not going to worry about the loans right now. I am going to get on the plan and I am going to hope that Congress doesn't go crazy and make it go away in 10 years, or 20 years, or whatever it may be." It is inspiring to see students be able to do that. Students who in the past might have looked at their loan balance and sort of recoiled back and said, "Okay, I can't afford to be a public defender. I can't afford to be a legal aid attorney. I can't afford to work at a non-profit." To not have to have that worry, but at the background is still that ever increasing cost of law school. Part of the dilemma with costs of law school is the kind of good ways to teach people and give them the skills to go out and be a lawyer, and have them help the community while they are students. Clinical education, hands on legal training, those cost more money too. Those are the way you best prepare someone to go out and do the job. Those are the ways that you best connect people to other players who are going to help them get a job, but those are the methods that cost the most money. You can fill a great big room and put a professor at the front and that is cheap. But when you say that you are just going to have five or six students working with one clinical professor that is expensive. So it is that dilemma of the cost of law school keeps going up, but the programs that do the best job of training people are the ones that cost the most.

- 1:18:00 Chair Ellis The federal debt, if I am understanding you correctly, is non-dischargeable in bankruptcy?
- 1:08:06 B. Penn You are correct.
- 1:18:06 Chair Ellis The private debt that is left over from the pre-07 period probably is?
- 1:18:13 B. Penn Those aren't dischargeable either. They get special treatment for student loans. The only way to discharge student loans in bankruptcy is to essentially show that you will never in your life be able to use the skill, knowledge, achievement that you had and for folks who go to law school your job is to think. So as long as you can somehow convey your thoughts to another person, one might argue that you could still use that law degree.
- 1:18:48 Chair Ellis Okay. You have depressed us for the entire meeting. Thank you for coming. This was very informative.
- 1:19:01 J. Potter Has Shaun kicked you yet?
- 1:19:02 Chair Ellis Okay. Shall we take about an eight minute recess.
- (Break)

Agenda Item No. 5 PDSC Budget Update

- 1:11 Chair Ellis Alright. Shall we resume? The next item is the PDSC budget update. Kathryn.
- 1:27 K. Aylward I am going to give you an update on two budgets. The first budget is our 11-13 current biennium budget. Nancy and I went to full Ways & Means this morning where House Bill 5052 was approved. They didn't actually vote, so I am not sure how that actually works. It went through work session and there were no comments. In House 5052 it is what they call the "Rebalance Bill." This time of the two year cycle there is always a rebalance bill and what they call a "Program Change Bill." They sort of travel in tandem. The rebalance bill is just money. That is all it says. Here is more money for you and less money for you. The program change bill deals with the statutory changes that need to be made in order to enable

those different changes in the money. So in our case there was nothing in the program change bill, it was just we need more money. They did appropriate \$1.5 million to this biennium, which is the remainder of our \$3.5 million dollar special purpose appropriation. You will recall we went in September and got two and this is the one and a half. Whenever I meet with anyone who will listen, I say, "You know the one and a half is great but that doesn't do it. I am going to be back for more." We were hopeful that during the rebalance that we would say, "You know, look, it actually more like \$4.7, or some large amount of money, so why don't you just give it to us all now and we don't have to come back and trouble you." They didn't do that. We will be going back to trouble them, but what I am pleased about is that it was on the record. LFO staff, when the bill was going through in subcommittee, did say, "By the way, this \$1.5 does not meet all of their needs for the current biennium." We will have to look again toward the end of the biennium for additional funding. So that is good news. As far as the 13-15 biennium, we are House Bill 5041, and our hearings before the Public Safety Subcommittee of Ways & Means start on Monday, Monday and Tuesday, and actually we could send it to you. We didn't send it to you in advance because we didn't want you to change anything. We have our presentation materials which are on the legislative website. You can get them, but now that they are done shall we just email them to the Commission members? Don't find any mistakes because we are all rehearsed up and ready, or we will be by Monday. This time they are doing something a little bit different. They are doing what they call "Phase I and Phase II." I think Phase I is budget presentation light where you just talk about yourselves and what you do. They listen politely and ask a few questions. Then in Phase II where they really have to make the hard decisions, I think they will be asking hard questions. We may not be asked to come back for Phase II. We don't know yet, but I think probably not because even though our budget to me seems big it is simple. It is like we do one thing. We are not a really complex budget like Corrections or DHS or K-12. We are pretty straightforward. The feedback has been that the subcommittee hearings have gone well and that we agency budget director's meeting where we all get together and compare horror stories and everybody said, "You know what, this Human Services Subcommittee was fine. This general government was fine." So it is a huge relief for agencies presenting not to be liked tortured publicly. That is it.

- 5:41 Chair Ellis Nancy, anything you want to add to that?
- 5:45 N. Cozine I am hopeful that it will be a very good two days. I am certainly happy to send you all the materials. I would have been happy to send them earlier. We will always get them to you when you want them.
- 5:59 Chair Ellis It is two days, but I think I am right, it starts late on Monday?
- 6:05 N. Cozine Three o'clock. Three o'clock to 4:30 on Monday and then Tuesday.
- 6:12 Chair Ellis And then Tuesday is how long?
- 6:13 K. Aylward It is the same. It is three hours, but we like to say two days of budget hearings because everybody does that.
- 6:19 Chief Justice
Balmer Barnes, this is new to me too. There are going to be three days of budget hearings. I, of course, thought three eight hour days. Boy this is going to be really heavy duty. Well it turns out it is three one and a half hour days. Three o'clock to 4:30.
- 6:33 K. Aylward You are drinking coffee and pacing up to that point and freaking out that suddenly you are \$20 million off.
- 6:47 Chair Ellis Okay. Guardedly optimistic that this will go okay.

Agenda Item No. 6

Annual Survey Results

- 6:52 Chair Ellis Alright. Paul, do you want to resume the chair and we have already addressed some of this.
- 6:59 P. Levy Yes, and it is good to know that my law school debt, if I had any left, could be discharged with bankruptcy. We have already talked about our six annual statewide survey. This will look familiar to you. I know that you have studied these reports over the years carefully. This report is virtually identical to prior reports in that what we are being told overall, across all types of practice, is that our providers are, for the most part, doing a good job.
- 7:55 Chair Ellis Particularly in juvenile.
- 7:56 P. Levy What is in the report, and has been true across reports, is that probably the most valuable part of this exercise are the comments that we have receive. I will talk in a moment about how we follow up on those. The comments often belie just the numbers that you get, including the juvenile. We hear about particular attorneys who are not doing a good job and these can be attorneys who are part of large public defender offices. They could be in consortia. They could be on their own, hourly lawyers, and so we continue to hear about problems. While it is distressing, it is also good that we finding out about them. What we do with this survey is, after we receive the results, one of the analysts put together a big spreadsheet with all of the 180 or so comments that we have. We went through each of those comments and where we could determine who made them or where they came from, we have divided among the four analysts and me, the responsibility to follow up with judges, prosecutors, and with the providers on these comments. There is a place for us to make a note on the spreadsheet of what we learned. We are meeting again in a little over a week to go over that. Then also plan larger follow ups. It will guide us in terms of where we will be doing a peer review later this year. It is really the comments that provide the best information from this survey. I just learned during the break that as a result of that comment, we did receive information about this remark on the death penalty survey. Mr. Chair, it was the comment where the person had had experience with two lawyers. One was excellent and the other shouldn't be representing anyone. Apparently this was not actually a capital case, at least the lawyer who was being commented on here negatively. It was not a capital case, but our analysts in that county can follow up more about that comment.
- 11:08 Chair Ellis What is the difference between question 5 and question 7? This same pattern gets repeated in other subjects. In no. 5 you ask for the overall impression of the quality of public defense representation, in this case adult criminal, and no. 7 is do public defense attorneys provide satisfactory representation of clients in adult criminal. I had trouble deciphering why one is different than the other.
- 11:44 P. Levy What we are trying to get at with 7, it is a way in a county are all of the clients being well served. How often our lawyers meeting the needs of all of their clients?
- 12:32 Chair Ellis You might consider consolidating them. They just seem to me like if there is a difference it is so refined.
- 12:43 P. Levy When we started this five or six, seven years, or six years ago, we word-smithed this survey to death. I cannot right now recall exactly why we ended up with this phrasing in this question.
- 13:08 Chief Justice
Balmer In no. 5 it looks like you and trying to get some sense of level of quality, right? As opposed to, okay, satisfactory presumably includes excellent and good, but sort of the frequency of it falling below a satisfactory standard whatever that is. In the diagram they sort of overlap, but at least you are purporting to be looking at different things slightly.

13:39 J. Potter But your responses are more or less parallel. As I go through this every year there are questions that I would like to change. We have resisted, unless we really need to, changing the survey simply so we can compare it from year to year. The results haven't really changed much from year to year.

14:06 C. Lazenby Paul, looking at the responses of 12 that say, "some attorneys who are appointed from out of county are in over their heads, are unethical, wasteful, and only marginally competent." Then you look at the overall responses to 12 and it says that everything has remained about the same. Just on the surface of looking at it that looks like that is a red flag for us.

14:27 P. Levy These comments here are just numbered in the order in which they were received. These comments that I set out with you are just with regard to death penalty representation.

14:42 C. Lazenby Okay. Alright.

14:46 P. Levy I set them out here for two reasons: 1) because we only asked one question about death penalty, which is an open-ended question. Tell us what you think about it. And also because I thought the balance was quite favorable, although it indicates as I said in the narrative that there are still areas of concern.

15:05 C. Lazenby So do you have analysts following up the no. 12 comment here?

15:07 P. Levy Yes. Where we can identify who made the remarks we are following up on those. I don't have the spreadsheet, but I am sure that we are following up where we can.

15:21 Chair Ellis Then showing my brilliance as a craftsman of questions, item 8 struck me as not that helpful and was repeated several other times. It says, "Do you question the competence of any public defense attorneys..." So you could have just one out of 200 and you would still have to answer, "Yes." Or you could have, "Man there are so many bad lawyers in my jurisdiction it is terrible." You would still get the same answer, "Yes." You might want to refine that.

16:04 P. Levy We might. This is the productive question on this survey because there is an opportunity to comment in connection with this question. That is where we get most of the comments.

16:21 Chair Ellis So you think the comments are enough to address the issue that I was concerned about.

16:30 P. Levy It is interesting. The response to this question has changed a little bit over time. As I noted in the narrative with respect to juvenile work, in the first survey where we could measure this, a majority of people with juvenile said, "Yes" to this question. If there is one person in a county whom a recipient of this survey says should not be doing the work and is incompetent, but in juvenile that has now dropped.

17:12 Chair Ellis I can see at least one smiling face out here. Juvenile is up like at 98.5.

17:20 J. Potter You can tell from the surveys the geographical response. Do you know at least what county it is in?

17:25 P. Levy Yes. Because we ask where you are, we can filter the responses from that question.

17:36 Chair Ellis Can you break out judicial responses versus DHS responses?

17:40 P. Levy We can do that and DA responses.

17:49 Chair Ellis Will tell them it is anonymous but we can crack the code.

- 17:50 P. Levy No, no we don't. I don't know if the instructions are here or not. We tell them their responses are anonymous unless they choose to provide their name. We tell them that none of this is confidential. It is a public record and it is subject to disclosure. Forty-seven people provided their names and that is very helpful. What is aggravating is we get this response from judges and others that there are incompetent lawyers in this county and I can tell you who they are. Then they don't give us their names.
- 18:45 J. Potter When you were looking at this and you were looking at the geographic overlay to all of this, nothing jumped out at you as a place in which there was a geographic problem?
- 18:56 P. Levy Not a problem as a result of geography. We absolutely are able to see that there are problems in a particular location.
- 19:5 J. Potter That would help us if we were to go back to a county. Some time ago we went to Jackson County. We looked at the juveniles. The numbers there were out of sight in terms of what representation was. They have since reported that that has been backed off, but if it still showed up on these forms it is still being a problem then I supposed we would want to know that so we could direct our attention to it. In fact we are with the peer review going to a county where there were many comments. The comments reflect many issues and problems in that county not necessarily solely quality concerns. It is helping us, along with other information, deciding where to go with our peer reviews and with Commission business as well.
- 20:20 Chair Ellis Do you share the results with our providers?
- 20:21 P. Levy Yes.
- 20:22 Chair Ellis Are they able to break that down by their geography?
- 20:30 P. Levy Because we can filter these by location we are able to give more targeted response to providers. We can tell Lane County people that this is what is being said in Lane County. The very first survey we did we asked about individual providers. It resulted in a huge, unwieldy survey that was very difficult to administer and a burden to respond to.
- 21:05 Chair Ellis Any other questions or comments on the survey? Thanks.

Agenda Item No. 7 Juvenile Appellate Section Senior Attorney

- 21:15 Chair Ellis Peter, the juvenile appellate section senior attorney.
- 21:23 P. Gartlan Thank you, Mr. Chair. For the record, Peter Gartlan, Chief Defender, of the Appellate Division. This is an action item and I think I need to give you a little background for some historical perspective. In 2007, the legislature funded the creation of a juvenile dependency unit, appellate unit, in this office. The unit was created in 2008. Over the past several years it has really evolved. It was set up on, kind of the model that we used in the criminal section, which is there is a senior deputy in charge of the team. Then there are team members. It has evolved. The position has evolved. It is partly because of the unique kind of nature of juvenile dependency law. It is on different expedited schedule and plus we found that the person in this position is really kind of the face of the agency to the outside world. So the person, who is in this position right now, Shannon Storey, has done an excellent job. The unit has really excelled and everything we hear from different parts of the system has been highly complimentary about Shannon's contribution to the law and to the office and to this unit. To give you a little more historical perspective, and it was kind of an eye opener for me, in 2006 and 2007, those two years, the Court of Appeals issued 12 and 13 opinions. Twelve in one year and 13 in another. Most of them were in TPR. There were two reversals each year. So the legislative intent, I think, of creating this unit was to have the Court of Appeals issue more

opinions and kind of articulate how the statutory scheme is supposed to work. Then that would filter down and the trial courts would have to follow the appellate opinions and there would be more adherence and following what the statutes require. Again, I think that has been a success. The history shows that is exactly what has happened. For example, in 2011, there were 27 opinions in the Court of Appeals in dependency and TPR cases. Sixteen were from our unit, the JAS unit, and there were 12 wins. In 2012, there were 44 opinions in the Court of Appeals in dependency and TPR cases. Twenty-two were from this unit and 16 of those 22 were wins. The unit has been excellent and it is largely due to Shannon. Shannon has just been exemplary as a team leader. As I said, she is serving other roles. She is a resource to the legislature. She is the public face to the outside world. She is a resource for the trial bar. That position has evolved, and it has largely evolved because of what she has done. What we are attempting to do here is kind of capture what her duties. As I said that position was originally a senior deputy position. It was modeled after the criminal section, but it has become kind of a senior deputy plus position. So what this does is it places it between the senior deputy defender, which is 34, and the chief deputy defender, which is a 38. So it places it dead in the middle at 36. I think it best captures what she has done and what the position has become. I would be happy to answer any questions.

- 25:29 Chair Ellis I am little confused. This is called an “Action Item.” What are we being asked to do?
- 25:37 P. Gartlan This is a new classification. This is kind a reclassification. It is a change to the compensation plan. This position did not exist before this particular title.
- 25:51 Chair Ellis So the comp plan we are looking at is the existing with this added?
- 25:57 P. Gartlan Correct.
- 25:58 P. Ramfjord So Shannon was in the position of a senior deputy defender and we will be creating the position of juvenile appellate section senior attorney, which would result in a two level pay grade increase for her reflecting her additional responsibilities that you have described.
- 26:13 P. Gartlan Correct.
- 26:17 Chair Ellis Anything you want to share on this, Nancy?
- 26:20 N. Cozine Thank you, yes. Just to further refine exactly what analysis went into this decision, that we are now placing with you. On the criminal side we have three deputy chiefs. You have one for outreach, so doing that “public fac” and responsible for interacting with legislature. That is Shawn Wiley. Then you have our chief deputy in charge of personnel. That is Josh Crowther. His responsibilities are personnel related in the office, CLE’s. Then you have operations, and that is Ernie Lannet. So you have these three chief deputies on the criminal side and many of their responsibilities have – the way that the position Shannon is in has developed, she is sort of somewhere in between. She is really doing some of the same responsibilities that some of those chief deputies are doing. We wanted to take a close look at the responsibilities she had and make sure that we had a position that really accurately captured the workload that she has. She has a very small unit. There are five lawyers total including here right now. For a long stretch there had been only three due to a vacancy. It is a very small unit. Her workload, however, includes responsibilities that are somewhat akin to some of those chief deputies.
- 27:50 Chair Ellis I don’t think we want to get in the business of setting individual comp levels other than the executive director. Everything you have said is interesting, but I think if what you are proposing is creation of a pay level for a level of responsibility and you all will decide who...
- 28:15 N. Cozine Who goes where. By statute you are required to adopt and approve our compensation plan.

28:24 Chair Ellis I do understand that. I just want to make it clear. My view is we are doing this on a generic level not a Shannon specific level.

28:36 N. Cozine Right. The position, as it has developed, has ended up with responsibilities that are beyond the typical senior.

28:44 Chair Ellis And I am sensing unanimity among management here. Other questions or comments? Is there a motion to approve the creation of the position SR36, under juvenile appellate section senior attorney?

MOTION: John Potter moved to approve the position; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

29:13 Chair Ellis Okay. Anything else to report?

29:14 P. Gartlan I think I might be next up anyway in the monthly report.

Agenda Item No. 9 OPDS Monthly Report

29:19 Chair Ellis Okay. If that is alright with you, Nancy, we will take him now.

29:24 P. Gartlan Continuing with the juvenile unit.

29:25 Chair Ellis Let me pause. Should we be eating? Why don't we get our lunches.

33:58 P. Gartlan I will time my controversial remarks just right. The next item is an update on the appellate division. Sticking with the juvenile appellate section theme, we have added Sarah Peterson. She will join the appellate section on April 8. Sarah is 07 graduate of the University of Oregon. She worked for over two years for Justice Jack Landau.

34:34 J. Potter What is her debt load?

34:36 P. Gartlan I don't know. We have somebody joining, Rond Chananudech. He will be joining the criminal section on April 1. So we have new attorneys joining us. One on April 1 in the criminal section and Sarah in the juvenile appellate section.

34:57 Chair Ellis And each of them, when the opening was there, what was the number of applicants?

35:04 P. Gartlan The round with Rond it was over a 100, a 140 or so applicants. With the JAS pool, I think it was around 80. It was not over 100.

35:17 Chair Ellis That is just amazing.

35:20 P. Gartlan I think with the JAS pool, though, we had a lot of out of state applicants. There were people who weren't really qualified in our view.

35:37 J. Potter And yet in Hood River County, Jack Morris has a hard time finding an applicant.

35:44 P. Gartlan We had also had five Supreme Court arguments this month. We had a very intense few weeks in the office with moot courts and arguments. Three of those five were by first time attorneys in the Supreme Court. Each of them did very well. We are really happy with their performance. The office, I think, was represented well.

36:16 Chair Ellis On the other side does the SG does all the arguing for the state?

36:23 P. Gartlan The appellate division does the arguing for the state.

36:28 Chair Ellis Do they spread it out as much as you guys do?

36:28 P. Gartlan I am not sure how they spread it out. They do it spread it out, but I don't know what their internal criteria are. Cases do get moved from the attorneys in Court of Appeals to the Supreme Court, but I don't know how they decide that.

36:43 Chair Ellis You know my view. I commend what you are doing there. You are giving a lot of people that exposure.

36:51 P. Gartlan We think it is a part of our role, our function. That is about it for the appellate division.

37:05 Chair Ellis Any of those cases with a big issue?

37:05 P. Gartlan Yeah. One was argued up at Lewis & Clark and it was a gun issue. Portland has an ordinance that prohibits carrying around a loaded firearm. You have to have a permit and if you have a permit you can carry it concealed, but Portland prohibits carrying a loaded firearm and there is a criminal penalty attached. So that issue is before the Supreme Court. That is fascinating both under the state and federal constitution law. The US Supreme Court has issued a couple of gun law cases within the last five years. It presents really nasty, interesting, challenging questions, and it even involves an appellate question that applies to all kinds of constitutional challenges. It is about how does a court approach analyzing an ordinance or statute that infringes or implicates a constitutional provision. It is going to get dry. There are separate rules with respect to whether or not the statute or ordinance involves speech, some sort of speech, where there is over breath analysis. The courts have been reluctant to take that over breath analysis and use it with respect to other kinds of statutes that do not implicate speech. The Oregon Supreme Court did use an over breath analysis a few years ago in a gun case. The state and several *amici* on the case were challenging - asking the Supreme Court to please to change its approach to gun cases. It is just a fascinating issue because you get down to why is it that some constitutional provisions get this kind of favored treatment or scrutiny and others don't. Our position, although the lower Supreme Court correctly did, even though they never explained why, they did it because of the nature of the right of self defense. It is something that exists even outside government relation to the individual, it is individual protecting one's self, protecting one's family, and also protecting against foreign or against one's own government. It is fascinating issue. I can't wait for the decision. Neil Byl did a really nice job for our office.

39:49 Chair Ellis I take it we played no role in the Haugen versus Kitzhaber dispute?

39:50 P. Gartlan Correct. Our office has the co-defendant, Brumwell.

39:58 Chair Ellis Any other questions for Pete?

40:02 J. Potter The two hires that you talked about, are these positions that are replacing somebody that has left? They are not brand new numbers?

40:14 Hon. Elizabeth Welch I have a question that is maybe not of interest to everybody else, so I don't know how tight our agenda is. Let me just ask. I am alarmed because of where I come from, with the number of termination cases that have been reversed. What the hell is going on? Are judges making bad mistakes? Are lawyers ...

40:52 P. Gartlan This really goes back to why I think the legislature created the unit here. The number of opinions that existed back just six or seven years ago was paltry. Most of them were TPR cases and they were mostly affirmed. What the unit has done is really interesting. It is saying, "Wait a minute. There is a statutory scheme here and people have not been paying

attention to the statutory scheme." It seems to be there were a lot of dependency cases that were kind of ad hoc. Just kind of equitable determination decisions and our unit is saying, "Wait, there is a systemized, organized, analytical model and it has to be followed. What happened below has to adhere to what the statutory scheme is." So it is really a statutory based, philosophical challenge. The Court of Appeals is kind of agreeing that, yes, if there is a statutory procedure here then it should be followed. It is really a success story. I think this is exactly what the legislature intended when it created a centralized appellate unit. Before it was individual practitioners and there was kind of development of an approach and a philosophy as to how to shape the law.

42:18 C. Lazenby

So, is the failing one where there is inconsistency around the state, you say it seems like people are sort of doing equitable dispositions in these matters. Is it correctable by them writing better orders? Or are there real procedural flaws in the way this is handled?

42:37 P. Gartlan

I think because of its ad hoc equitable nature, the practice that existed, there was just uncertainty. I feel we are editorializing here, but I think there is kind of a lack of familiarity. I don't know how many dependency law experts there really were, and even whether or not a lot of judges were comfortable with dependency law. I think what has happened is the Court of Appeals is becoming more comfortable because there is kind of better appellate practice. They are more comfortable making decisions and they are more comfortable issuing opinions that describe and articulate how the system is supposed to work. In an odd kind of way the Court of Appeals is to juvenile dependency law what the Supreme Court is to most other areas. The Supreme Court hasn't reached into this area all that much. I think it is because of a lack of a comfort level. Now the Court of Appeals is issuing more opinions because I think they feel as if they are getting good advocacy from both sides, so they feel comfortable making decisions based upon some sort of rational based statutory analysis.

44:02 Chair Ellis

Which is very encouraging because they are not just deciding an individual dispute, but they are really helping lay out...

44:12 P. Gartlan

From what I can tell it is affecting practice statewide. Our unit is in regular contact with the trial bar. I think the trial bar is encouraged because, well now we have these opinions. They can go to the trial courts and say, "Look, you have to follow these procedures and if you don't you may get reversed." Trial judges don't like to get reversed. Like I said, it is a success story.

44:40 Chair Ellis

Remember the panoplies of motivations in life. If you get past greed and sex and power, fear of embarrassment is the big one. That is what we are working on here.

44:58 P. Gartlan

It is true.

45:03 Chair Ellis

Okay. Any thing else for Peter?

45:00 C. Lazenby

Just back to Kitzhaber and Haugen for a second. Even though we are not representing Haugen are we paying for his attorney at all?

45:09 P. Levy

No. It did require a bit of work. He sought payment and we litigated that issue in the trial court, in the Oregon Supreme Court, and then he even filed a cert petition, beautifully written, to the US Supreme Court seeking payment from us. We waived response in the US Supreme Court and the cert was denied.

45:42 C. Lazenby

So Haugen's representation is *pro bono*?

45:44 P. Levy

Yes.

45:47 Chair Ellis

Okay. What is next.

46:00 P. Levy I am done eating here. I have just a brief item.

46:00 Chair Ellis The bad news for you is, so are we.

46:01 P. Levy I just wanted to report on the state bar has attempted to revise the performance standards for criminal and juvenile and use that as a segue to talking about a new document that we have that I have ordered for all of you. As you know the Commission's statutory mandate is to provide cost effective representation consistent with constitutional requirements.

46:36 Chair Ellis And national standards.

46:37 P. Levy And Oregon and national standards of justice. We use the state bar standards in many ways in our work. We have a small task force working now to update those standards. Commissioner McCrea is on that. I am chairing it. Our work is progressing. Not fast...

47:04 S. McCrea Steadily.

47:05 P. Levy Steadily. Yes, we will call it that. Fortunately it has not progressed that fast because in the midst of this project, early this year arrived the bench mark, the gold standard, for representation in juvenile delinquency cases. This is National Juvenile Defense Standards from the National Juvenile Defender Center. It is amazing. It is a superb document that sets out standards with in-depth commentary with great footnotes, which you can't read because they are so tiny, but other than that it is a great document. Because this is an area of concern for the Commission as well as the standard no by which we must all insure that juvenile defense is conducted in Oregon. They are sending copies here for each Commissioner. They are free. You can read it now online at NJAD site. But the standards are really good. There are 83 standards here. Some of them are how to prepare for trial, conduct cross-examination, and the like, that are really not that different from what happens in criminal defense. The focus of the work is on a number of things. One is just how different and specialized juvenile representation is and how the training and the knowledge that one needs to do it is different from what the usual criminal practitioner has. There are important sections on the attorney/client relationship and making clear, as if there were any doubt left, that it is an expressed interest representation. There is no room in delinquency for representing best interests of your client. It also is very good on confidentiality requirements and the role of the parent. They don't say to ignore the parent entirely, because you need the parent to be involved and engaged in the representation and that is a key to success in the representation, but you may not take direction from the parent. You may not share confidential information with the parent without the consent of the client. That sort of stuff is really good, but what is new, perhaps, is a section on the obligation of juvenile defenders to engage in system reform. That is where you know about, see, or understand there to be inequities, or injustices, or things that are just not going well in the juvenile justice system. You have an obligation to seek to reform those, and so it does direct lawyers to deal with issues that the Commission is dealing with, such as early access to a lawyer. Having a lawyer available not just at your first appearance in court, where we still have some problems, but have access to a client before your first appearance. A lot of focus on dealing with waiver of counsel. Lots of focus dealing with shackling of juveniles, which continues to be an issue in Oregon. While we are working on our state bar standard update to incorporate much of this in there, standing alone this volume already becomes one of those national standards of justice that the Commission and our agency is guided by. You have a copy at least by the next time we see you.

51:15 Chair Ellis Good.

51:15 N. Cozine And following up on that, those standards also include a provision about the assumption of indigency for youth.

51:25 Hon. Elizabeth Welch Oh really.

51:25 N. Cozine Oh really. We feel that this is a very nice piece that can add to and inform our discussions about the Chief Justice's task force and its work, which has not yet begun in earnest. We wanted to start with a survey to find out what was happening in the various counties. That went out at the end of December. Unfortunately, within the judicial department who actually issued the survey, the person who issued the survey went out on an emergency medical leave before it went out. Someone else was assigned and she then left. I think they are on position number three. She left and now it is posted again. So we have been having some technical difficulties getting that survey analyzed and getting meaningful results. I think that the number of responses was too few to actually give a meaningful response county to county. I think what we need to do is pull everybody together and start the conversation with or without the benefit of a very thorough survey. Just start looking at our standards and making changes where we need to so we are in compliance with the national standards. I hope to have Mr. Livingston actually here to report on that task force next month. He was not available today. Commissioner Potter, I hate to put you on the spot but I thought you might want to talk about the OCDLA Legislative Drive in.

52:49 J. Potter Last Monday OCDLA had a legislative drive in, in which we have 50 lawyers participating. We focused on *Gideon*, as it is the 50th anniversary of *Gideon*. Former Justice Mick Gillette spoke in front of the Senate Judiciary Committee and gave an overview of the *Gideon* case and what it meant. Then OCDLA had a bill on the complication of *Brady* and discovery issues that were heard by the judiciary. We had panel of witnesses including one of Senator Ted Stevens' lawyers from Washington, D.C. Apparently Senator Stevens had 10 lawyers that represented him. This was one of them from that firm who did a very nice job.

53:39 Chair Ellis Talking about government misconduct?

53:42 J. Potter Talking about government misconduct and the prosecution in particular in this case. Then we retreated to the basement in Room 50 in which we had presentations by Mick Gillette and by Rob Carey, the lawyer from Washington, D.C., and Representative Jennifer Williamson came down and talked and the Attorney General came in and talked to us. Our members then spread out and went and talked to their representatives. Gail and Aaron had made appointments for all the attendees to go speak with their senator and representative and talk about not only the OPDS budget, but also *Gideon* and the Brady bill. It was good day to get folks involved and engaged in the process. One of my standing criticisms of the defense bar is their lack of understanding of where laws are made. They seem to think they are made in the courtroom, but understanding the law making process in Salem is something that is foreign to many lawyers. Many of them have never stepped foot inside the capital building.

55:07 Chair Ellis Sounds like you are getting almost more education for your members than for the

55:14 J. Potter It would be at least equal. It was a successful and good day.

55:17 Chair Ellis Excellent.

55:17 N. Cozine It was. Interestingly, in the Joint Ways & Means Public Safety Subcommittee that day, a comment was made in the agency budget hearings, not ours clearly, directly referencing a visit from a public defense provider and the low rates of pay. I thought that was good sign that that was really a worthwhile effort from a budget standpoint. Other legislation that I thought this Commission might be interested in hearing about, House Bill 2548, it is an effort to get bail bondsman back into Oregon. This is about the third session in a row that they have been making this attempt. I think there is some pretty strong opposition. My understanding is that there will be several entities opposing the legislation. It is a very, very detailed bill.

56:12 Chair Ellis Is there a commercial interest in the background here that is pushing this?

56:21 N. Cozine Yes. It is the insurance and surety groups who want to see it implemented. There are two issues. One is the issue that there are bail states all around us, and if a bail bondsman drives through Oregon with someone that they are attempting to return to a jurisdiction, they can get charged with kidnap here in Oregon. There is case law on that. The bail industry is interested in clearing that little snafu up, but they are also interested in doing business in this state. That is something that would affect our client population and I know OCDLA is well aware of this bill.

57:01 Chair Ellis Back in the old days when we had that there was quite a bit of corruption associated with it.

57:08 N. Cozine There are people who remember that and I believe some of those individuals would be testifying against the bill.

57:12 C. Lazenby What is the revenue profile of that? Is the industry coming in and saying we will give the state a share of that as opposed to what goes on right now with posting bail?

57:19 N. Cozine That is my understanding.

57:25 J. Potter I believe they are now saying in this particular bill 1% kickback to the state.

57:39 N. Cozine Senate Bill 622 is a juvenile records bill. This bill is an Oregon Law Commission bill and the attempt is to align the juvenile statutes with the new eCourt system, so that when documents are filed there is a clear path of where those get filed. Interestingly, in dependency and delinquency cases there are many statutory provisions requiring entities, such as OYA, DHS, and the Juvenile Department, to file with the court reports that and other information. Those are not part of the case record. They are required to be submitted by statute, but once you have one electronic file, where does that go so it doesn't become part of the record of the case? So there is a big effort to try and clarify and map out where these different pieces go, and additionally, when we were in Linn County we talked about evidence. Where does evidence go? There is no clear path for that either - whether it goes into the record of the case or some other storage unit within that electronic file. It has been an interesting work group. Shannon Storey has been participating and looking at it from the appellate angle, and I have been participating from the administrative angle, also making sure that there are provisions allowing access for our attorneys. One issue that arose was whether or not in the new eCourt environment perspective appellate attorneys could look at the case record to determine whether or not they had a conflict. So building things like that in so that we have a clear path. The bill is unfortunately going to run into quite a bit of opposition because there is a current case pending that is on open courts. That open courts pending litigation, four mandamus actions up in front of the Supreme Court right now, may well slow this effort down. It will be interesting to see what happens with it. The Oregon Law Commission was considering it at its meeting this last Wednesday, but they ran out of time so it was pushed to their next meeting agenda. House 3259 is a bill that would give the circuit courts jurisdiction over certain post prison individuals. This bill is silent as to whether or not it would trigger the right to court appointed counsel, but our fiscal impact statement has noted that that is a possibility and a potential increase. The bill began by giving the court very broad authority over all post prison supervision individuals and it was narrowed to only those who are participating in a grant funded drug court or other treatment court, or it is going to be narrowed. My understanding is there is an amendment. Finally, House Bill 3463, this is a newly introduced bill that would require this agency to compensate public defenders at the level that district attorneys are paid. I just received this this morning. It was sponsored by Representatives Williamson, Garrett, Hicks, and Tomei. It directs the Public Defense Services Commission to adopt policies and negotiate contracts that provide for compensation of appointed counsel at a rate equivalent to assistant or deputy district attorneys at comparable experience practicing within the same county as appointed counsel.

1:01:09 Chair Ellis Mandated parity but with no money.

1:01:12 N. Cozine I think it is interesting because we do have a statutory provision that is very similar for our appellate attorneys, and it is an unfunded mandate.

1:01:26 Chair Ellis Where is the Sentencing Commission legislation?

1:01:27 N. Cozine There is a joint committee on public safety. They are continuing to have hearings. In fact, they have a hearing starting at 1:00 today at the capital if any of you are interested in going over there. It is from 1:00 to 3:00. It is my understanding that today they will be hearing from actually some national figures and also some people from around the state of Oregon on those provisions that are specifically related to the juvenile reforms. So second look at Measure 11 and reversing the waiver presumption so rather than the presumption that children are waived into adult court, the presumption reverses. They start at juvenile court and can be waived to adult court if they are within a certain age range. That will be an interesting discussion.

Agenda Item No. 8 April PDSC Meeting – change of date

1:02:26 Chair Ellis Do you want to take up the calendar issue now?

1:02:31 N. Cozine The only last thing would be an update from CBS.

1:02:35 K. Aylward I have got nothing.

1:02:39 Chair Ellis That makes me want to hear more about it.

1:02:43 N. Cozine Then the April meeting would be appropriate.

1:02:45 Chair Ellis Okay. Everybody brought their calendars I am sure. Do you have a proposed date you want to see if it works?

1:02:54 N. Cozine We were hoping originally for, I think, Tuesday, the 30th. I think we already have one conflict with that. The push and pull here is that of course we have this limited time window between now and the current meeting schedule date which is April 11. CBS needs to get the RPF out in May, so we need to have that approved by this Commission before too late in May. The week of April 29th would be the target week at this point.

1:03:35 Chair Ellis Do you want to pick a day there that you like and see if it works?

1:03:40 N. Cozine We have the Marion County peer review the 1st, 2nd, and 3rd, so Monday is a tough day, but...

1:03:45 Chair Ellis That would be the 29th of April.

1:03:52 N. Cozine It would be the one day that I haven't heard people are unavailable.

1:03:55 Chair Ellis That works for me.

1:03:56 P. Ramfjord Words for me.

1:04:04 J. Potter Fine.

1:04:05 N. Cozine Alright. Thank you.

1:04:08 Hon. Elizabeth Welch The usual time?

1:04:13 N. Cozine The usual time - 10:00 to 2:00 here in Salem.

1:04:27 Chair Ellis Kathryn, did you have more you wanted to say?

1:04:30 K. Aylward No. I don't.

1:04:35 Chair Ellis Anything else?

1:04:36 N. Cozine Do you want to hear the line up for our budget presentation while you are here, or do you want to save that for the circulated document?

1:04:49 Chair Ellis If it takes just a minute.

1:04:50 N. Cozine Do you have another three hours? We actually have done a few dry runs. It seems to be going just fine. The day, Monday, will start, of course, with Chief Justice Balmer and Chair Ellis introducing the budget. Then Kathryn, Pete, and I will move through the operations of the office, the budget, the structure, mission, values, and goals. On day two we will finish up the budget details and we will then hear from Judge Ortega from the Court of Appeals, Judge Waller from Multnomah County, Attorney General Ellen Rosenblum, Walt Beglau the Marion County District, he is representing the ODAA. Then Brett Ballou, who is the managing attorney from Washington State Office of Public Defense. They have a parent representation program that is very successful and is very much like our policy option package 100 that has a component to reduce the dependency caseload. They have a study that was completed in 2010 that demonstrates that their parent representation program actually reduced the time children spent in foster care. There is a way to evaluate studies called "The Maryland" - I am going to forget the term, but on the Maryland scale, if you are in the four to five range the study is considered statistically valid. I had sent this report to legislators here and they wanted to know whether or not this was a valid study and asked that I send it to Craig Prins at the CJC to have his data people look at the study. The email we got backed indicates that this is a highly validated study, very reliable, so we can present that information to our legislators. We will also be able to allow our Washington friends to share that there was in Washington a 25% reduction in the human services caseload for child welfare. They attribute approximately 40% of that reduction to the parent representation program. So, some really good information for our legislators about what reduced caseloads can do to assist parents in these cases, and children who are part of these cases. We will also have Jack Morris to talk about some of his struggles with attracting new lawyers, and Angela Sherbo from Youths, Rights & Justice, to talk about the challenges they have had. Then we have two individuals coming who are actually parents in the children welfare system who had lawyers who were public defense providers, and both of these individuals are still involved to help parents through the system and to help them connect with their lawyers. They have some really great observations to share with the legislature about their experience and what they observe now. We are very hopeful that this will be a really informative two days for our legislature.

1:08:05 J. Potter Not going to go into a third day?

1:08:11 N. Cozine We hope not. No. We don't intend to go into a third day.

1:08:10 Chair Ellis What time do you want me here on Monday?

1:08:12 N. Cozine We start at 3:00. I think if you want to be here anywhere between 2:00 and 2:30.

1:08:22 Chair Ellis Okay.

1:08:23 C. Lazenby I just want to ask if you think there is any chance that any of the sort of sentencing adjustment measures are going to get through the legislature? With prison costs driving changes in sentencing because it is messing with Measure 11. What is the story on that?

1:08:43 N. Cozine I think it is still too early to tell. From everything that I hear there is still very robust discussion going on within the legislature. There is certainly the cynical view that it is not going anywhere, but there are many people who think something will get done. To what degree something is done, to what degree savings are actually captured, I think that is the big question. There is still opposition. My understanding is that in early April there will be an opportunity for public comment. They are expecting both sides of the discussion to come to the table.

1:09:28 Chair Ellis Okay. If there is nothing else then I would entertain a motion to adjourn.

MOTION: John Potter moved to adjourn the meeting; Per Ramfjord seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Meeting adjourned.

Attachment 2

House Bill 3463

Sponsored by Representative WILLIAMSON; Representatives GARRETT, HICKS, TOMEI

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Directs Public Defense Services Commission to adopt policies and negotiate contracts that provide for compensation of appointed counsel at rate equivalent to assistant or deputy district attorney of comparable experience practicing within same county as appointed counsel.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to compensation of public defenders; creating new provisions; amending ORS 151.216 and
3 151.219; and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 151.216, as amended by section 42, chapter 107, Oregon Laws 2012, is
6 amended to read:

7 151.216. (1) The Public Defense Services Commission shall:

8 (a) Establish and maintain a public defense system that ensures the provision of public defense
9 services in the most cost-efficient manner consistent with the Oregon Constitution, the United States
10 Constitution and Oregon and national standards of justice.

11 (b) Establish an office of public defense services and appoint a public defense services executive
12 director who serves at the pleasure of the commission.

13 (c) Submit the budget of the commission and the office of public defense services to the Legis-
14 lative Assembly after the budget is submitted to the commission by the director and approved by the
15 commission. The Chief Justice of the Supreme Court and the chairperson of the commission shall
16 present the budget to the Legislative Assembly.

17 (d) Review and approve any public defense services contract negotiated by the director before
18 the contract can become effective.

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

21 (f) Adopt policies, procedures, standards and guidelines regarding:

22 (A) The determination of financial eligibility of persons entitled to be represented by appointed
23 counsel at state expense;

24 (B) The appointment of counsel;

25 (C) The *[fair]* compensation of counsel appointed to represent a person financially eligible for
26 appointed counsel at state expense **at a rate equivalent to an assistant or deputy district at-**
27 **torney of comparable experience practicing within the same county as the county of the ap-**
28 **pointed counsel's primary practice;**

29 (D) Appointed counsel compensation disputes;

30 (E) Any other costs associated with the representation of a person by appointed counsel in the

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 state courts that are required to be paid by the state under ORS 34.355, 135.055, 138.500, 138.590,
 2 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.206, 419C.209,
 3 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.265, 427.295, 436.265 or 436.315 or any
 4 other provision of law that expressly provides for payment of such compensation, costs or expenses
 5 by the commission;

6 (F) Professional qualifications for counsel appointed to represent public defense clients;

7 (G) Performance for legal representation;

8 (H) The contracting of public defense services;

9 (I) Contracting with expert witnesses to allow contracting with out-of-state expert witnesses
 10 only if in-state expert witnesses are not available or are more expensive than out-of-state expert
 11 witnesses; and

12 (J) Any other matters necessary to carry out the duties of the commission.

13 (g) Establish a peer review system for the approval of nonroutine fees and expenses incurred in
 14 cases involving aggravated murder and the crimes listed in ORS 137.700 and 137.707. The review
 15 shall be conducted by a panel of attorneys who practice in the area of criminal defense.

16 (h) Establish a complaint process that allows district attorneys, criminal defense counsel and the
 17 public to file complaints concerning the payment from public funds of nonroutine fees and expenses
 18 incurred in cases.

19 (i) Reimburse the State Court Administrator from funds deposited in the Public Defense Services
 20 Account established by ORS 151.225 for the costs of personnel and other costs associated with lo-
 21 cation of eligibility verification and screening personnel pursuant to ORS 151.489 by the State Court
 22 Administrator.

23 (2) Policies, procedures, standards and guidelines adopted by the commission supersede any
 24 conflicting rules, policies or procedures of the Public Defender Committee, State Court Administra-
 25 tor, circuit courts, the Court of Appeals, the Supreme Court, the Psychiatric Security Review Board
 26 and the Oregon Health Authority related to the exercise of the commission's administrative re-
 27 sponsibilities under this section and transferred duties, functions and powers as they occur.

28 (3) The commission may accept gifts, grants or contributions from any source, whether public
 29 or private. However, the commission may not accept a gift, grant or contribution if acceptance
 30 would create a conflict of interest. Moneys accepted under this subsection shall be deposited in the
 31 Public Defense Services Account established by ORS 151.225 and expended for the purposes for
 32 which given or granted.

33 (4) The commission may not:

34 (a) Make any decision regarding the handling of any individual case;

35 (b) Have access to any case file; or

36 (c) Interfere with the director or any member of the staff of the director in carrying out pro-
 37 fessional duties involving the legal representation of public defense clients.

38 **SECTION 2.** ORS 151.219 is amended to read:

39 151.219. (1) The public defense services executive director shall:

40 (a) Recommend to the Public Defense Services Commission how to establish and maintain, in a
 41 cost-effective manner, the delivery of legal services to persons entitled to, and financially eligible
 42 for, appointed counsel at state expense under Oregon statutes, the Oregon Constitution, the United
 43 States Constitution and consistent with Oregon and national standards of justice.

44 (b) Implement and ensure compliance with contracts, policies, procedures, standards and guide-
 45 lines adopted by the commission or required by statute.

1 (c) Prepare and submit to the commission for its approval the biennial budget of the commission
2 and the office of public defense services.

3 (d) Negotiate contracts, as appropriate, for providing legal services to persons financially eligi-
4 ble for appointed counsel at state expense. No contract so negotiated is binding or enforceable until
5 the contract has been reviewed and approved by the commission as provided in ORS 151.216. **The**
6 **director may not negotiate a public defense services contract that compensates appointed**
7 **counsel at a wage less than that of an assistant or deputy district attorney of comparable**
8 **experience practicing within the same county as the county of the appointed counsel's pri-**
9 **mary practice.**

10 (e) Employ personnel or contract for services as necessary to carry out the responsibilities of
11 the director and the office of public defense services.

12 (f) Supervise the personnel, operation and activities of the office of public defense services.

13 (g) Provide services, facilities and materials necessary for the performance of the duties, func-
14 tions and powers of the Public Defense Services Commission.

15 (h) Pay the expenses of the commission and the office of public defense services.

16 (i) Prepare and submit to the commission an annual report of the activities of the office of public
17 defense services.

18 (j) Prepare and submit to the Legislative Assembly a biennial report on the activities of the of-
19 fice of public defense services.

20 (k) Provide for legal representation, advice and consultation for the commission, its members,
21 the director and staff of the office of public defense services who require such services or who are
22 named as defendants in lawsuits arising from their duties, functions and responsibilities. If requested
23 by the director, the Attorney General may also provide for legal representation, advice and consul-
24 tation for the commission, its members, the director and staff of the office of public defense services
25 in litigation.

26 (2) The director may designate persons as representatives of the director for the purposes of
27 determining and paying bills submitted to the office of public defense services and determining pre-
28 authorization for incurring fees and expenses under ORS 135.055.

29 **SECTION 3. The amendments to ORS 151.216 and 151.219 by sections 1 and 2 of this 2013**
30 **Act apply to public defense services contracts negotiated or entered into on or after the ef-**
31 **fective date of this 2013 Act.**

32 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
33 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
34 **on its passage.**

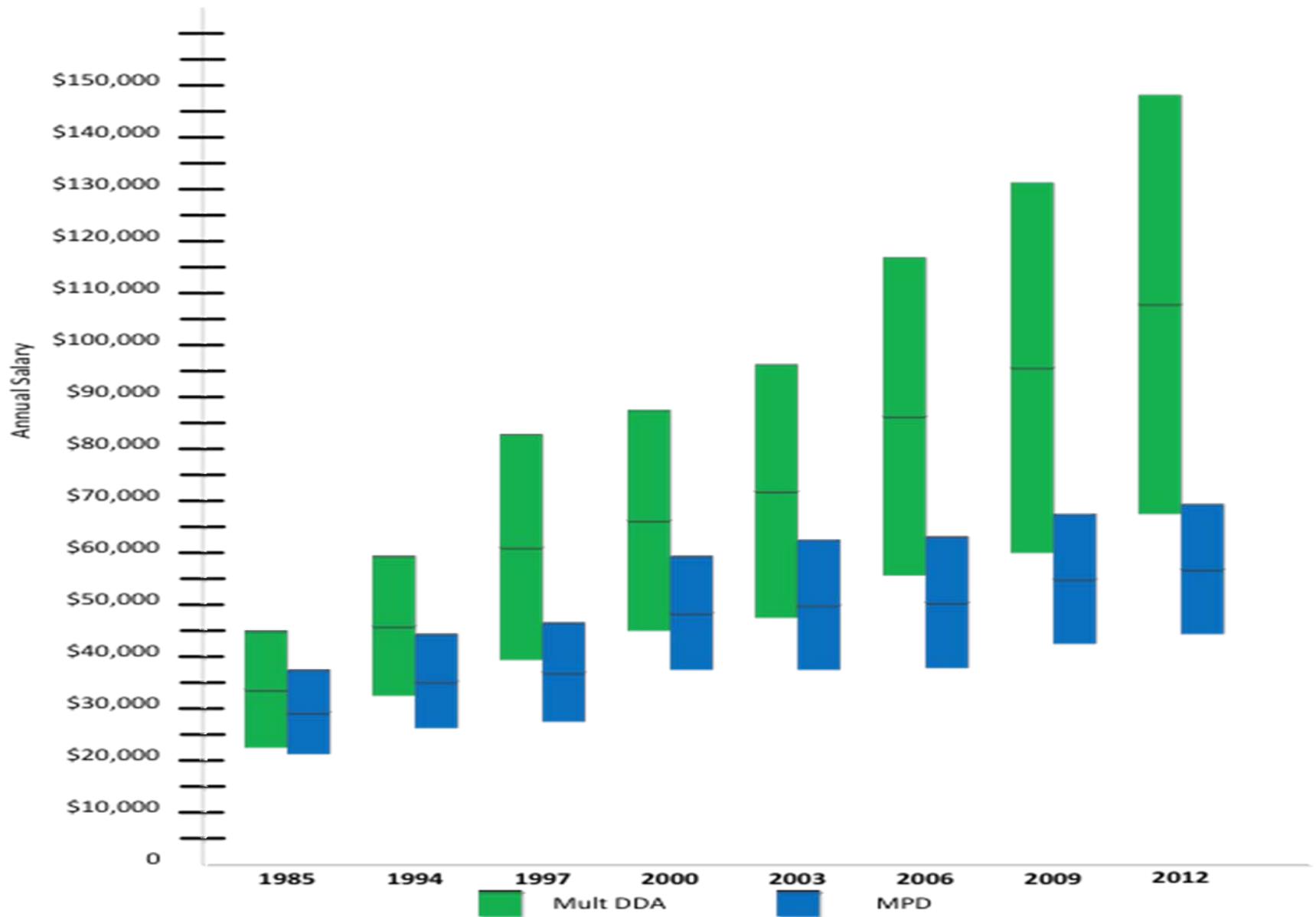
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House Bill 3463

2013 Oregon State Legislature



HISTORICAL WAGE SCALE COMPARISON
BETWEEN
THE MULTNOMAH COUNTY DEPUTY DISTRICT ATTORNEY & THE METROPOLITAN PUBLIC DEFENDER



Traci Anderson, President
Kirsten Snowden, Vice President

MCPAA

Brian Davidson, Secretary
Ryan Lufkin, Treasurer

Phone: 503.988.6076

Multnomah County Prosecuting Attorney's Association

FAX: 503.988.3906

To Whom It May Concern:

Public defense lawyers are critically important components of the justice system. They take on the task of ensuring that law enforcement is held to the highest standard and that only the guilty are punished by the State. Without them, we could not do our jobs. It is therefore vitally important to attract and retain highly skilled lawyers in these positions. We want the very best opponents in court to ensure that our convictions are meritorious and provide the community the assurance that even the worst among us are defended with vigor and integrity. Skilled public defense lawyers also ensure fewer errors in the proceedings and thus reduce the need to burden an already overburdened appeals court.

Currently, public defense lawyers are terribly underpaid for their work. Their jobs are filled with extraordinary stress from their clients, who are often incarcerated, and from the families and loved ones of their clients. The pay disparity between public defense lawyers and virtually any other class of litigation lawyer is appalling, even when compared to their colleagues in the District Attorney's offices.

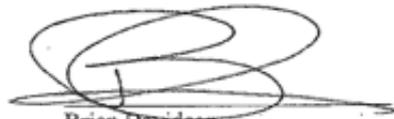
We write to urge the legislature to examine the pay structure of public defense lawyers and craft a means to bring their pay more in line with their work and responsibilities. Every member of the public would want the very best representing them if they were charged with a crime and we should encourage the recruitment and retention of these lawyers in careers as public defenders.



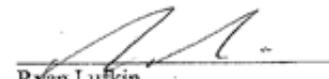
Traci Anderson
President, MCPAA



Kirsten Snowden
Vice-President, MCPAA

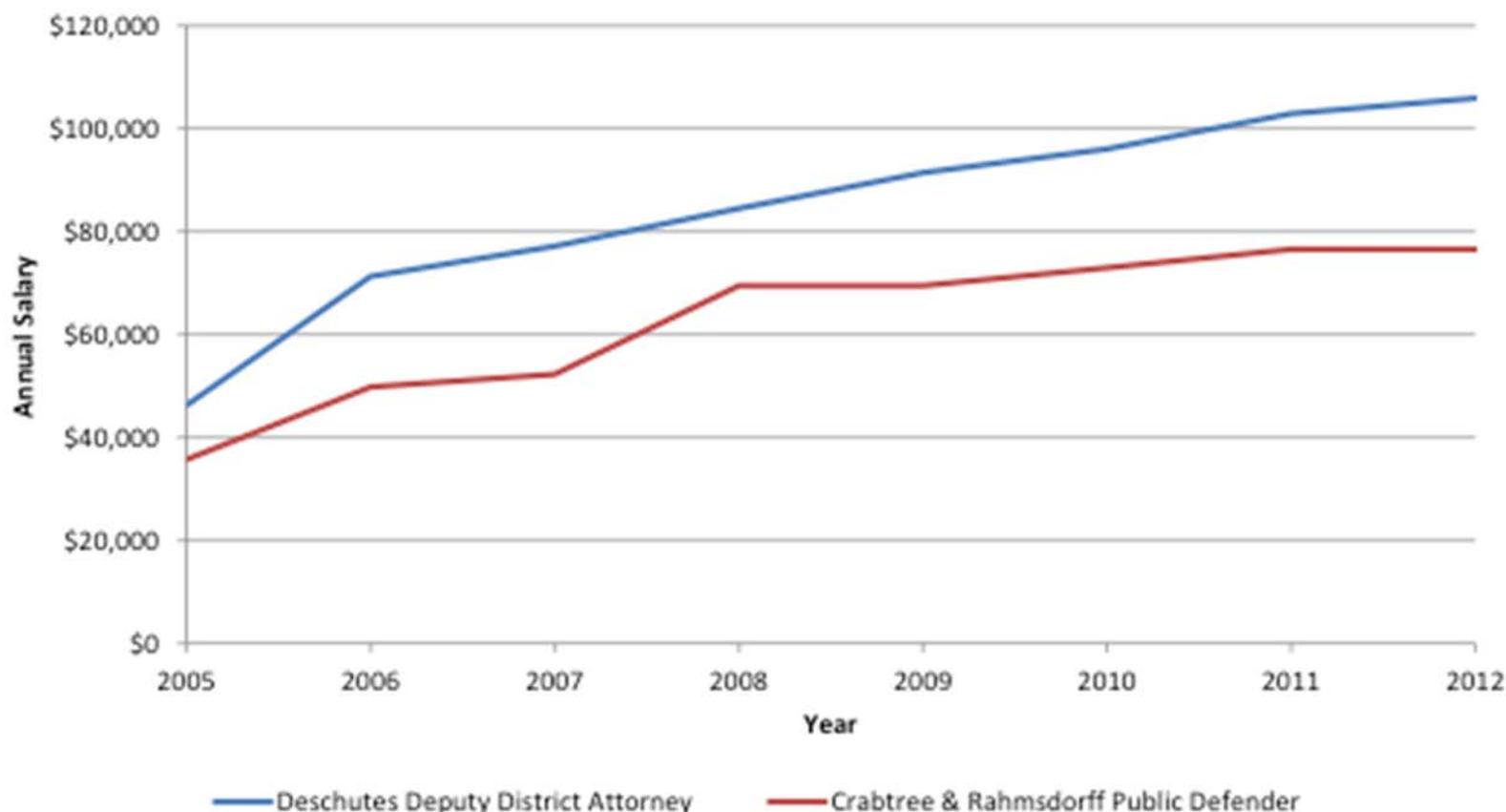


Brian Davidson
Secretary, MCPAA



Ryan Lufkin
Treasurer, MCPAA

Deschutes County - Compensation Comparison



	2005	2006	2007	2008	2009	2010	2011	2012	Total
Deschutes Deputy District Attorney	46255	71292	77132	84506	91429	96039	102899	105883	\$675,435.00
Crabtree & Rahmsdorff Public Defender	35708	49778	52270	69458	69458	72930	76577	76577	\$502,756.00

Between 2005-2012, "George" made \$172,679 more in salary as a DDA than if he had stayed at the PD's office

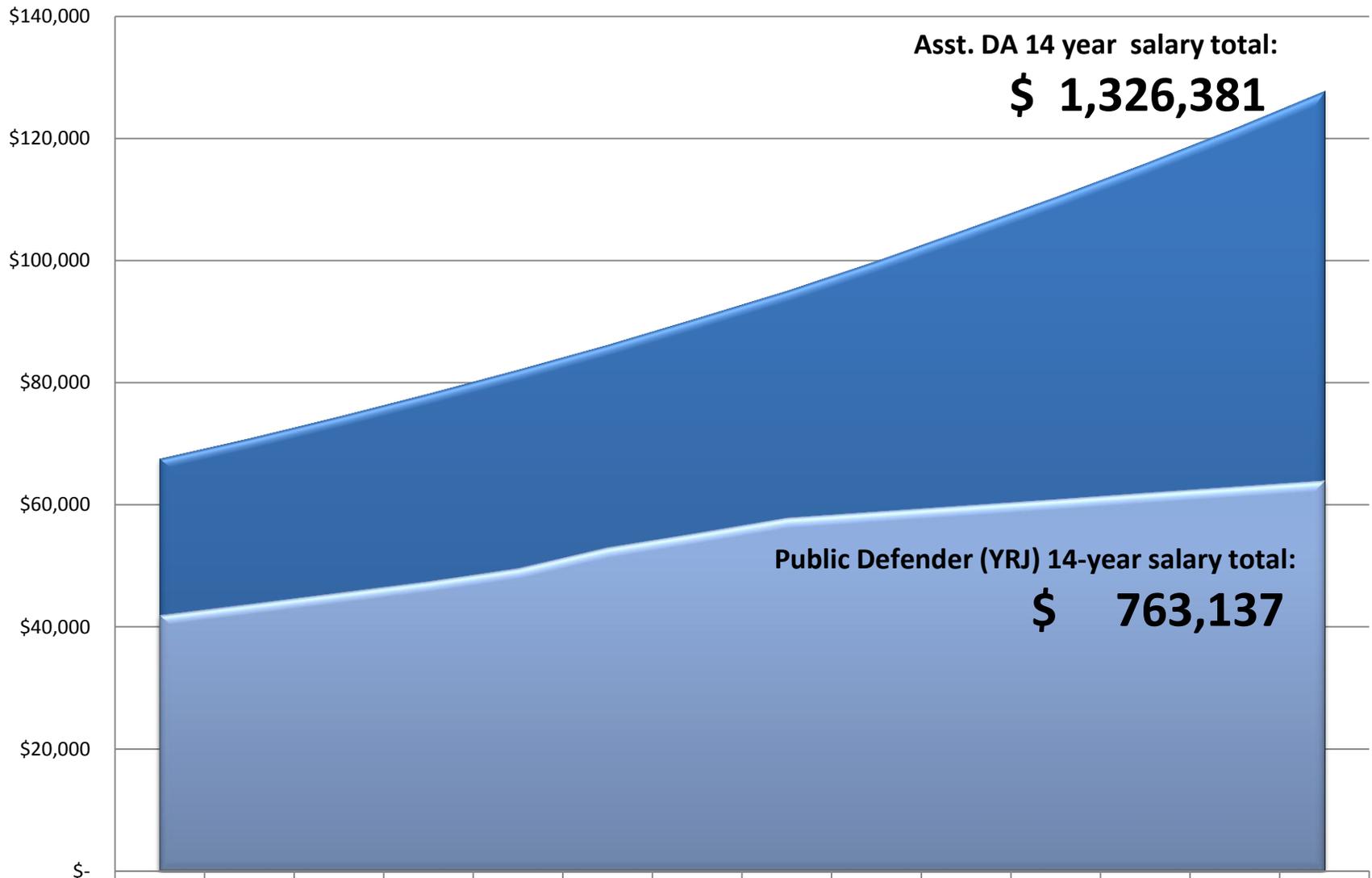
DA – PD Pay Parity

State Statute Examples

Ohio: Section 120-1-06: “The salaries for public defender attorneys shall approximate and be in parity with the compensation received by a prosecutor with the same number of years in practice and experience.”

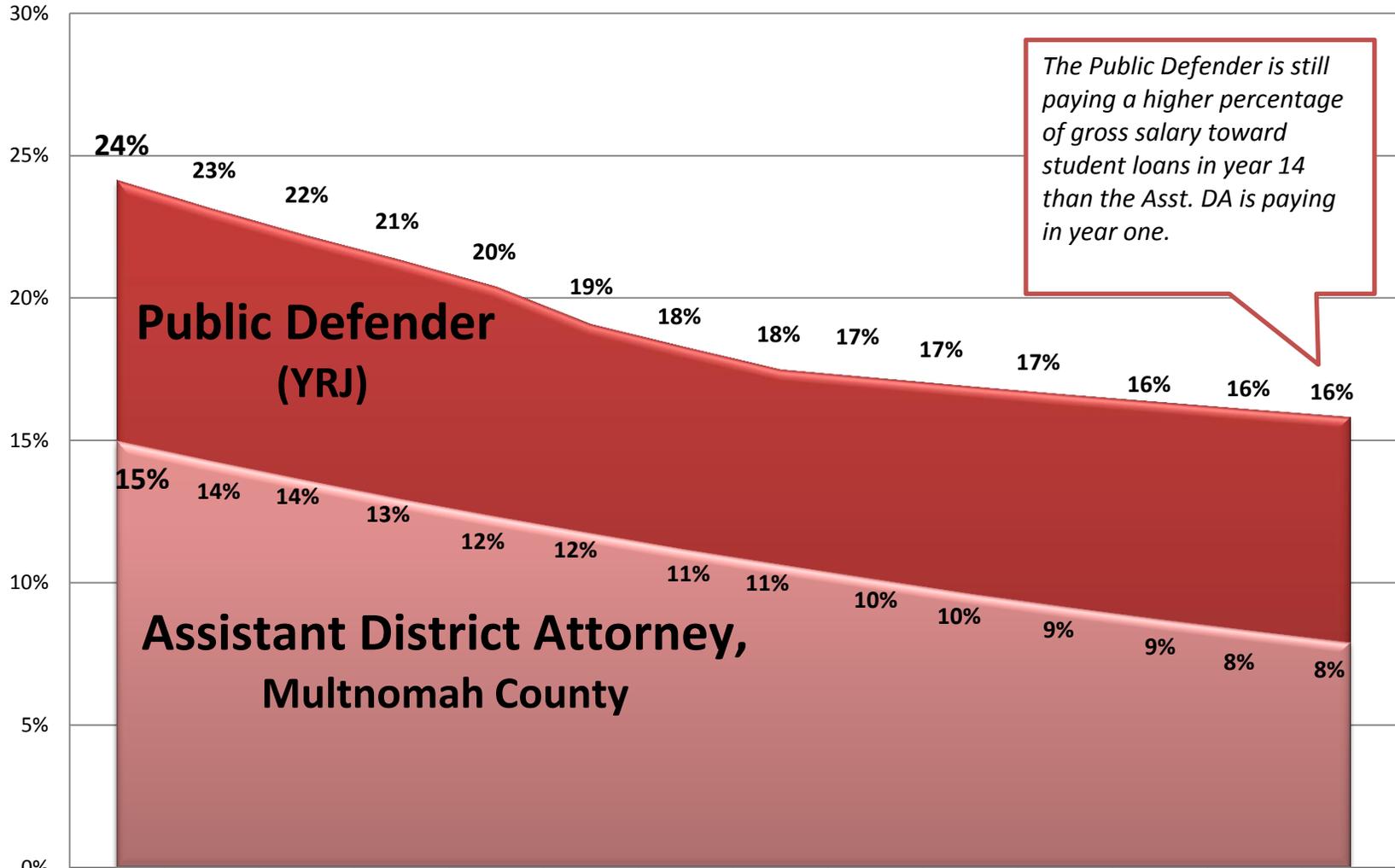
Connecticut: “The state’s public defenders, who are not union members and have no say in pay negotiations, get the same raises as prosecutors because of state law that requires equal pay for the two agencies.”

Comparison of Prosecutor and Public Defender Payscales, Steps 1-14



	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10	Step 11	Step 12	Step 13	Step 14
■ Asst DA	\$67,604	\$70,929	\$74,493	\$78,249	\$82,148	\$86,239	\$90,616	\$95,090	\$99,946	\$105,16	\$110,42	\$115,95	\$121,71	\$127,81
■ YRJ Staff Atty	\$41,932	\$43,743	\$45,604	\$47,466	\$49,603	\$53,040	\$55,386	\$57,849	\$58,869	\$59,889	\$60,909	\$61,929	\$62,949	\$63,969

Average Percentage of *Student Loan Payments to Gross Salary*, Years 1-14 (based upon \$125,000 debt and 25-year loan term)



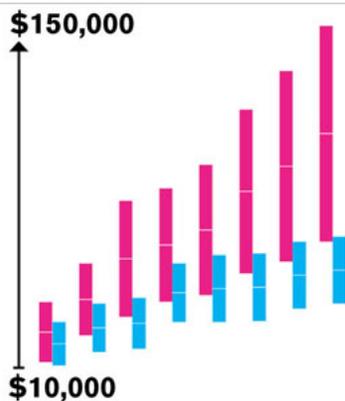
The Public Defender is still paying a higher percentage of gross salary toward student loans in year 14 than the Asst. DA is paying in year one.

■ YRJ Staff Atty	24%	23%	22%	21%	20%	19%	18%	18%	17%	17%	17%	16%	16%	16%
■ Asst DA	15%	14%	14%	13%	12%	12%	11%	11%	10%	10%	9%	9%	8%	8%

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Defense Spending

Public Defenders Hate Being Oregon's Lowest-Paid Lawyers

by [Dirk VanderHart](#) [@dirquez](#)

KASIA RUTLEDGE is a hard-working attorney with five years of trial experience. She says she can't turn on the heat during winter months.

"I cuddle up with blankets and hoodies through the winter," Rutledge told the Oregon House Judiciary Committee on April 9. "I don't have television, I don't have internet at my house—I can't afford them. My sister cuts my hair."

Lawyers aren't people usually associated with lives of austerity. But Oregon's public defenders—probably the lowest-paid attorneys in the state—are painting a bleak picture. After years of widening disparity in pay between defenders and the prosecutors they square off against, both groups are warning of dire consequences for indigent clients who can't afford high-priced private lawyers. And they're asking legislators to step in with a fix.

A diagram that's been making the rounds in Portland's legal circles bolsters their argument. The graph shows how pay scales between Multnomah County's public defenders and prosecutors have drifted, from relative parity in 1985, to the point that seasoned public defenders now earn the same as an untested new prosecutor. The trend exists statewide, attorneys say.

"I would like nothing more than to dedicate my life to public service," Conor Huseby, a colleague of Rutledge's, testified before the committee. "The way things are going right now, I am going to have to quit my job in two years in order to support a baby and a mortgage."

"We are simply asking for the money we need to do the job you asked us to do."

A simple request, perhaps, but an unlikely one.

The bill that would give public defenders comparable pay to county prosecutors, HB 3463, will die in the House Judiciary Committee this session. A more modest budget proposal by the Public Defense Services Commission—the state agency that contracts out public defense service—is still alive. But it could be hard to push through in a tough budget session with many competing priorities.

As State Representative Jeff Barker, the judiciary committee chair, told the *Mercury*: "We're short of money."

It's easy to be cynical about public defenders' woeful claims. Attorneys in Rutledge's office—Portland-based nonprofit Metropolitan Public Defender Services—start with salaries in the mid-\$40,000 range and top out, after 11 years, at more than \$72,000. Plenty of Portlanders would consider that ample.

But public defenders, as well as prosecutors and judges, say you've got to look at those numbers in context. Rutledge, for instance, says she left law school with \$190,000 in student loan debt. She spends more than \$12,000 a year paying it off.

And this asceticism is a choice. If she entered private practice instead of defending Portland's indigent, Rutledge could potentially double her salary.

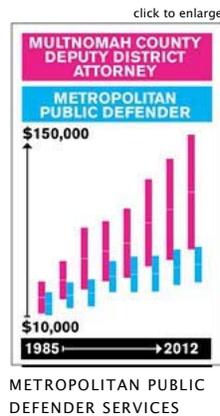
The draw of better pay for different work makes it hard to recruit and retain public defense attorneys, which in turn decreases the quality of defense poor folks can expect. And that's not good for anyone.

A principal argument in the fight for pay parity is that the initial outlay of cash will save money in the long run.

"Fewer convictions overturned, fewer appeals from errors in the trial, and less severe sentences from the advocacy of experienced defense attorneys all save you money," Ryan Lufkin, a deputy district attorney in Multnomah County, told legislators last week (making clear he wasn't officially speaking for the office of District Attorney Rod Underhill). "We all agree this is the right thing to do."

The sticking point has been getting the state's budget makers to agree. The issue of pay parity may have received some attention this year, but it's been a struggle for decades. Seasoned defenders are skeptical this session is any different.

"The issue is, we're not state employees," says Keith Rogers, director of Multnomah Defenders, Inc., the county's second-largest public defense contractor. On a budget, he notes, money allocated for public defense is just a number, divorced of any staffing numbers or benefits packages. "They treat us the same way they do an increase in [the cost of] paperclips or gasoline."



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From the Archives

Hold the Phone

Cops share video, audio from first police shooting of 2013.

by Denis C. Theriault

Attachment 3

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

PUBLIC DEFENSE LEGAL SERVICES CONTRACTS

BEGINNING

JANUARY 1, 2014

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PART IV - CONTRACT GENERAL TERMS

PART I – GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense. Proposals must demonstrate that the legal services meet Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

PDSC is accepting proposals for all categories of cases in all counties. The contracts awarded may have one-year, two-year, or four-year terms beginning January 1, 2014, or other such length of term and beginning date as determined by PDSC.

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

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

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

1.3 Authority

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

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

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

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

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

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

1.4 Funding Source

The Legislature appropriates funds to the Public Defense Services Commission to pay attorney compensation and other expenses related to the legal representation of financially eligible persons for which PDSC is responsible, including contract payments under ORS 151.219.

1.5 Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

As noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and women-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise [MBE] and Women Business Enterprise [WBE]. Emerging Small Business [ESB] firms are also an important sector of the state's economy."

Oregon MWESB certified firms, as defined in ORS 200.055, have an equal opportunity to participate in the performance of contracts financed in whole or in part with state funds. By submitting its proposal, proposed contractor certifies that it will take all necessary and reasonable steps to ensure that MWESB certified firms are provided an equal opportunity to compete for and participate in the performance of any contract resulting from this procurement. Proposed contractor further certifies and agrees that it has not and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, and it has not and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a minority, women or emerging small business enterprise certified under ORS 200.055.

It is the expectation of PDSC, that the proposed contractor will develop an effective and thoughtful approach to the solicitation of MWESB certified firms to perform work on this project.

1.6 Schedule of Events

Release of RFP	May 3, 2013
Proposal Submission Deadline (<i>Received via email by 11:59pm</i>)	
For non-death penalty proposals	June 17, 2013

For death penalty and mitigation proposals	July 15, 2013
Commission review of statewide contracting plan	September 12, 2013
Notice of intent to award contracts	October 18, 2013
Commission review of proposals and award of contracts	October 25, 2013

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

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

1.7 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, their review by the affected court(s), and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications must be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

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

B. Facially Adequate Proposals

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

- 1) request additional information from applicants to clarify information or material in the proposal;
- 2) consult with judges, court administrative staff, and others who have knowledge of the applicant or the local caseloads and practices to aid in the review of the proposal's merits; and

- 3) request individuals with experience and expertise in the proposed case types to review the apparent qualifications of the applicants, the strengths and weaknesses of the management plans submitted by applicants and the apparent cost-effectiveness and quality of the various proposals.

C. Negotiations

PDSC must ensure that each contract is compatible with:

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

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

D. Contract Awards

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

E. General Contract Terms

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

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

1.8 Proposal Evaluation Criteria

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

CRITERIA:

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

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

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

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

1.9 Proposal Records

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Kathryn Aylward, Director of the Contract and Business Services Division at:

kathryn.aylward@opds.state.or.us

PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

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

2.1 Submitting Proposals

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

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

A. Form of Submission

Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered to be part of the proposal.

The email should be sent to: mail@opds.state.or.us

B. Deadline

Proposals must be received by PDSC no later than 11:59 p.m. on the submission deadline date.

The submission deadline for proposals is June 17, 2013 for non-death penalty contracts and July 15, 2013 for death penalty and mitigation contracts.

If the applicant fails to submit the proposal(s) in accordance with the deadline to PDSC, PDSC will disqualify the proposal(s), unless authorization for late submission is granted in writing by PDSC. Consideration for late submission will be based on PDSC's needs, both regional and by case type, and the reason for the late submission.

2.2 Application Format

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

2.3 Acceptance of RFP and General Contract Terms

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

2.4 Multiple Proposals

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

2.5 Modification of Proposals

A. When Permitted

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

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

B. Delivery

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

C. Included in Proposal File

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

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

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

B. Procedure When PDSC or Applicant Discovers Mistake

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

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

1) Minor Inaccuracies

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

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

2) Mistakes Where Intended Correct Proposal is Evident

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

3) Mistakes Where Intended Correct Proposal is Not Evident

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

C. Included in Proposal File

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

2.7 Withdrawal of Proposals

A. Request to Withdraw

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

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and
- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

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

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

2.9 Categories of Cases Available for Contract

A proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel payable from the Public Defense Services Account:

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

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

2.10 Number of Cases

A. Available Caseload

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

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

PDSC will contract for:

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

C. Proposed Caseload

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

2.11 Cost of Services

A. Expenses Included in Contract Price

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

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

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

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

B. Reasonable Expenses

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

C. Factors to Consider

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

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

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

2.12 Proposal Application Format (Part III of RFP)

The application format consists of:

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

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

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

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

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

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

3.1 APPLICATION SUMMARY

APPLICANT INFORMATION
County or Counties to be served: _____
Formal Name of Applicant: _____
Contact Person for Proposal: _____
Address: _____ _____
Telephone: _____ Fax: _____
Email (required): _____
Fed. I.D. No.: _____ or S.S.N.: _____
Type of Business Entity (<i>e.g. LLC, Non-Profit, Corporation</i>): _____

CASELOAD INFORMATION

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

B. Complete the section below:

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

(Add additional years if necessary.)

A. METHODOLOGY, EXPLANATIONS AND ESTIMATES

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

2) Case Costs.

Explain:

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

Estimate:

- d) what percentage of each case type is disposed by jury trial, court trial, plea, dismissal, withdrawal, and bench warrant;

- e) the average number of hours required for each case type proposed;
 - f) the cost of providing contract counsel at arraignments to advise defendants regarding plea offers or resolution of probation violation or contempt matters if a program were established to facilitate early resolution of cases. Describe the time required and the potential number of cases involved; and
 - g) the percentage of attorney time and staff time required for administrative duties, CLE, and other professional duties not related to a particular case.
- 3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

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

Number of Attorneys _____ / FTE_____

Number of Secretarial/Receptionist Staff _____ / FTE_____

Number of Paralegals/Legal Assistants _____ / FTE_____

Number of Administrative Staff _____ / FTE_____

Number of Investigators _____ / FTE_____

Number of Interpreters _____ / FTE_____

Number of Other Staff _____ / FTE_____

Identify "Other Staff" type: _____

3.2 CERTIFICATION FORM

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

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

3.3 PROPOSAL OUTLINE

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

A. **SERVICE DELIVERY PLAN**

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

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

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

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

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

Are any offices housed in a residence?

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

If yes, please explain: _____

5. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
6. Professional Education and Supervision Plan. Describe plans for professional development and supervision of all attorneys, direct support, and administrative staff. Include:
 - a) training;
 - b) CLE;
 - c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and
 - d) supervision and development of less experienced attorneys.
7. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.
8. Local Factors. Identify and discuss, in detail, local factors that affect caseload and case processing that may affect cost.
9. Board of Directors. Contractor shall be governed by a board of directors that includes at least two independent members who do not provide services under the entity's contract and are not elected by those who do. In lieu of a board of directors, Contractor shall demonstrate effective and appropriate financial safeguards and quality assurance mechanisms. Describe either the composition of applicant's board of directors, or the financial safeguards and quality assurance mechanisms.
10. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
11. Contract Terms. Include any requests to modify terms in the general terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

B. PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

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

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

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

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

APPLICANT'S PROPOSED ESTIMATED ALLOCATION OF CONTRACT FUNDS

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

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

3. STAFF EXPENSES (continued)

First Year

Second Year

Professional Licenses/Certificates
(explain _____)

Education Training/CLE's--Attorneys

Education Training--Other Staff
(explain _____)

Attorney Travel

Other Staff Travel

SUBTOTAL:

4. OVERHEAD (OCCUPANCY)

Office Rent/Lease

Office Insurance

Building Utilities

Building Maintenance

Real Estate Taxes (if separate from rent)

SUBTOTAL:

5. OVERHEAD (OPERATIONS)

Phone Services (Equipment/Local Calls)

Long Distance Calls

Office Supplies

Postage

Outside Photocopying/Printing

Library

Subscriptions

Other Case Expenses
(explain _____)

SUBTOTAL:

6. OVERHEAD (NONCAPITAL EXPENSES)

Furniture & Equipment Leases

Description

Annual Cost

6. OVERHEAD (NONCAPITAL EXPENSES) (continued)

First Year

Second Year

Equipment Repairs/Maintenance

SUBTOTAL:

7. OVERHEAD (OTHER)

Personal Property Taxes

Professional Contract Services (specify)

Miscellaneous (specify)

SUBTOTAL:

8. TOTAL OPERATIONS (total of 1-7)

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

Computer--Hardware

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

Computer--Software

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

Office Furniture

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

Office Equipment

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

SUBTOTAL:

GRAND TOTAL* (total of 8 and 9):

=====

* Grand total must equal total proposed annual contract price.

C. PROPOSED LIST OF CONTRACT ATTORNEYS

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

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

Total FTEs: _____

D. PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF

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

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

Total FTEs: _____

E. CERTIFICATE OF ATTORNEY QUALIFICATION AND SUPPLEMENTAL QUESTIONNAIRE

(Submit one certificate and questionnaire for each attorney proposed to provide contract services.)

Name: _____

Bar Number: _____

Address: _____

Email: _____

Foreign language fluency in: _____

Phone Number: _____

Years of Experience:

Fax Number: _____

Practice of Law _____ Criminal _____

Cell/Pager: _____

Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

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

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

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
 - Murder
 - Other Criminal

APPELLATE LEVEL

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

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

- Civil Commitment
- Contempt
- Habeas Corpus

- Post-Conviction Relief
 - Murder
 - Other Criminal

Please check only one box below:

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

or

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

Signature

Date

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I certify that the above information is true and complete.

SIGNATURE

DATE

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

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

I, the undersigned, being first duly sworn,

Mark only one: (X)

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

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

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

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

G. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

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

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

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

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

I hereby certify that the above information is correct.

Signature _____ Date

Entity

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

PART IV

CONTRACT GENERAL TERMS

**PUBLIC DEFENSE LEGAL SERVICES CONTRACT
GENERAL TERMS**

JANUARY 1, 2014 TO DECEMBER 31, 2015

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GENERAL TERMS

1 DEFINITIONS AND CASE CREDIT RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.4.2 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.4.3 Public Defender

A "public defender" is a nonprofit organization established solely to provide contract services to persons qualifying for court-appointed legal representation.

1.4.4 Law Firm

A "law firm" is a sole practitioner, partnership, or professional corporation which provides contract services to persons qualifying for court-appointed legal representation and which may engage in non-court-appointed legal representation.

1.4.5 Consortium

A "consortium" is a group of attorneys or law firms that is formed for the sole purpose of providing contract services to persons qualifying for court-appointed legal representation. In addition to participating jointly to provide contract services, Consortium members retain their separate identities and may engage in non-court-appointed legal representation.

1.4.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.7 Appointment

An "appointment" is the assignment of a contractor to represent or advise an eligible person on any matter under the terms of this contract.

1.4.8 Case

A "case" is any action in this state in which Contractor has been appointed to represent a client under the terms of this contract. Specific definitions of case types are listed in Section 10.

1.4.9 Credit

A "credit" is an event or circumstance which counts toward Contractor's satisfaction of this contract.

1.4.10 Value

The "value" of a credit is the negotiated rate by type of credit as set forth in the Caseload and Case Value Matrix.

1.4.11 Complex Case

A "complex case" is an appointment on a case type valued at \$2,000 or more. Withdrawal or substitution for any reason from a complex case changes the credit type to "Other" (OTHR).

1.5 Rules for Counting Appointments

An appointment is credited, according to the following rules:

1.5.1 Criminal Complex Case Credit

An appointment to a client indicted on a complex case is one credit. No extra credit may be taken for multiple incident dates or charges.

1.5.2 Criminal Appointment Case Credit (Non-Complex Case Credit)

- (a) An appointment on criminal charges alleged to have occurred on **specific calendar days** is one credit for each count charged in the charging instrument alleged to have occurred on different specific calendar days, regardless of the number of victims involved, up to a maximum of five credits per case.
- (b) An appointment on criminal charges alleged to have occurred on **indeterminate dates** (e.g., "on or between January 1, 1996, and July 1, 1996") is a credit for each count charged in the charging instrument which can be determined to allege different calendar days, up to a maximum of five credits per case.
- (c) Separate counts in a charging instrument that allege alternative theories of criminal liability on the same date are only one credit.
- (d) One additional OTHR credit may be claimed when Contractor is appointed on a criminal matter that includes one or more counts of criminal forfeiture.
- (e) No additional credit may be taken due to the following circumstances:

SEC. 1 INTRODUCTION

- (i) more than one charging instrument (including Uniform Traffic Citation) is filed; or
- (ii) more than one case number is assigned.

1.5.3 Case Type Credit

Unless Section 1.4.11 applies, the case type credited is for the most serious offense alleged to have occurred on a specific calendar day, even if the charge is later changed to a different case type. For cases in which the most serious charge is a Class C felony, the most serious offense is assault IV domestic violence, DUII felony, or Class C felony, in this order.

1.5.4 Credit for Recommended Representation

Except for complex cases, if a contract case proceeding has been interrupted for the following reasons and time intervals, Contractor receives a new credit if:

(a) 365 Days After Aid and Assist Delay

more than 365 days have passed since the client was originally found unable to aid and assist and the client is brought before the court for a rehearing on the issue or trial; or

(b) 180 Days After Bench Warrant

more than 180 days have passed since a bench warrant was issued; or

(c) 18 Months with Repeated Bench Warrants

more than 18 months have passed since Contractor was originally appointed and the case is recommenced and no additional credit has been received because of Section 1.5.4(b); or

(d) 180 Days After Pre-Indictment Dismissal

on a felony case, more than 180 days have passed since a dismissal of a case pre-indictment; or

(e) After Appeal or Post-Conviction Relief

a new trial or sentencing follows an appeal or post-conviction relief; or

(f) After Interlocutory Appeal

a case resumes at the trial level, following an interlocutory appeal by the state; or

(g) After Mistrial or Hung Jury

a new trial is scheduled after a mistrial or hung jury; or

(h) After Prosecutorial Misconduct

a case is refiled after dismissal without prejudice and 180 days have passed since the dismissal.

1.5.5 Probation Violation Credit

An appointment on a probation violation proceeding arising out of a criminal or civil contempt sentencing(s), is one probation violation credit for each court case number to which Contractor is appointed. Provided however that if Contractor is appointed to more than one case number, additional credit is received ONLY for those case numbers

in which the convictions involve different incident dates. Contractor receives no additional credit for appointments on new alleged probation violations if the original probation violation matter on which Contractor was appointed has not been adjudicated.

1.5.6 Show Cause Hearing for Diversion or Conditional Discharge Agreement

An appointment for a show cause hearing to address non-compliance issues related to a diversion agreement, conditional discharge agreement or any other type of deferred or delayed adjudication agreement is an SCDV credit if:

- (a) Contractor did not receive a credit for the underlying charge; or
- (b) more than 180 days have passed since Contractor represented the eligible person at a previous court appearance.

1.5.7 Juvenile Case Credit

1.5.7.1 General Provisions

A petition which is amended from or to a delinquency or dependency petition or the dismissal of one type of petition and refiling of another type of petition is not a new credit.

1.5.7.2 Prepetition Matters

An appointment to represent a child who is in custody and being interrogated or is otherwise detained is a credit, even if no petition is later filed on the allegations involved. The appointment continues through disposition on any petition that is later filed on those allegations and no additional case credit is received.

1.5.7.3 Delinquency Petitions

An appointment on a delinquency case is credited under the rules set out in Sections 1.5.2 - 1.5.4.

1.5.7.4 Dependency and Termination Petitions

An appointment to represent children, parents, or legal guardians on a dependency petition is generally one credit regardless of the number of petitions filed (see Section 1.5.7.4.1 for exceptions). Case credit in a dependency proceeding covers representation from appointment to the court's entry of the dispositional order required under ORS 419B.325. An appointment to represent children, parents, or legal guardians on a termination of parental rights petition is always one credit.

1.5.7.4.1 Representation of Multiple Children

An appointment to represent two or more related children in a dependency proceeding is a maximum of two credits if:

- (a) the petition names as parents different mothers of different children; or
- (b) the petition names as parents different fathers of different children, not including any putative father unless the putative father also appears in the case; or
- (c) the children are living in more than one location.

SEC. 1 INTRODUCTION

1.5.7.4.2 Maximum Credit for Representing Parents

The maximum number of credits that may be counted when a Contractor attorney represents more than one parent or legal guardian in a dependency proceeding is one.

1.5.7.5 Postdispositional Juvenile Hearings

A postdispositional juvenile hearing is limited to a hearing before the court or Citizen Review Board (CRB) that is held **after** the juvenile court enters the dispositional order required under ORS 419B.325 or ORS 419C.440. Postdispositional juvenile matters are a new credit for each hearing attended by Contractor. A single postdispositional hearing, even if it involves matters relating to more than one original juvenile petition, counts as only one postdispositional credit. Postdispositional hearings do not include probation violation hearings.

1.5.7.6 Juvenile Probation Violation Hearings

Juvenile probation violation hearings are governed by Section 1.5.5.

1.5.7.7 Waiver Proceedings

Contractor shall receive one additional "Juvenile Other" (JUDO) credit beyond that assigned for the original appointment for each waiver proceeding under ORS 419C.349.

1.5.8 Mental Health Case Credit

An appointment to represent an allegedly mentally ill or mentally retarded person is a credit. The appointment ends at the original disposition of that matter.

1.5.9 Contempt Case Credit

An appointment to represent a client on a contempt case is one credit. Contractor receives no additional credit for appointments on new allegations of contempt if the original contempt allegation on which Contractor was appointed has not been adjudicated.

1.5.10 Post-Conviction Relief Case Credit

An appointment to represent a client on petitions filed at the same time or petitions with sequential numbers counts as one credit. The appointment ends at the original disposition of that matter.

1.5.11 Habeas Corpus Case Credit

An appointment to represent a client on a petition for a writ of habeas corpus is one credit if Contractor does not represent the petitioner on the charge to which the habeas corpus case is related. Petitions filed at the same time or petitions with sequential numbers count as one credit. The appointment ends at the original disposition of that matter.

1.6 Appointments That Do Not Qualify for Credit

1.6.1 Verification Removal

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case credit where:

(a) Finding of Ineligibility

the court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

the court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

1.6.2 Client Retains Counsel

An appointment to represent a client who later retains Contractor or, in the case of a consortium, retains the same consortium member, on the same case does not qualify for credit.

1.6.3 Reassignment Within Consortium

If a case is reassigned within a consortium for any reason, no new credit may be claimed.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

SEC. 3 RIGHTS OF PDSC

3.3 PDSC Powers for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - (i) for willful or habitual failure to comply; or
 - (ii) for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of this contract including material misuse of contract funds;
- (b) Contractor's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate legal services under this contract or fulfill the obligations of this contract.

3.5.2 No Appointments After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably believes that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the probable number of available cases increases substantially; and
- (b) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for credits in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor's assignment to such excess cases.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval. PDSC and its agents will comply with the American Bar Association's "Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor" (2002) when conducting any fiscal or performance audit.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory,

SEC. 3 RIGHTS OF PDSC

or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question exists of Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.4, 4.5 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Court Appointments Outside Contract

Contractor may accept additional court appointments to cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional appointments do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "representation", set forth in Section 7.1, for cases assigned under this contract.

4.3 Request for Additional Credit

Contractor may make a written request for additional credit for cases Contractor believes required an extraordinary amount of time, effort, or expense, etc., on cases closed since the preceding periodic review (see Section 5.7). Only PDSC may approve additional credit for cases assigned under this contract. Contractors shall not make requests of the court or court staff to approve additional credit.

4.3.1 In General

Contractor shall submit in writing any materials needed to show extra services beyond the contract and the amount of additional credit proposed.

4.3.2 Complex Cases in Which Contractor Withdraws

Contractor shall submit any materials needed to show extra services performed prior to a withdrawal for any reason on a complex case and the amount of additional credit proposed beyond one OTHR credit.

4.4 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

- (a) privileged because of the attorney/client relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.5 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

SEC. 5 MUTUAL OBLIGATIONS

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279B.220, 279B.230, and 279B.235 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery by certified mail or in person; and
- (d) become effective not less than 60 days from delivery by certified mail or in person for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Caseload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

5.6 Renegotiation Shall Minimize Reductions in Staff

PDSC shall renegotiate with all Contractors affected by case decreases to apportion decreases in a manner that minimizes reductions in staff. Such renegotiations shall:

- (a) reduce the total number of cases for the contract period and adjust the monthly payments to Contractor accordingly; or

- (b) have Contractor refund or otherwise repay to the State any moneys saved.

5.7 Periodic Review

At the request of either party, PDSC and Contractor will periodically review case assignment trends, requests for additional credit and any other matters needed to determine contract compliance or any necessary contract modifications.

5.7.1 Review of Assignments to Multiple Contractors and Mixture of Cases

In counties where more than one Contractor provides legal services, periodic review shall include a review by PDSC, the court, and the Contractors of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates and the rates contemplated under the contracts, PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected, to the extent total cases are available. Similarly, if the periodic review discloses a substantial disparity between the case mix under the contract and the case mix actually assigned to Contractor, PDSC will notify the court and Contractors that appointment case mix must be adjusted and corrected, to the extent total cases are available. (See Section 7.8.2.5)

5.7.2 Fungibility

The parties agree that PDSC is contracting for the provision of legal representation by Contractor, as measured by value, and that the estimated workload, by case type, is the parties' expectation as to the distribution of the cases which may be available during the contract period. The parties expressly agree that Contractor may substitute one type of case for another, for the purposes of contract performance, with cases being fungible, except as specifically provided to the contrary in this contract.

5.8 Other Contractors and Vendors

PDSC may undertake or award other contracts for additional or related work. Contractor shall cooperate with PDSC and the courts to coordinate appointment procedures and other court activities necessary for efficient and effective administration of this and other contracts for public defense services.

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

5.9 Management Conference

Absent compelling circumstances dictating otherwise, PDSC agrees to hold an annual public defense management conference and Contractor agrees to ensure that the contract administrator and any staff the administrator deems necessary will attend each management conference offered during the term of the contract. If the contract administrator is unable to attend, the Contractor agrees to contact the assigned contract analyst to discuss alternative options so that the community served by that provider is not without representation at the management conference.

6 OBLIGATIONS OF PDSC

6.1 De Minimis Changes in Contractor Reports/Documents

PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)

6.2 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider both cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.3 Accounting Model

Payment under this contract shall be based on when work is performed, consistent with Oregon state government accounting procedures. Except for contracts based on number of hours, the accounting model used for payment under the contract assumes the disposition of an average case assigned under the contract occurs within 90 days of the assignment. The model also assumes approximately one-third of the work is performed in the month the case is assigned and one-third of the work is performed in each of the following two months. PDSC shall pay Contractor according to this accounting model out of funds for the biennium during which the work is performed.

6.4 Payments in Addition to Contract Price

PDSC shall pay for the following case expenses from funds available for the purpose:

(a) Discovery

Discovery expenses include material provided by DHS or a county juvenile department for representation in a juvenile case. For post-conviction relief cases, discovery includes the cost to obtain a copy of the defense, district attorney or court files pertaining to the underlying case;

(b) Preauthorized Non-Routine Expenses

Non-routine case expenses requested by Contractor and preauthorized by PDSC or other authority designated to approve non-routine expenses in compliance with the requirements of ORS 151.216 and ORS 135.055(3). Unless the services are performed by Contractor's staff or subcontractors, non-routine expenses include, but are not limited to:

- (i) medical and psychiatric evaluations;
- (ii) expert witness fees and expenses;
- (iii) interpreters who charge a rate above the guideline amount as shown in the payment policy or interpreters for services other than attorney/client communication;
- (iv) polygraph, forensic and other scientific tests;

- (v) investigation expenses; and
- (vi) any other non-routine expenses PDSC or other authority designated to approve non-routine expenses preauthorizes and finds necessary and proper for the investigation, preparation, and presentation of a case;

(c) Lay Witness Fees

Lay witness fees and mileage incurred in bringing defense witnesses to court, but not including salary or expenses of law enforcement officers required to accompany incarcerated witnesses;

(d) Copying Clients' Files

The cost, if it exceeds \$25, of providing one copy of a client's or former client's case file upon client's or client's appellate, post-conviction relief or habeas corpus attorney's request, or at the request of counsel appointed to represent the client when the client has been granted a new trial;

(e) Copying Direct Appeal Transcripts for PCR Trial-Level Representation

The cost, if it exceeds \$25, of making copies of direct appeal transcripts for representation in post-conviction relief cases. Contractor is limited to no more than two copies;

(f) Records

Medical, school, birth, DMV, and other similar records, and 911 and emergency communication recordings and logs, when the cost of an individual item does not exceed \$75; and

(g) Process Service

The cost for the service of a subpoena as long as the rate per location does not exceed the guideline amount as shown in the payment policy.

7 OBLIGATIONS OF CONTRACTOR

7.1 Obligations To Appointed Clients

7.1.1 Representation At All Court Proceedings in the Relevant Court

Contractor shall provide representation at all stages of a case assigned under this contract as limited by this contract. Representation means the provision of competent legal advice and assistance by appointed counsel to a person that a state court has determined to be financially eligible and entitled to appointed counsel at state expense on all matters related to the appointment, except DMV license suspension hearings, civil forfeiture proceedings, domestic relations proceedings and other civil proceedings.

7.1.2 Standards of Representation

Representation further means providing a level of legal service that meets Oregon and United States constitutional and statutory requirements, and Oregon and national standards of justice.

7.1.3 Specific Representation Services

Contractor shall provide services on any and all matters

SEC. 7 OBLIGATIONS OF CONTRACTOR

necessary to provide adequate representation of the client, including but not limited to:

- (a) having an attorney present at regularly scheduled arraignments or other initial appearance;
- (b) establishing and following procedures to ensure prompt notification to the court of the specific attorney assigned to each case;
- (c) filing all necessary motions, including pre- and post-judgment motions;
- (d) representation through judgment or other final order of the court on the case, including but not limited to:
 - (i) filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge or similar provisions,
 - (ii) filing necessary paperwork under ORS 161.705 ("reduction of certain felonies to misdemeanors"), and
 - (iii) all prejudgment proceedings arising from a petition for a writ of mandamus or habeas corpus related to the case on which counsel was appointed;
- (e) legal assistance to individuals who would be eligible for counsel at state expense if charged with a crime and where exigent circumstances preclude an appointment order (e.g., interrogation);
- (f) preparing all documents, letters, research and referrals to appropriate agencies;
- (g) continuous legal and support staff services, during case substitutions, to the extent necessary to ensure continuous representation and the establishment of the new attorney/client relationship;
- (h) consulting with clients regarding appellate review;
- (i) upon request, assisting in filing a notice of appeal and motion for appointment of appellate counsel and timely responding to appellate counsel's questionnaire or questions regarding the case;
- (j) to the extent ethically possible, representing a client at a show cause hearing to determine client's financial eligibility;
- (k) to the extent ethically possible, consulting with appellate or post-conviction relief counsel on an appeal or post-conviction relief proceeding; and
- (l) upon request, providing copies to appellate or post-conviction relief counsel in a timely manner.

7.1.4 Client Contact

7.1.4.1 In-Custody Initial Interviews

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

- (a) within 24 hours of appointment; or

- (b) by the next working day if the court appoints Contractor on a Friday, weekend, or holiday.

7.1.4.2 Out-of-Custody Interviews

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what client must do to schedule an interview time.

7.1.5 Contractor Responsibilities – Financially Ineligible Clients

Contractor shall comply with the requirements of federal and Oregon constitutions, the Oregon Rules of Professional Conduct, and consider OSB Ethics Opinion 2005-34 if Contractor learns that the client is ineligible for state-funded legal services under this contract.

7.2 Withdrawal From Case Only on Court Approval

Contractor may withdraw only with the court's approval. Contractor shall promptly notify the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the case shall be reassigned in the normal course.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any,

SEC. 7 OBLIGATIONS OF CONTRACTOR

and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 659A and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to PDSC on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

7.3.8 Oregon Judicial Information Network (OJIN)

For juvenile cases, Contractor shall limit use of OJIN to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Staff and Equipment

7.4.1 Staffing Levels

Contractor has secured, or will secure at its own expense in whole or in part from contract funds, all personnel or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.

7.4.2 Assigning and Associating Attorneys

7.4.2.1 Diligence in Hiring

Contractor shall use due diligence to hire, assign, or associate attorneys for this contract who are qualified to provide competent and effective services to their clients and the courts.

7.4.2.2 Supervision

Contractor shall have more experienced attorneys closely supervise lesser experienced attorneys' performance. Contractor shall provide information on the extent of supervision on PDSC's request. However, Contractor shall not provide to PDSC or any other person the contents of any employee's personnel files unless Contractor's employee expressly, knowingly, and voluntarily agrees in writing.

7.4.2.3 Certification

Contractor shall provide to PDSC the name and qualifications of any attorney added during the contract term to perform contract services. The newly added attorney shall meet the qualification standards established by PDSC, for the type of cases that will be assigned. A "certificate of attorney qualification" shall be provided to PDSC for each newly added attorney.

SEC. 7 OBLIGATIONS OF CONTRACTOR

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(9)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor and provide in-court interpretation comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.4.4 Limit on Contractor and Staff Noncontract Work

Contractor and Contractor's staff shall not let noncontract work interfere with adequate representation of court-appointed clients under this contract.

7.5 Record Keeping

7.5.1 Case Records

Contractor shall maintain current information, including case log notes, on individual contract cases. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by PDSC, or PDSC's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all appointment, service and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to PDSC

7.6.1 Case Inventory

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly case inventory report for the preceding month. Contractor may submit amended case inventory reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly case inventory report to be amended.

7.6.2 Case Disposition and Withdrawal Data

Contractor shall maintain data, using codes specified by PDSC, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor will make the data available for PDSC to review on request.

7.6.3 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment until PDSC receives the report and supporting documentation.

7.6.4 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.7 Costs, Expenses and Client Clothing

7.7.1 Costs and Expenses

Except for the expense items listed in Section 6.4, Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial; and
- (c) staff services, including routine travel expenses, if Contractor has staff investigators, interpreters, or polygraphers.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7.2 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available. (Contact PDSC for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in staff attorney names, staffing levels and office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

SEC. 7 OBLIGATIONS OF CONTRACTOR

7.8.2.2 Staffing

Contractor shall provide, to PDSC and the affected court, notice of the names of attorneys who are hired or leave Contractor's employ and any other substantial staffing changes. Upon request by PDSC, Contractor shall provide a current list of attorneys and staff positions by full time equivalent, and provide timely responses to PDSC surveys or other inquiries concerning the diversity of attorneys and staff employed by or otherwise performing services for Contractor.

7.8.2.3 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall assure PDSC of its continued ability to meet contract requirements or shall propose reductions in caseload and price if Contractor is unable to meet contract requirements because of such organizational change.

7.8.2.4 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's attorney or investigator staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's attorney or investigator staff has been convicted of a crime.

(c) Formal Bar Complaint

A formal accusation of misconduct, that is alleged to have occurred with respect to representation provided in a contract case, has been filed by the Oregon State Bar against a member of Contractor's attorney staff.

(d) Bar Discipline

Disciplinary action is taken by the Oregon State Bar against one of Contractor's attorney staff.

(e) Uninsured Practice of Law

A member of Contractor's attorney staff has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

7.8.2.5 Nonassignment of Available Cases or Early Quota

Contractor shall notify PDSC immediately upon determining that:

- (a) the court is not assigning Contractor to cases available for appointment; or
- (b) Contractor will reach its total contract quota before the expiration of the contract.

Within forty-five (45) days of notification to PDSC that the court is not assigning Contractor to cases available for appointment, PDSC shall propose a plan to Contractor and the court to remedy the nonassignment of available cases.

7.9 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or
- (c) accept or keep credit for a case for which Contractor's attorney is subsequently retained.

<p>7.10 Independent Audit Required Contractor shall, from contract funds, be subject to an annual independent audit by a CPA firm and shall provide a copy to PDSC.</p> <p>7.11 Annual Expenditure Report Forty-five (45) days after the end of each one-year period under the contract, Contractor shall provide to PDSC a one-year expenditure report listing the amounts of contract funds expended by the same line items as are listed in Contractor's "Estimated Allocation of Contract Funds".</p> <p>7.12 Limits on Full Time Public Defender Attorneys Attorneys employed full time by nonprofit public defender offices shall not accept employment for legal services on a retained basis and shall not accept appointment to a public defense case outside this contract without the authorization of PDSC.</p> <p>7.13 Limits on Pro Bono Work Nonprofit public defenders may provide pro bono representation only for:</p> <ul style="list-style-type: none"> (a) cases covered by contractor's or another's malpractice insurance; and (b) cases that are: <ul style="list-style-type: none"> (i) related to cases to which contractor's attorneys have been appointed; or (ii) unrelated to contract cases, provided the pro bono services are rendered outside of the contract.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR

9.1 Refund for Shortage

If Contractor's actual caseload value, at the expiration or termination of the contract, is less than the workload value Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

9.2 Wind-Down Procedures

Unless PDSC agrees in writing, if either party suspends or terminates the contract, or the contract expires, Contractor shall complete timely and adequate legal services on all existing contract appointments on cases assigned before the effective date of suspension or termination.

9.2.1 Negotiations

If the contract expires or terminates, PDSC and Contractor shall negotiate wind-down procedures. Whenever possible, Contractor shall wind down pending cases within three months of contract expiration or termination by completing or, with PDSC's agreement, reassigning the cases.

9.2.1 Negotiations

Except when PDSC terminates the contract for cause under Section 3.5 and unless otherwise agreed, the parties shall, whenever possible, agree on wind-down procedures before the contract expires or terminates. If the parties cannot agree on wind-down procedures, PDSC alone shall decide what state funds, if any, will finance wind-down procedures based on what PDSC reasonably believes is necessary to ensure the clients' right to adequate assistance of counsel and that Contractor's legal obligations are met.

9.2.2 Reduction in Contractor's Caseload

If Contractor's caseload or contract amount is reduced significantly resulting in layoffs, whether as a result of contract modification or contract renewal, PDSC and Contractor may negotiate wind-down procedures.

10 APPOINTMENT TYPE DEFINITIONS

() denotes the applicable appointment code.

10.1 CRIMINAL CASES

10.1.1 Appointments After Diversion or Conditional Discharge Agreement (SCDV)

For all criminal cases, Contractor shall report separately on cases where Contractor is first appointed:

- (a) after the defendant enters into a diversion or conditional discharge agreement or any other type of deferred or delayed adjudication agreement, and
- (b) when the court orders the defendant to show cause why the agreement should not be terminated.

Contractor shall report these cases as SCDV rather than as the original case type.

10.1.2 Capital Murder Case (CMUR)

A capital murder case is any appointment to represent a person charged with aggravated murder as defined by ORS 163.095 except as provided under paragraph 10.1.3., below.

10.1.3 Noncapital Murder Case (MURD)

A noncapital murder case is any appointment to represent a person charged with:

- (a) murder as defined by ORS 163.115; and
- (b) aggravated murder where the person is a juvenile under 15 years of age who is waived to circuit court on the charge (a convicted juvenile cannot be sentenced to death or life without parole under ORS 161.620) or aggravated murder where the person was 15, 16 or 17 years of age on the date the crime is alleged to have occurred (no death sentence may be imposed under ORS 137.707(2)).

10.1.4 Felony Case

A felony case is any appointment to represent a person charged with one or more crimes described by ORS 161.525, excluding capital murder and noncapital murder. It includes manslaughter and negligent homicide. A case is a felony case if it includes a felony charge at any time after defendant appears in circuit court, even if later reduced to a misdemeanor.

10.1.4.1 Measure 11 Felony (AM11, BM11, JM11)

Other than murder, a felony that is the subject of ORS 137.700 or ORS 137.707. AM11 is a Class A Measure 11 felony with an adult defendant; BM11 is a Class B Measure 11 felony with an adult defendant; and JM11 is a Class A or Class B Measure 11 felony where a 15-, 16- or 17-year-old is indicted as an adult in circuit court.

10.1.4.2 Class A Felony (AFEL)

A Class A felony is a crime that a statute expressly designates as a Class A felony, other than an AM11 case.

10.1.4.3 Class B Felony (BFEL)

A Class B felony is a crime that a statute expressly designates as a Class B felony, other than a BM11 case.

10.1.4.4 Class C Felony (CFEL)

A Class C felony is a crime that a statute expressly designates as a Class C felony, other than a DUII felony (DFEL), or domestic violence Class C felony (DVIO).

10.1.4.5 DUII Felony (DFEL)

A DUII felony is a DUII case in which an element of the crime charged is that the defendant has at least three prior DUII convictions within the past ten years (ORS 813.010(5)).

10.1.4.6 Domestic Violence Class C Felony (DVIO)

An Assault IV case which is elevated to a Class C felony under ORS 163.160(3).

KEY: Public Defender Consortium or Law Firm

10.1.4.7 Unclassified Felony (UFEL)

A felony crime that the statute(s) do not expressly designate as a Class A, B, or C Felony.

10.1.5 DUII (DUIS)

A DUII case is any appointment to represent a person charged with driving under the influence of intoxicants, other than DUII felony (DFEL).

10.1.6 Misdemeanor Case (MISS)

A misdemeanor case is any appointment to represent a person charged with one or more crimes described by ORS 161.545 or by local ordinance as a misdemeanor, excluding DUII, misdemeanor contempt and the misdemeanor traffic cases defined below.

10.1.7 Misdemeanor Traffic Case

A misdemeanor traffic case is any appointment to represent a person on a misdemeanor traffic charge for which a convicted defendant may be incarcerated as an original sentence under the Oregon Vehicle Code, other than a traffic offense charged as a felony or DUII. For statistical purposes, report cases in the following categories:

- (a) Misdemeanor Driving While Suspended (DWSS).
- (b) Other Traffic Misdemeanor (OTMS).

10.1.8 Extradition Case (EXTR)

An extradition case is any appointment to represent a person in a proceeding under the Uniform Criminal Extradition Act, ORS 133.743 - 133.857. It includes representation on a writ of habeas corpus filed in a pending extradition proceeding.

10.2 PROBATION VIOLATIONS

10.2.1 Probation Violation

A probation violation is any appointment or reappointment to represent a person in a proceeding concerning an order of probation, including but not limited to the revoking thereof, arising out of a criminal or civil contempt conviction(s) and sentencing(s), under Section 1.5.5. For reporting purposes, Contractor shall report each type of probation violation case by the following subcategories:

10.2.1.1 Felony Probation Violation (FPV)

A felony probation violation case is any appointment to represent a person in a probation proceeding arising out of a felony conviction.

10.2.1.2 Misdemeanor Probation Violation (MPV)

A misdemeanor probation violation case is any appointment to represent a person in a probation proceeding arising out of a contempt case, or a misdemeanor conviction, except DUII.

10.2.1.3 DUII Probation Violation (DPV)

A DUII probation violation is any appointment to represent a person in a DUII probation proceeding arising out of a DUII conviction.

10.3 CONTEMPT CASES

10.3.1 Contempt Case

A contempt case is any appointment to represent a person charged with contempt of court. For statistical purposes, report cases in the following three categories:

10.3.1.1 Family Abuse Prevention Act (FAPA)

Contempt for violating a Family Abuse Prevention Act (ORS 107.700 - 107.735) restraining order.

10.3.1.2 Support (SUPP)

Contempt for failure to comply with an order or judgment in domestic relations or juvenile court proceeding for the payment of suit money, attorney's fees, spousal support, child support, maintenance, nurture, or education.

10.3.1.3 Contempt (CONT)

Misdemeanor contempt or any other contempt that is not a FAPA or SUPP contempt.

10.4 CIVIL COMMITMENT CASES

10.4.1 Civil Commitment Case (MHMI)

A civil commitment case is any appointment to represent a person in a proceeding brought under ORS Chapter 426 or 427.

10.5 JUVENILE CASES

10.5.1 Juvenile Case

A juvenile case is any appointment or a reappointment to represent a person(s) in a proceeding brought under ORS Chapter 419B or 419C. For statistical purposes, report juvenile cases in the following categories:

10.5.1.1 Juvenile Felony (JUDF)

If committed by an adult, alleged act would constitute a felony.

10.5.1.2 Juvenile Misdemeanor (JUDM)

If committed by an adult, alleged act would constitute a misdemeanor.

10.5.1.3 Juvenile Other (JUDO)

- (a) if committed by an adult, alleged act would constitute a violation or infraction;
- (b) alleged act is a status offense;
- (c) an emancipation case (any appointment to represent a child in a proceeding under ORS 419B.550 - 419B.558);
- (d) a waiver case (any appointment to represent a child in a proceeding to waive the child to adult court for further proceedings under ORS 419C.340);
- (e) appointments under ORS 420A.203 (Eligibility for second look; report to sentencing court; hearing; disposition);

SEC. 10 APPOINTMENT TYPE DEFINITIONS

- (f) appointments under ORS 181.823(12) (Relief from reporting requirement; juvenile offenders); and
- (g) appointment to a juvenile case for which no other juvenile case type applies.

10.5.1.4 Probation Violation or Motion to Modify (JPV)

Proceeding based on allegation(s) that the child has violated the terms of probation or a proceeding based on a motion to modify a disposition.

10.5.1.5 Juvenile Dependency Case

A juvenile dependency case is any appointment to represent a person based on a new petition alleging that a child is within the jurisdiction of the juvenile court under ORS 419B.100(1)(a) - (h).

- (a) Parent (JDEP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JDEC): Appointment to represent child(ren).

10.5.1.6 Postdispositional Proceeding

A postdispositional proceeding is any appointment in a juvenile court proceeding to represent a person at a court or CRB review hearing and shelter care hearings held after the original disposition. It does not include probation violation proceedings or family unity meetings. Probation violation proceedings are a separate category under delinquency.

- (a) Parent (JPDP): Appointment to represent parent(s) or guardian(s).
- (b) Child (JPDC): Appointment to represent child(ren).

10.5.1.7 Termination of Parental Rights Case

A termination of parental rights case is any appointment to represent the parent or child in a proceeding under ORS 419B.498 - 419B.530 OR in a contested adoption matter (Zockert v. Fanning) OR in a contested permanent guardianship proceeding under ORS 419B.365.

Guardianship proceedings under ORS Chapter 125 are excluded.

- (a) Parent (JUTP): Appointment to represent parent(s) or guardian(s), including contested adoption proceedings.
- (b) Child (JUTC): Appointment to represent child(ren), including contested adoption proceedings.

10.6 OTHER CIVIL CASES

10.6.1 Habeas Corpus Case (CVHC)

A habeas corpus case is any appointment to represent a person in a proceeding for a writ of habeas corpus under ORS 34.355, excluding:

- (a) habeas corpus petitions filed in a pending extradition proceeding; and
- (b) habeas corpus petitions filed for a client whom Contractor represents on a related matter (not a separate appointment under the contract).

10.6.2 Post-Conviction Relief Case (CVPC)

A post-conviction relief case is any appointment to represent a person under ORS 138.510 - 138.686.

10.6.3 Psychiatric Security Review Board Case (PSRB)

A Psychiatric Security Review Board case is any appointment by the PSRB to represent a person under ORS 161.346(11).

10.7 OTHER CASES (OTHR)

An other case is: a complex case from which Contractor withdraws; an appointment under ORS 136.611 (Material Witness Order); an appointment under ORS 137.771(2) (Sexually Violent Dangerous Offenders); an appointment under ORS 138.694 (DNA testing); a criminal forfeiture credit; or an appointment to a case for which no other case type applies.

**CONTRACT BETWEEN PDSC AND CONTRACTOR
PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2014	
February 2014	
March 2014	
April 2014	
May 2014	
June 2014	
July 2014	
August 2014	
September 2014	
October 2014	
November 2014	
December 2014	
<i>First-Year Subtotal</i>	\$0
January 2015	
February 2015	
March 2015	
April 2015	
May 2015	
June 2015	
July 10, 2015	
July 2015	
August 2015	
September 2015	
October 2015	
November 2015	
December 2015	
<i>Second-Year Subtotal</i>	\$0
<i>Total Payments</i>	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR
CASELOAD AND CASE VALUE MATRIX**

Case Types	Value	Number of Cases	Total Value
1/1/14 - 12/31/14			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
First-Year Total		0	\$0
1/1/15 - 12/31/15			
MURD			\$0
AM11/BM11/JM11			\$0
AFEL			\$0
BFEL			\$0
CFEL/DFEL/DVIO			\$0
DUIS/MISS/DWSS/OTMS/SCDV/CONT/ FAPA/SUPP/EXTR/MHMI/OTHR			\$0
DPV/FPV/MPV/JPV			\$0
CVHC/CVPC			\$0
JDEC/JDEP			\$0
JDPC/JPDP			\$0
JUDF			\$0
JUDM/JUDO			\$0
JUTC/JUTP			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

PUBLIC DEFENSE SERVICES COMMISSION

REQUEST FOR PROPOSALS

FOR

TRIAL-LEVEL CAPITAL MURDER & DEATH SENTENCE POST-
CONVICTION RELIEF
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES
CONTRACTS

BEGINNING JANUARY 2014

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PART IV - CONTRACT GENERAL TERMS

PART I – GENERAL INFORMATION

1.1 Request For Proposals (RFP) Description

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide effective and efficient mitigation investigative services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense.

PDSC is accepting proposals for trial-level capital murder and death sentence post-conviction relief cases. The contracts awarded may have a one- or two-year term beginning January 1, 2014, or other such length of term and beginning date as determined by PDSC. The basic services required are mitigation investigative services as necessary to provide adequate and effective legal representation that meets established professional standards of practice.

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

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

1.2 Applicable Contracting Procedure

ORS 151.216 authorizes the PDSC to adopt policies and procedures for the contracting of public defense services. As part of the Judicial Branch, PDSC is not subject to the Department of Administrative Services administrative rules and procedures that govern contracting for personal services contracts. The PDSC adopts the policies, procedures, instructions, requirements and other provisions of this RFP as the PDSC procedures for contracting for personal services. The model rules of the Oregon Attorney General do not apply to PDSC contracting but will be reviewed each time the Attorney General modifies them to determine whether PDSC should modify the policies and procedures contained herein.

1.3 Authority

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

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

PDSC may contract with individual mitigation investigators for these services.

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

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

PDSC reserves the right to reject any or all proposals received by reason of this RFP or to negotiate separately in any manner necessary to serve the best interests of the PDSC and the state. PDSC reserves the right to seek clarifications of proposals and to award a contract(s) without further discussion of the proposals submitted. PDSC reserves the right to amend or cancel this RFP without liability if it is in the best interest of the state and public to do so.

1.4 Funding Source

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

1.5 Minorities, Women and Emerging Small Businesses

Pursuant to ORS 200.035, PDSC shall provide timely notice of RFPs and contract awards to the Advocate for Minorities, Women and Emerging Small Businesses if the estimated value of the contract exceeds \$5,000.

Responses to RFPs shall include a certification, on a form provided by PDSC, that the applicant has not and will not discriminate against a subcontractor in the awarding of any subcontract because the subcontractor is a minority, woman or emerging small business enterprise certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS 408.225.

1.6 Schedule of Events

Release of RFP	May 3, 2013
Proposal Submission <u>Deadline</u> (Received via email by 11:59pm)	July 15, 2013
Commission review of statewide plan	September 12, 2013
Notice of intent to award contracts	October 18, 2013
Commission review of proposals and award of contracts	October 25, 2013

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

PDSC will provide notice of its intent to award contracts to all applicants at least seven (7) days before the award of contracts, unless exigent circumstances require a shorter period of notice.

1.7 General Proposal Review Procedures

The instructions and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications and any other information available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications **MUST** be received by PDSC by 11:59 p.m. on the submission deadline date. The following events will then occur.

A. Inadequate Proposals

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

B. Facially Adequate Proposals

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

- 1) request additional information from applicants to clarify information or material in the proposal; and
- 2) consult with public defense attorneys and others who have knowledge of the applicant to aid in the review of the proposal's merits; and

C. Negotiations

PDSC must ensure that each contract is compatible with:

- 1) the needs of the public defense legal services providers for the types of cases covered by the contract; and
- 2) budget allocations.

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

D. Contract Awards

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

E. Contract Terms

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

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

1.8 Proposal Evaluation Criteria

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

CRITERIA:

- 1) The proposal and any modification is complete and timely, in conformance with the RFP.
- 2) The proposed plan for delivery of services is adequate to ensure effective mitigation investigation. Among the factors PDSC may consider are the quality of services and the experience of the applicant.
- 3) The applicant has the ability to perform the contract effectively and efficiently and to provide services in the types of cases proposed. PDSC may consider the applicant's qualifications and experience providing public defense mitigation investigative services.
- 4) The cost for services is reasonable.
- 5) The proposal is consistent with the needs and best interests of the legal services providers involved. Among the factors PDSC may consider are the other service methods and service providers available and the applicant's ability to work with public defense legal services providers and other providers.
- 6) The proposal is consistent with the needs and best interests of the state as a whole. Among the factors PDSC may consider are the other service methods and mix of service providers available, and the applicant's ability to work with other groups affected by the contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

In addition to the criteria listed above, PDSC will evaluate the available workload, the current number of contractors or hourly-paid providers, and the relative cost of administering current contracts and/or new contract proposals. PDSC has the sole discretion to apportion or not to apportion workloads between applicants AND to award or not to award contracts.

1.9 Proposal Records

Materials submitted by applicants will not be available for public review until all contracts awarded pursuant to this RFP have been fully executed.

Written inquiries on preparing applications may be directed to Kathryn Aylward, Director of the Contract and Business Services Division at:

kathryn.aylward@opds.state.or.us

PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS

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

2.1 Submitting Proposals

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

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

A. Form of Submission

Proposals MUST be submitted as an email attachment in a searchable Portable Document Format (PDF). The PDF must not be password protected nor copy protected.

Any text in the body of the transmitting email will not be reviewed and will not be considered to be part of the proposal.

The email should be sent to: mail@opds.state.or.us

B. Deadline

Proposals MUST BE RECEIVED by PDSC no later than 11:59 p.m. on the submission deadline date.

The submission deadline for proposals is July 15, 2013.

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

2.2 Application Format

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

2.3 Acceptance of RFP and Contract Terms

A. Applicants are responsible for reviewing the terms and conditions of the RFP and the standard terms of the contract.

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

2.4 Multiple Proposals

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

2.5 Modification of Proposals

A. When Permitted

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

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

B. Delivery

Applicants must deliver any modifications in the same manner as required by Section 2.1.A for original proposals.

C. Included in Proposal File

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

2.6 Mistakes in Submitted Proposals

A. When Corrections Permitted

PDSC will permit applicants to correct mistakes on a proposal only to the extent correction is not contrary to PDSC's interest or to the fair treatment of other applicants.

PDSC has sole discretion to allow an applicant to correct a mistake. PDSC will notify the applicant if and when PDSC allows corrections to proposals.

B. Procedure When PDSC or Applicant Discovers Mistake

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

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

1) Minor Inaccuracies

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

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

2) Mistakes Where Intended Correct Proposal is Evident

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

3) Mistakes Where Intended Correct Proposal is Not Evident

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

C. Included in Proposal File

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

2.7 Withdrawal of Proposals

A. Request to Withdraw

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

- 1) on the applicant's letterhead;
- 2) signed by an authorized representative(s); and

- 3) submitted to PDSC in the same manner as required by Section 2.1.A for original proposals.

B. Included in Proposal File

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

2.8 Evaluation of Proposals

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I.

2.9 Categories of Cases Available for Contract

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

- Capital Murder
- Death Sentence Post-Conviction Relief

2.10 Cost of Services

A. Expenses Included in Contract Price

Public defense contractors are responsible for all reasonable and necessary expenses that are considered overhead.

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

- 1) copies;
- 2) long distance telephone expenses;
- 3) in-state mileage;
- 4) non-routine case expenses that are preauthorized such as out-of-state travel.

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

B. Reasonable Expenses

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

2.11 Proposal Application Format (Part III of RFP)

The application format consists of:

- 1) Application Summary;
- 2) Certification Form; and
- 3) Proposal Outline divided in the following sections:
 - a) Service Delivery Plan
 - b) Proposed Contractor Certificate of Compliance with Applicable Oregon Tax Laws
 - c) Proposed Contractor Independent Contractor Certification Statement

THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 5 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

(TO BE COMPLETED AND SUBMITTED TO PDSC)

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

3.1 APPLICATION SUMMARY

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

CASE TYPE AND WORKLOAD INFORMATION

- A. List all case types for which services will be provided:

- B. Identify the percentage of FTE hours (1,800/year) being proposed (e.g. 100%, 50%):

3.2 CERTIFICATION FORM

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

Signature

Date

Typed or Printed Name of Authorized Representative

Title or Representative Capacity

Applicant Name

3.3 PROPOSAL OUTLINE

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

A. SERVICE DELIVERY PLAN

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

1. Case Services. Describe the workload and case types to be covered. Include any limitations in coverage by case type, county or region.
2. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include how applicant will comply with ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases, June 2008 (available at www.oregon.gov/opds);
3. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.
4. Professional Development Plan. Describe plans for professional development and training methods to maintain current awareness of new developments regarding mitigation services in capital murder cases.
5. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available.
6. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
7. Contract Terms. Include any requests to modify the standard terms of the contract. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

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

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

I, the undersigned, being first duly sworn,

Mark only one: (X)

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

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

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

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

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

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Federal ID # or
Social Security #: _____

Subscribed and sworn to before me this _____ day of _____, 20____.

Notary Public

My commission expires: _____

C. PROPOSED CONTRACTOR INDEPENDENT CONTRACTOR CERTIFICATION STATEMENT

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

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

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

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

I hereby certify that the above information is correct.

Signature _____

Date _____

Entity _____

PUBLIC DEFENSE SERVICES COMMISSION
REQUEST FOR PROPOSALS
FOR
PUBLIC DEFENSE MITIGATION INVESTIGATIVE SERVICES CONTRACTS

PART IV

CONTRACT GENERAL TERMS

**PUBLIC DEFENSE MITIGATION INVESTIGATION CONTRACT
BETWEEN PUBLIC DEFENSE SERVICES COMMISSION AND**

CONTRACTOR NAME

**GENERAL TERMS
AND
SPECIFIC TERMS**

CAPITAL MURDER CASES

JANUARY 1, 2014 TO DECEMBER 31, 2015

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GENERAL TERMS

1 DEFINITIONS

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit involving any question of construction arising under this contract in an appropriate court in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

- (a) the remaining terms and provisions shall remain valid; and
- (b) the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

1.4 Public Defense Services Commission

Public Defense Services Commission (PDSC) and "State of Oregon" includes the respective agents, employees, members, officers, representatives, and successors of PDSC and State of Oregon.

1.5 Contractor

"Contractor" includes Contractor's agents, employees, members, officers, representatives, successors, and subcontractors.

1.6 Client

A "client" is a person whom a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.7 Case

A "case" is any action in this state in which court-appointed counsel has been appointed to represent a client.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Attorney Fees

If a party brings any action, suit, or proceeding to enforce this contract or to assert any claim arising from this contract, the prevailing party shall be entitled to such additional sums as the court may award for reasonable attorney fees and costs incurred as a result of the action, suit, or proceeding, including any appeal.

2.3 Termination

The parties may agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, PDSC may agree in writing to alternative measures.

3 RIGHTS OF PDSC

3.1 Subcontracts

Contractor shall not subcontract for or delegate any of the services required under this contract without obtaining PDSC's prior written consent. PDSC shall not unreasonably withhold consent to subcontract. Under this contract, PDSC incurs no liability to third persons by making contract payments to Contractor.

3.2 Assignment of Contract

Contractor shall not assign Contractor's interest in this agreement without PDSC's prior written consent. PDSC shall not unreasonably withhold consent to assignment. Under this contract, PDSC incurs no liability to third parties, including subcontractors, for making contract payments to Contractor.

3.3 PDSC Powers for Failure to Obtain Workers Compensation

If Contractor fails to secure and maintain workers' compensation coverage or to provide PDSC with a certificate of exemption, PDSC may:

- (a) withhold payment of any amount due Contractor until such coverage or certification is provided;
- (b) suspend this agreement until Contractor complies; and
- (c) terminate this contract:
 - (i) for willful or habitual failure to comply; or
 - (ii) for failure to comply within 30 days after PDSC suspends this contract.

3.4 De Minimis Changes in Contractor Reports/Documents

At any time and by written instructions, PDSC may make de minimis changes to the terms and conditions of this contract regarding any one or more of the following:

SEC. 3 RIGHTS OF PDSC

- (a) format or content of any report or other document to be submitted by Contractor;
- (b) number of copies of any report or other document that Contractor must submit; and
- (c) time in which, or place at which, Contractor must submit any required report or other document. (See Section 6.1)

3.5 Termination by PDSC for Cause

3.5.1 Reasons for Contract Termination

PDSC may terminate this contract for cause, for the following reasons:

- (a) Contractor's material breach of this contract including material misuse of contract funds;
- (b) Contractor's willful or habitual disregard of the procedures required by the courts in which Contractor provides services;
- (c) Contractor's demonstrated continued inability to serve adequately the interests of its contract clients;
- (d) Contractor's failure to abide by standards of performance and rules of professional conduct; or
- (e) some other cause which has substantially impaired Contractor's ability to provide adequate mitigation investigation under this contract or fulfill the obligations of this contract.

3.5.2 No Acceptance of Cases After Notice

When Contractor receives PDSC's notice of termination for cause, Contractor shall not accept any further cases under the contract unless PDSC otherwise agrees in writing.

3.6 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability of funds. PDSC may propose to modify, suspend, or terminate this contract if PDSC reasonably believes that funds will not be sufficient to pay anticipated costs of public defense services and PDSC has complied with the procedures set out below in Section 6.2 (State Funding Shortfall).

3.7 Increasing Workload: Renegotiation at PDSC Option

The parties may renegotiate this contract to increase the total work to be performed by Contractor under this contract at additional cost to the state, if:

- (a) the workload will increase substantially due to the number of available cases; and
- (b) PDSC determines that renegotiation is in the state's interest.

PDSC will not pay Contractor for hours in excess of the maximum value agreed to under the original contract, unless renegotiation and agreement occurs prior to Contractor performing the work.

3.8 Review, Verification and Inspection of Records

3.8.1 Request

PDSC may review or verify Contractor's records that relate to the performance of this contract:

- (a) on reasonable written notice; and
- (b) as often as PDSC reasonably may deem necessary during the contract term.

3.8.2 Access to Facilities and Provision of Records

PDSC may conduct fiscal or performance audits to monitor and evaluate the services provided under this contract. PDSC will give reasonable written notice to Contractor before any evaluation. On PDSC's proper request, Contractor shall provide access to its facilities and make records available to PDSC or PDSC's designee or agent at all reasonable times, and promptly respond to reasonable requests for information in connection with audit or performance reviews. PDSC will not remove Contractor's original office records or other property of Contractor from Contractor's premises without Contractor's approval.

Contractor shall keep such data and records in an accessible location and condition. Notwithstanding any other provisions of this section, no constitutional, statutory, or common law right or privilege of any client or Contractor employee are waived by Contractor.

3.8.3 Other Information

Upon the PDSC's determination that a significant question exists of Contractor's ability to perform this contract and subject to client confidentiality, personnel confidentiality and de minimis limits (Sections 4.3, 4.4 and 6.1), Contractor shall provide any other information that PDSC reasonably identifies and requests related to the concern identified.

3.8.4 Timely Reports by PDSC

When PDSC undertakes a review of Contractor, PDSC shall provide Contractor a draft review report for comment, clarification or rebuttal information. PDSC shall issue a final report to Contractor. Draft and final reports shall be provided in a timely manner.

3.9 Use of Equipment Purchased with Contract Funds

Contractor may purchase in whole or in part from contract funds equipment required to perform services under this contract. Any equipment Contractor acquires with funds expressly provided by this contract shall be used for these purposes.

3.10 Return of Equipment Purchased with Contract Funds

Any equipment purchased with expressly identified contract funds shall accrue to PDSC when this contract is terminated or expires and no new contract is agreed upon within 60 days of termination, expiration, or completion of a negotiated wind-down, whichever occurs last, if:

- (a) Contractor purchased the equipment with separately identified funds from this contract or public defense services contracts with similar provisions or with insurance proceeds to replace equipment that Contractor had purchased with funds from this contract;
- (b) had an original dollar value of \$500 or more; and
- (c) whose useful life exceeds the term of this contract.

3.11 Limit on Return of Equipment to PDSC

Section 3.10 does not apply to any Contractor that is a nonprofit, tax-exempt corporation whose articles of incorporation require the transfer or distribution of equipment to another nonprofit, tax-exempt corporation that provides public defense services in the event of full or partial wind-down.

4 RIGHTS OF CONTRACTOR

4.1 Termination By Contractor For Cause

Contractor may terminate this contract for cause should PDSC materially breach any duty or obligation under this contract.

4.2 Public Defense Cases Outside Contract

Contractor may accept additional public defense cases in excess of contract coverage or excluded from contract coverage, but only to the extent that the additional cases do not interfere with Contractor's ability to fulfill this contract. PDSC shall not pay Contractor outside the contract for any services falling within the definition of "mitigation investigation", set forth in Section 7.1, for cases accepted under this contract.

4.3 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe mitigation investigator/client or mitigation investigator/attorney consultations or to review information in case files that is:

- (a) privileged because of the mitigation investigator/client or mitigation investigator/attorney relationship; or
- (b) work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.4 Personnel Records

Contractor grants no right to PDSC or designee of PDSC to review information in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow PDSC or PDSC's designee reasonable access to other information, including specific compensation of individual staff members, for review purposes. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of personnel records.

5 MUTUAL OBLIGATIONS

5.1 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.2 Compliance with Applicable Law

5.2.1 In General

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status.

5.2.2 Laws Incorporated by Reference

The provisions of ORS 279.312, 279.314, 279.316, and 279.320 are incorporated herein by reference as conditions of this contract and shall govern performance of this contract.

5.3 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall:

- (a) be in writing;
- (b) state the reasons therefor and may specify what may be done to avoid the modification, suspension, or termination;
- (c) become effective for willful breach not less than 14 days from delivery by certified mail or in person; and
- (d) become effective not less than 60 days from delivery by certified mail or in person for non-willful breach.

5.4 Modification or Termination Due to Legislative Action or Court Interpretation

PDSC and Contractor may renegotiate this contract if there is a significant change in workload or cost of doing business contemplated under this contract due to amendments to or court interpretations of federal or state laws. In addition, PDSC may modify, suspend, or terminate this contract as needed to comply with amendments to or court interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.5 Modification or Termination Due to Decreased Workload

PDSC and Contractor may renegotiate this contract if there is a significant decrease in the probable number of cases available.

6 OBLIGATIONS OF PDSC

6.1 De Minimis Changes in Contractor Reports/Documents

PDSC shall not make any change that would cause more than a de minimis increase in cost or time required to perform the contract except by written agreement signed by both parties. (See Section 3.4)

6.2 State Funding Shortfall

If the Emergency Board or legislature does not appropriate sufficient funds, PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider both cost and the level of representation that meets minimum allowable professional standards. PDSC may suspend or terminate the contract if the parties cannot agree to modification.

6.3 Payments in Addition to Contract Price

PDSC shall pay for case expenses as described in the Public Defense Payment Policies and Procedures and this section of the contract from funds available for the purpose.

Contractor agrees to request reimbursement under this agreement for those types of expenses defined and enumerated herein;

- (a) such case-related expenses that are reasonable and necessary to provide an adequate defense that are defined as expenses under ORS 135.055 AND which are not related to office overhead, salaries, benefits, out-of-state travel, airfare, personal services (such as psychologists, interpreters, expert witnesses). Routine expenses, for the purpose of reimbursement, primarily include in-state travel expenses, audio and video tapes, records and copy services from outside sources;
- (b) such case-related expenses that there would be a significant risk of error in the proceedings if the service were not provided or the expense were not incurred; and
- (c) such case-related expenses that are reasonable. In instances where the policy establishes maximum allowable costs and unless otherwise specifically agreed herein, the presumed "reasonable amount" of an expense is the policy guideline rate. In other instances, a "reasonable amount" is presumed to be the market value of the service or expense or the amount necessary for the provider of the service or expense to recover only its actual cost of providing the service or item. For services or items where there is no opportunity for competitive services or production of items (where the provider is a captive entity) (for example, cost of medical records), Contractor should notify the director of any costs that exceed what Contractor believes is reasonable.

6.3.1 Types of Expenses Subject to Reimbursement

6.3.1.1 In-state Lodging

Reimbursement for in-state lodging is limited to actual costs incurred when Contractor cannot reasonably avoid incurring this expense and the expense is necessary. Contractor shall seek commercial or government rates. The maximum allowable amount for lodging is the current rate for reimbursement according to the policy. Amounts exceeding the lodging expense maximums will be disallowed unless the higher rate has been preauthorized by the director of the Contract and Business Services Division (CBS) of the Office of Public Defense Services, or the director's designee.

6.3.1.2 Meals in Conjunction with Overnight Travel

Contractor is entitled to claim a meal allowance for meal expenses incurred in conjunction with overnight travel. Meal allowance amounts are those set forth in the policy. Receipts need not be submitted when requesting a meal allowance

6.3.1.3 Meals for Day Trips

If Contractor does not incur lodging costs but, due to departure or return times, could justify a lodging expense, Contractor is entitled to claim a meal allowance based upon the following travel times. The amounts allowed are those set forth in the policy for that meal.

- (a) If Contractor leaves home before 5:00 a.m., Contractor is entitled to the breakfast allowance amount.
- (b) If Contractor leaves home before 5:00 a.m. and does not return until after 2:00 p.m., Contractor is entitled to the breakfast and lunch meal allowance amounts.
- (c) If Contractor does not return home until after 9:00 p.m., Contractor is entitled to the dinner allowance amount.

6.3.1.4 Telephone Expenses While Traveling

Contractor may be reimbursed for case-related telephone charges incurred while traveling.

Contractor may be reimbursed for one telephone call per day to Contractor's office to conduct business not related to a contract case when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

Contractor may be reimbursed for one personal telephone call per day when the travel requires an overnight stay. The amount of reimbursement shall be the actual cost of the telephone call not to exceed \$5.00.

6.3.1.5 Routine Expenses Not Related to Travel

- (a) Discovery costs.
- (b) On-line computer research charges.
- (c) Photocopy and printing costs, not to exceed the maximum amounts listed in the policy.
- (d) Postage and delivery costs, if the cost of sending an individual item is \$1.00 or greater and is supported by a receipt.
- (e) Long-distance and collect telephone charges when the cost of an individual call is \$1.00 or greater.
- (f) Potentially relevant medical, mental health, school, corrections, child welfare, internal affairs, and arrest/conviction records;
- (g) Film and photograph processing;

- (h) Copies of audio or video recordings, logs and photographs, including but not limited to those obtained from law enforcement, prosecution and emergency communication services;
- (i) Service of process fees where counsel documents the necessity of incurring such expenses (rather than utilizing the sheriff's office(s) or case investigators) was outside counsel's reasonable control;
- (j) Materials other than ordinary office supplies for, or items that will serve as exhibits for court proceedings where the cost per item does not exceed \$25 and the total expense for the type of exhibit(s) does not exceed \$100; and
- (k) Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Provider should submit a written explanation with any request for payment of an out-of-pocket expense not listed in this section unless the OPDS has preauthorized the expense. An original receipt, invoice or copy of a cancelled check is required if item is obtained from an outside vendor.

6.3.2 Types of Expenses Excluded From Payment Unless Preauthorized

- (a) Expenses not specifically described in the contract that require preauthorization as non-routine expenses or that are presumed to be covered under the base contract as overhead expenses.
- (b) Airfare and vehicle maintenance.
- (c) Non-direct travel expenses, such as dry cleaning or laundry services.
- (d) Direct client expenses, such as haircuts, clothing or glasses.
- (e) Transcripts.
- (f) Expenses required to secure the attendance of an out-of-state witness.
- (g) Computer software programs.

7 OBLIGATIONS OF CONTRACTOR

7.1 Standards of Mitigation Investigation

Contractor shall provide mitigation investigation for the purpose of providing cost-effective delivery of services that will allow counsel to meet constitutional, statutory, and other legally mandated standards of representation. Contractor will provide timely, effective, and efficient case-related services in compliance with the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases (June 2008).

7.2 Contractor Responsibilities - Financially Ineligible Clients

Contractor shall notify the client's court-appointed counsel if Contractor learns that a client is ineligible for state-funded mitigation investigation under this contract.

7.3 Special Obligations To State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend and hold harmless PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that result from or arise out of Contractor's activities.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Neither Contractor nor any of its employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers' compensation benefits for any and all of their subject workers as required by ORS chapter 659A and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. Contractor accepts responsibility for all actions of its members, officers, employees, parties, agents and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VI of the Civil Rights Act of 1964, with Section V of the Rehabilitation Act of 1973, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS 659A.142, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance To Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide PDSC a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars (\$500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall include the State of Oregon, PDSC, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities to be performed under this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without notice by Contractor to PDSC. Any failure to comply with the provisions of these insurance requirements, except for the potential exhaustion of aggregate limits, shall not affect the coverage provided to the State of Oregon, PDSC, and their divisions, officers and employees.

7.3.6 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly received, expended, and accounted for.

7.3.7 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Record Keeping

7.4.1 Service Records

Contractor shall maintain current information on individual cases assigned pursuant to this contract showing services provided and hours of time expended. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection of PDSC, or PDSC's designee or agent.

7.4.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.4.3 Retention Period

For purposes of this contract only, Contractor agrees to preserve all service records and supporting documentation regarding contract work performed for a period of three (3) years after the expiration of this contract.

7.5 Reports to PDSC

7.5.1 Time Records

Within twenty (20) days of the end of each month, Contractor shall provide to PDSC, in a format specified by PDSC, a reasonably accurate monthly time report for the preceding month. Contractor may submit amended time reports, if necessary, at any time up to forty-five (45) days after completion of a periodic review that includes the monthly time report to be amended.

7.5.2 Penalty for Late Reports

Contractor shall submit timely and properly completed reports. If Contractor fails to submit a proper, reasonably accurate report within thirty (30) days of its due date, PDSC may withhold the next monthly payment and subsequent payments until PDSC receives the report and supporting documentation.

7.5.3 Enforceability

The reporting requirements set forth in this section are enforceable after the expiration of this contract.

7.6 Costs and Expenses

Contractor shall pay for:

- (a) all ordinary, reasonable and necessary costs, fees, and expenses incurred in providing contract services;
- (b) all other routine expenses related to case preparation and trial, except for those described in 6.4; and
- (c) staff services, unless specifically authorized by PDSC to be paid outside this contract.

Contractor shall not expend contract funds for out-of-state travel or other costs unrelated to a specific case without the express written authorization of PDSC.

7.7 Special Notices

Contractor shall provide PDSC written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

- (a) Contractor's ability to carry out this contract, including changes in office location;
- (b) Contractor's ability to meet financial obligations; and
- (c) matters affecting Contractor's ability to provide services to clients.

7.7.1 Time Requirement for Notices

All notices shall be provided to PDSC within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided.

7.7.2 Specific Notices Required

7.7.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 and immediate notice of the cancellation of any such policies.

7.7.2.2 Change in Contractor's Organization

Contractor shall notify PDSC of any change in Contractor's organization that might affect staffing, payment, or tax reporting under the contract. Contractor shall assure PDSC of its continued ability to meet contract requirements or shall propose reductions in caseload and price if Contractor is unable to meet contract requirements because of such organizational change.

7.7.2.3 Events Which Could Impair the Contract

Contractor shall notify PDSC within fourteen (14) days of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

A member of Contractor's staff has been charged with a crime.

(b) Criminal Conviction

A member of Contractor's staff has been convicted of a crime punishable by a term of incarceration of one or more years or involving moral turpitude.

7.7.2.4 Early Quota

Contractor shall notify PDSC immediately upon determining that Contractor will reach its total contract quota before the expiration of the contract.

7.8 No Dual Payments for Contract Work

Contractor shall not:

- (a) expend funds under this contract for work performed outside this contract;
- (b) accept funds from anyone other than PDSC for work performed under this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default caused by theft, fire, flood, or other casualty, if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be responsible for the torts only of its own officers, employees, and agents committed in the performance of this contract.

9 RISKS OF CONTRACTOR - REFUND FOR SHORTAGE

If Contractor's actual workload value, at the expiration or termination of the contract, is less than the workload value Contractor agrees to refund to PDSC the shortage, unless PDSC agrees in writing otherwise.

**CONTRACT BETWEEN PDSC AND CONTRACTOR
PAYMENT SCHEDULE**

End of Month (Unless noted)	Monthly Payment
January 2014	
February 2014	
March 2014	
April 2014	
May 2014	
June 2014	
July 2014	
August 2014	
September 2014	
October 2014	
November 2014	
December 2014	
<i>First-Year Subtotal</i>	\$0
January 2015	
February 2015	
March 2015	
April 2015	
May 2015	
June 2015	
July 2015	
August 2015	
September 2015	
October 2015	
November 2015	
December 2015	
<i>Second-Year Subtotal</i>	\$0
<i>Total Payments</i>	\$0

**CONTRACT BETWEEN PDSC AND CONTRACTOR
CASELOAD AND CASE VALUE MATRIX**

	Hourly Rate	Number of Hours	Total Value
1/1/14 - 12/31/14			
	\$0	0	\$0
			\$0
First-Year Total		0	\$0
1/1/15 - 12/31/15			
	\$0	0	\$0
			\$0
Second-Year Total		0	\$0
Contract Total		0	\$0

Attachment 4

PUBLIC DEFENSE

PAYMENT POLICIES AND PROCEDURES

PUBLIC DEFENSE SERVICES COMMISSION

OFFICE OF PUBLIC DEFENSE SERVICES

PUBLIC DEFENSE PAYMENT POLICIES AND PROCEDURES

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- Exhibit 5 - Request for Preauthorization of Non-Routine Expenses Form
- Exhibit 6 - Notice of Adjustment to Fee Statement
- Exhibit 7 - Schedule of Compensation

The following Public Defense Payment Policies and Procedures (PDPPP) are adopted by the Public Defense Services Commission (PDSC), pursuant to ORS 151.216(1)(f)(B) through (E). The PDPPP govern all appointment and expense matters, effective December 1, 2003. This is the ninth eleventh revision and is effective JanuaryOctober 19, 2012.

1. APPOINTMENT OF COUNSEL FOR ELIGIBLE PERSONS

1.1 In General

Appointment of counsel and payment of related expenses at state expense, payable from funds within the Public Defense Services (PDS) Account, are subject to and limited by statutes, state caselaw, policies adopted by the PDSC, and the terms of public defense services contracts.

For purposes of this policy statement, a person whom a state court has determined to be financially eligible for assigned counsel at state expense shall be referred to as "client".

1.2 Appointment of Assigned Counsel

Courts may only appoint counsel at state expense in those types of cases in which there is express authority, by statute or caselaw, for payment of assigned counsel from the PDS Account. (See Exhibit 1, Appointment Type Codes). Counsel appointed by courts in cases where there is no express authority for payment from the PDS Account will **not** be paid from the PDS Account.

Courts shall appoint contract attorneys, when available, prior to appointing private bar attorneys.

1.3 Appointment Agreement

By accepting an appointment to represent a client, assigned counsel agrees to abide by relevant statutes (e.g., ORS 135.055 regarding non-routine expenses) and this PDPPP, except as expressly provided otherwise in a public defense services contract.

1.4 Types of Assigned Counsel

For purposes of this policy statement, "counsel at state expense" or "assigned counsel" is limited to counsel appointed by state courts where there is express statutory or caselaw authority for payment of assigned counsel from the PDS

Account.

"Assigned counsel" is counsel appointed by a court at state expense and may be "contract" or "private bar" counsel.

Appointments made under a public defense services contract are subject to that contract. Such appointments are called contract appointments or contract cases. Counsel appointed under a public defense services contract is "contract counsel".

Appointments made other than pursuant to a public defense services contract are called private bar appointments or private bar cases. These appointments are assignments to individual attorneys, not to firms. The individual attorney is held responsible for the case to which he or she is assigned. A contract attorney appointed to a case outside the contract is "private bar counsel" under this policy statement.

1.5 Appointment of Co-Counsel

1.5.1 Circumstances Supporting Appointment

A court has discretion to appoint co-counsel when the court finds that appointment is reasonable and necessary considering both the circumstances of the case and lead counsel's circumstances and needs. Lead counsel must file a motion with the court to appoint co-counsel and must file a supporting affidavit that explains why the appointment is reasonable and necessary.

As a general policy, however, the Office of Public Defense Services (OPDS) discourages appointing co-counsel except in:

- a) capital cases;
- b) complex or lengthy murder or serious felony cases when qualified lead counsel would not be able to take the case unless co-counsel were appointed, e.g., lead counsel is a sole practitioner and the length or complexity of the case would require lead counsel in effect to close a going practice or decline appointment; or
- c) no qualified lead counsel is available within the area, and appointment of co-counsel would help local counsel obtain experience to qualify as lead counsel for future

appointments of this type.

Compensation of co-counsel is limited by the cap on hours set in Section 1.5.2, subject to subsequent modification as provided in that section.

1.5.2 Caps on Co-Counsel Hours

The court order appointing co-counsel must set a limit on the number of co-counsel hours. OPDS recommends a cap of 300 hours in a capital case and a cap of no more than 150 hours in any other case.

Lead counsel may request preauthorization of an increase in the original cap on co-counsel hours, by submitting a letter to OPDS setting forth the name of co-counsel, date on which co-counsel was appointed by the court, the number of hours approved by the court, the number of additional co-counsel hours requested, and a statement of why additional co-counsel hours are necessary and reasonable in the particular case.

1.6 Associate Counsel – Limitation on Use in Private Bar Cases

“Private bar” appointments are assignments to individual attorneys, not to firms. The individual attorney is held responsible for the case to which he or she is assigned.

Public defense funds will *NOT* compensate associates of the assigned counsel or assigned counsel for time spent on a case by attorney associates *UNLESS* OPDS has preauthorized the use of associate counsel in writing or the use of associate counsel is limited to exigent circumstances (illness of assigned counsel) where the service of associate counsel is ministerial (e.g., appearance in court to request a set-over due to assigned counsel’s illness).

In requesting preauthorization from OPDS for use of an associate other than in exigent circumstances, the assigned counsel shall describe in detail:

- a) the type(s) of legal services the associate would provide; and
- b) how the time expended by an associate will reduce the time that assigned counsel will need to expend without increasing the total cost to the state.

Assigned counsel will supervise and have full responsibility for the services performed by an associate. Assigned counsel may not delegate those functions that require the ability and experience for which counsel was assigned, including the handling of evidentiary hearings, trials, or oral arguments.

1.7 Substitution of Appointed Counsel

1.7.1 Need for Consultation With OPDS

A court may substitute one appointed counsel for another only when:

- (a) in the exercise of its discretion, the court determines that appointed counsel who is seeking to withdraw cannot ethically continue to represent the client and, except as described in Section 1.7.2, the court consults with OPDS regarding counsel to whom the case will be assigned, or
- (b) in other circumstances, when the interests of justice so require, and after consultation with OPDS regarding the need for substitution of counsel and counsel to whom the case will be assigned.

1.7.2 Reassignment within Public Defender Office, Law Firm or Consortium

The court need not consult with OPDS regarding counsel to whom the case will be assigned if appointed counsel and counsel to whom the case will be assigned are part of the same public defender office, law firm, or consortium under contract with the PDSC.

1.7.3 Limits on Matters Which May be Discussed Regarding Need for Substitution under 1.7.1 (b)

In consultation with the court regarding the need for substitution, OPDS may only:

- (a) obtain information regarding the reasons for substitution;
- (b) obtain information which may affect public defense planning in future cases;
- (c) provide information to the court regarding the cost of substitution; and

- (d) discuss options available to the court in terms of counsel to whom the case might be assigned and cost factors related to each option.

1.7.4 Consultation Regarding Substitutions for Case Types

Consultation between the court and OPDS may include discussion of the procedure for handling substitutions in a category of case types as well as the procedure in an individual case.

1.8 Recoupment of Attorney Fees and Expenses

At the conclusion of a case in which the court appointed counsel at state expense to represent a person, the court may order the person to pay a reasonable amount for the cost of appointed counsel and for expenses authorized under ORS 135.055. Pursuant to ORS 151.505(2), determination of reasonable costs by a court may be made by reference to a Schedule of Compensation established by PDSC. For this purpose, PDSC will provide and update as necessary a Schedule of Compensation (Exhibit 7), which describes the typical cost to PDSC to provide representation for listed case types and the average amount expended for each case type for nonroutine expenses authorized under ORS 135.055.

2. PRIVATE BAR ATTORNEY FEES AND BILLINGS

2.1 Hourly Rate Schedule

2.1.1 Noncapital Cases

Except in capital cases or as otherwise expressly authorized by OPDS, the hourly rate for attorney fees for private bar lead counsel, co-counsel or associate counsel is limited to the rate in the Schedule of Guideline Amounts (Exhibit 3). The rate for "regular" cases applies to juveniles charged with aggravated murder because statute prohibits the death penalty in those cases. The rate applies to cases at the trial and appellate levels.

2.1.2 Capital Cases, Adult Defendants

Private bar attorney fees at the trial court level for adult defendants are limited to the rates shown in the Schedule of Guideline Amounts for lead counsel and for co-counsel or associate counsel. The rates also apply to direct appeal and postconviction relief cases and to

postconviction relief appeals where the underlying case had a conviction resulting in a sentence of death.

2.2 Requests for Increased Hourly Attorney Rate

2.2.1 In General

Only OPDS *may* allow an exception to increase the private bar hourly rate where:

- a) counsel shows compelling circumstances; and
- b) OPDS finds that no feasible alternative exists.

2.2.2 Compelling Circumstances

Compelling circumstances include, but are not limited to, circumstances that:

- a) would impose substantial financial hardship on counsel because of the anticipated length or complexity of the proceedings; or
- b) establish that an increased hourly fee in that case would probably result in overall savings to the PDS Account.

Circumstances that are *not* compelling include:

- a) the scheduled rate is less than counsel's standard billing rate;
- b) the case or client is difficult or unpopular unless that fact may cause counsel substantial financial hardship at the scheduled rate; and
- c) counsel has received higher rates in other public defense cases.

2.2.3 Procedure to Request Increased Hourly Rate

Counsel must submit any request for an increased hourly rate as soon as possible prior to or after appointment. OPDS will not consider requests for an increased hourly rate first submitted late in the case.

Private bar counsel or counsel considering appointment must submit a letter requesting an increased hourly rate directly to OPDS. The request must document the compelling reasons that warrant an exception to the fee schedule.

OPDS will review counsel's request and will

confirm in writing the decision and the terms of any exception OPDS has allowed. In most circumstances, the increased hourly rate will be retroactive to the time of the appointment. When the nature of the case requires the court to expedite an appointment and a decision on the increased rate may determine whether the proposed private bar counsel accepts the case, the court may consult with OPDS for tentative approval. The tentative approval is subject to OPDS's timely receipt of the written request required by this section.

2.3 Billing for Services

2.3.1 In General

ORS 135.055(4) provides private bar counsel, on completion of all services, shall submit to OPDS a statement of all reasonable fees and expenses:

- a) supported by appropriate receipts—~~or invoices~~; and
- b) certified by appointed counsel to be true and accurate.

"Completion of services" is addressed in Section 2.5.

The PDSC Executive Director or OPDS designee will review the statement and determine whether the hours and expenses are reasonable, necessary, and properly payable from public defense funds.

OPDS will pay only for legal services related to the specific appointment. OPDS will not compensate counsel or other providers for time spent preparing payment requests, keeping time records, attending seminars, or otherwise managing one's office and career.

2.3.2 Provider's Fee Statement for Attorney Fees and Routine Expenses

Assigned counsel must use and complete the Public Defense Provider's Fee Statement for Attorney Fees and Routine Expenses (Exhibit 1).

Private bar counsel must submit, in addition to the one-page fee statement, supporting documentation for hours claimed. The supporting documentation must itemize time:

- a) by day; and
- b) in tenths of hours.

The attorney who requests payment of expenses must also submit appropriate receipts—~~or invoices~~. See Section 3.1.2. Appointed counsel must certify that the information in the fee statement is true and accurate.

2.4 Billing for Consulting With Assigned Counsel on Appeal or Postconviction Relief

Assigned counsel on an original trial-level case may bill for time and expenses expended in consulting with counsel on the client's appeal. Assigned counsel on an original trial-level case or assigned counsel on appeal (other than OPDS counsel) may bill for time and expenses incurred in consulting with petitioner's counsel on postconviction relief. Time and expenses expended by original assigned counsel consulting or otherwise assisting respondent's counsel in a postconviction relief proceeding (e.g., Department of Justice) may not be compensated from the PDS Account.

2.5 Timely Submission of Payment Requests

2.5.1 Trial Level Cases

For all cases in which services are completed, appointed counsel must submit payment requests to OPDS within 60 days of the date the court enters in the register of actions:

- a) an order allowing or requiring counsel to withdraw; or
- b) final judgment.

Counsel may bill for time dealing with post-judgment matters if those matters are concluded within 60 days after the judgment is entered. Counsel's time and expenses for consultation with assigned counsel on appeal or postconviction relief may be billed beyond the 60-day limit provided in this section.

When services to the client are suspended, counsel may submit payment requests to OPDS not sooner than 30 days and not later than 120 days from the date:

- a) the client enters into a program or agreement which delays final adjudication; or
- b) the client fails to appear or the court issues

a warrant; or

- c) the court determines the client is unable to aid and assist.

For juvenile dependency (proceeding up to the time of entry of a disposition) and post-disposition matters (e.g., review hearings), counsel must submit a request for payment within 60 days of:

- 1) entry of an order disposing of the original matter of the petition; or
- 2) entry of an order disposing of a discrete postdispositional matter before the court, such as a review hearing.

OPDS will return requests submitted late unless counsel submits a written explanation showing good cause to excuse the delay. OPDS will review the written explanation and approve or disallow payment based upon the reason.

2.5.2 Appellate Level Cases

Counsel may bill for time and expenses after the original brief is filed. A final billing should be submitted within 60 days of the entry of the appellate judgment.

2.6 Interim Billings

2.6.1 Aggravated Murder and Murder Cases

Assigned counsel may submit interim billings for aggravated murder and murder cases and postconviction relief cases where the underlying case contained a conviction for aggravated murder or murder, both at the trial and appellate level. Fee statements should not be submitted more often than monthly.

2.6.2 All Other Case Types

As a general policy, OPDS will not pay interim requests for attorney fees and expenses unless OPDS has authorized interim billing. An interim request is any request submitted before appointed counsel has completed all services in a trial-level case; for appellate cases, an interim request is a request submitted prior to filing the original brief. An exception to this policy will be made when sentencing is delayed more than 60 days after a finding of guilt or entry of guilty plea.

To request approval for interim billing, counsel must submit a letter to OPDS. The request must document the compelling reasons that warrant

authorization to submit an interim billing (e.g., a case has been pending for greater than six months). OPDS will review counsel's request and will confirm in writing the decision and the terms of any exception OPDS has allowed.

An interim billing will be reviewed on its own merits. When approving final payment requests, OPDS will not reduce earlier-approved amounts except to:

- a) correct arithmetic or clerical errors; or
- b) ensure total representation costs are not excessive.

An interim billing must include a statement that lists each of the following:

- a) limits (caps) set on fees, hours, or expenses, if any;
- b) amounts remaining within any limits.

The final request for payment also must include a statement of the total time spent for services rendered and the total fees requested in the case.

3. CASE EXPENSE GUIDELINES

3.1 In General

Public defense funds will not be used to pay expenses for a person who is determined financially eligible for assigned counsel, but who is not represented by assigned counsel, unless a statute or case law expressly provides otherwise. Two statutes that provide otherwise are ORS 40.325 (OEC 604) on interpreters in *criminal* cases, and ORS 138.500 on fees for transcripts in appellate cases. These statutes do not require the client to have assigned counsel. In addition, ORS 135.055 provides that a person who is financially eligible for assigned counsel, but who is pro se or has retained counsel, may request preauthorization of non-routine expenses to be paid from the PDS Account.

Reimbursable expenses must also be both reasonable and necessary to the investigation, preparation, or presentation of the case.

3.1.1 Guideline Amounts

The amounts shown in the Schedule of Guideline Amounts are guideline amounts, for most fees and expenses. The guideline amount is *not* equivalent to a pre-approved cost and is *not* a substitute for preauthorization.

Assigned counsel must obtain needed services by

the least expensive means available and within the guideline amount whenever possible. Expenses above the guideline amount may be approved if reasonable and necessary. Counsel must discontinue those services no later than when the case is disposed.

Counsel should provide relevant portions of the guidelines, including amounts and billing procedures, to prospective service providers *before* incurring any cost for services expected to be paid from public defense funds.

3.1.2 Receipts

In general, the provider must submit ~~with the payment request an original receipt or an invoice for an expense when the cost of an individual item or service is over \$25~~ unless otherwise stated in this policy. A copy of the provider's credit card statement or cancelled check may be submitted if an original receipt ~~or invoice~~ is not available. If the provider ~~does not have an original receipt or an invoice~~ has no documentation to support the expense, the provider must state in writing:

- a) what the expense was for;
- b) the amount of the expense and to whom it was paid; and
- c) why the provider does not have a receipt ~~or invoice~~.

The provider must sign and date this statement and submit it with the payment request. The provider must keep reasonable underlying records in case OPDS requires further documentation.

3.2 Types of Expenses

Expense categories are overhead, routine and non-routine.

3.2.1 Overhead

Overhead, including services performed by an employee or an independent contractor, is not reimbursable, except by contract with OPDS or in limited, *extraordinary* circumstances with the preauthorization of OPDS. Overhead, except as otherwise expressly provided in this policy, includes, but is not limited to:

- a) travel time and expenses between home and office;
- b) secretarial services;

- c) timekeeping and bill preparation;
- d) rent and utilities;
- e) office equipment and supplies;
- f) library materials;
- g) computerized legal research software, installation and monthly access fees; and
- h) paraprofessional (law clerk, legal assistant and paralegal) services.

Absent a contract, the OPDS will pay for overhead expenses as non-routine expenses *only if*,

- a) for appointed counsel, OPDS finds that
 - 1) the case will require counsel to incur a duplication of overhead expenses, where for example the court grants a change of venue and counsel requires support services at the new venue while maintaining similar services at his or her primary office; or
 - 2) the expense will be outweighed by savings in attorney fees, such as work done by a law clerk;
- b) for non-attorney providers, OPDS finds that the provider's services are reasonable and necessary and that the standard rate for such services does not include certain overhead expenses;
- c) for all providers, the OPDS preauthorizes the expense as a non-routine expense within this policy statement.

3.2.2 Routine Expenses for Assigned Counsel

Except for expenses included in a contract, OPDS will reimburse counsel or pay directly to the provider actual costs without preauthorization for the following items within the limits described below and as outlined in the Schedule of Guideline Amounts.

- a) Discovery: The custodian's actual cost of copying discovery, but not more than a reputable private vendor would charge for making copies. OPDS will not pay premiums for expedited copies where appointed counsel

reasonably could have avoided the need to expedite copies. For criminal cases, discovery is material obtained from the district attorney. For a juvenile case, discovery is material obtained from the district attorney, county juvenile department or the Department of Human Services.

For postconviction relief cases, discovery is a copy of trial-counsel's file, appellate counsel's file, the district attorney's file or the court file. Discovery material includes audio and video media, photographs and other similar items obtained from the sources described above.

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- b) Interpreter Services: For out-of-court attorney/client communication, counsel should use interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291. If no certified interpreter is available, counsel should use a qualified interpreter, as defined in ORS 45.275(8)(b). Attorney/client communication includes written communication to and from the client.

If the hourly rate for interpretation is within the guideline amount, and the service is for attorney/client communication, the services of an interpreter need not be preauthorized.

OPDS will pay the hourly rate shown in the schedule for interpreters. In addition, OPDS will pay travel time at one-half the current hourly rate and mileage at the current reimbursement rate. For interpreters whose rates exceed the guideline amount, counsel must request preauthorization from OPDS.

OPDS will pay a one-hour minimum if the service provided was verbal communication either by telephone or in person and requires less than one hour. An interpreter may not bill OPDS more than once for the same period of time. Actual time of service must be recorded even though an appointment was less than one hour and the interpreter is claiming the fee for one hour of service. Travel time may be claimed in addition to the one-hour minimum.

OPDS will pay for actual time worked for services that combine translation and transcription of written communications between the attorney and the client.

Interpreters shall bill for time and expenses on the Interpreter Fee Statement form and the Interpreter's Travel Worksheet, (Exhibit 4) and shall bill no more often than every two weeks. Counsel, or a person designated by counsel, must certify the interpreter's time by signing the Interpreter Fee Statement form. If the interpretation service is provided by telephone and the interpreter is not at the same location as counsel when the service is provided, the interpreter should indicate such on the Interpreter Fee Statement form and fill in the name of counsel for whom the service was provided.

Other interpreter services not related to attorney/client communication, such as translation and transcription of recorded interviews or interpreter services to assist an investigator, must be preauthorized.

Counsel shall not use an interpreter to deliver a message to or request information from the client unless counsel or counsel's staff person participates in the communication.

- c) Medical, School, Birth, DMV and Other Similar Records: When the cost of an individual record does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. ~~Original receipt or invoice required.~~
- d) 911 Recordings and Emergency Communication Recordings and Logs: When the cost of an item does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. ~~Original receipt or invoice required.~~
- e) Telephone Charges: Long-distance telephone charges and local collect calls from a client in a jail, prison, hospital, or other similar government institution.
- f) Photocopying and Scanning: Amounts per page as shown in the schedule. Copies made ~~by~~ or scanning services provided by a vendor must be supported by a receipt.
- g) Fax Charges: Long-distance charges for documents sent shall be paid the same as for regular long-distance telephone calls. For faxes received, ~~counsel may request reimbursement at~~ the same rate as that for in-house copies applies.

- h) Routine Mileage and Parking: Routine mileage does not include travel between counsel's office and the courthouse or other location where a hearing or judicial appearance is scheduled unless specifically authorized. The actual cost of parking, when the travel qualifies for mileage payment, may be reimbursed. An original receipt is required if the cost of parking is over \$10 for any one period.
- i) Postage:
 - 1) first-class mail. Receipt required if the cost to send an individual item exceeds \$5.00;
 - 2) express mail, only if counsel shows that express mail was reasonable and necessary and the additional expense ~~could~~was not ~~have been avoided~~caused by better planning~~counsel's delay~~;
 - = 3) messenger service other than for routine filings, only if counsel shows it was reasonable and necessary or that the method of delivery was the most economical available.
- j) Computerized Legal Research: Only fees for actual on-line time or usage may be claimed as a reimbursable expense. Documentation of on-line time must be submitted.
- k) Service of Process: ORS 21.410(1)(a) provides that no fee shall be charged to the state by the county sheriff for cases in which the party requesting service has counsel appointed at state expense. Counsel should use the most economical -method available. If the investigator for the case, who is paid from the PDS Account, provides for service, the investigator will be paid the hourly rate for time spent locating and serving or attempting to ~~serve~~serve a witness as long as the number of hours does not exceed the total hours preauthorized. If a different investigator is used for the sole purpose of providing service, the investigator will be paid the amount in the schedule for each location where service is made or attempted; ~~rather than the flat rate per subpoena.~~
- l) Lay Witness Fees and Mileage: Upon submission of documentation, OPDS will reimburse counsel the amount paid for the attendance of a lay witness as long as the

per diem amount and mileage do not exceed those set by statute. Payment in excess of the statutory amounts is a non-routine expense and requires preauthorization.

- m) Other: Similar to those described in this section or in excess of the limits stated in this policy with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Counsel should submit a written explanation with any request for payment of out-of-pocket expenses not listed in this section or in excess of the limits shown in the Schedule of Guideline Amounts unless OPDS has preauthorized those expenses.

3.2.3 Non-Routine Expenses

Except for expenses included in a contract, OPDS will reimburse counsel or other providers for non-routine public defense expenses *only* if:

- a) The expense is **authorized in advance**, *see, e.g., ORS 135.055; and either*
- b) The expense is within the guidelines; or
- c) The deviation from the guideline amount has been properly approved under Section 3.5.

Non-routine expenses include, but are not limited to:

- a) expert witness fees and expenses;
- b) investigation;
- c) mitigation;
- d) psychological, psychiatric and other medical examinations, evaluations and reports;
- e) polygraph examination;
- f) meals, lodging, airfare and rental cars.

Non-routine expenses may also include law clerk, legal assistant, or paralegal time that has been preauthorized as an expense that can be incurred outside of overhead costs.

3.2.3.1 Preauthorization Required for Non-Routine Expenses/Process to Request Reconsideration of Denials (Partial or Total)

OPDS will reimburse or pay directly to the provider non-routine expenses only if the expense

was preauthorized and is:

- a) within the guideline amounts listed in the schedule, or
- b) in excess of scheduled guideline amounts when:
 - 1) appointed counsel shows compelling circumstances that justify deviating from guideline amounts; and
 - 2) the expense is other than for transcription service for cases on appeal.

OPDS will authorize the use of an out-of-state expert only if a qualified in-state expert is not available or the use of an out-of-state expert is more economical.

A request for preauthorization of a non-routine expense must be submitted on the Request for Preauthorization of Non-Routine Expenses form (Exhibit 5). The form should be submitted via fax or email to OPDS Contract and Business Services Division for review.

Counsel must include with the form a narrative stating the date counsel was appointed, the most serious charge (if criminal), the type of service or expense requested, the reason the service or expense is necessary and reasonable for proper representation, and what results counsel expects to obtain with the service or expense requested. It is not necessary to submit an affidavit.

For aggravated murder and murder cases, once the initial approval has been given for fact and mitigation investigation, subsequent requests for additional hours for the same provider may be submitted up to 14 days past the effective date being requested. This exception applies to aggravated murder and murder cases at the trial level and to postconviction relief cases in which the underlying case had a charge of aggravated murder or murder. The requirement for preauthorization remains for all other case types and for other types of services for aggravated murder and murder cases.

If approved, OPDS will generate an authorization form which is also the provider's fee statement form.

Authorizations may only be billed against once.

If a request is denied in full or in part, OPDS will generate a partial authorization or denial. Counsel may request reconsideration by submitting to OPDS a letter requesting reconsideration and including additional support for counsel's request. If OPDS denies in whole or in part the request for reconsideration, counsel may appeal the denial to the presiding judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case. Counsel must notify OPDS in writing that the matter is being appealed. The decision of the judge is final.

3.2.3.2 Advances

OPDS will advance preauthorized expenses only when it finds an advance is the only way a service or document may be obtained. Advances will be authorized only in extraordinary circumstances and will be made only to assigned counsel.

To request OPDS to advance funds, counsel should:

- a) follow the procedures in Section 3.3; *and*
- b) specify the date by which counsel needs the funds.

OPDS requires two weeks lead time to process payment for an advance.

3.2.3.3 Postauthorization of Non-Routine Expenses

Under limited circumstances, OPDS will pay non-routine expenses authorized after the expense has been incurred. Counsel must explain, when making a request to OPDS for postauthorization of an expense, what exigent circumstances existed requiring counsel to incur the expense before requesting preauthorization or before OPDS could act on the request.

3.2.3.4 Compliance with Applicable Requirements

Investigators, mitigation experts and other expert providers who perform case-related services in another state or country are responsible for complying with any applicable requirements, including but not limited to licensing, that another state or country may impose for the performance of investigative or other services in those jurisdictions.

Out-of-state investigators, mitigation experts and other experts approved to perform services in Oregon are responsible for complying with any

applicable requirements, including but not limited to licensing, that the State of Oregon may impose for the performance of investigative or other services.

3.3 Procedures to Request Payment

3.3.1 Case Expenses, In General

For reimbursement of routine expenses incurred or already paid *by counsel* and not yet reimbursed, counsel must submit payment requests with the request for attorney fees. See Sections 2.3.

Non-attorney providers should submit payment requests directly to OPDS. See Section 3.3.2.

OPDS allows non-attorney providers to bill directly for preauthorized non-routine expenses such as for transcript services, investigation, expert witnesses, medical and psychiatric evaluations. OPDS does *not* allow direct billing from non-attorney providers for advances.

3.3.2 Use of Non-Routine Expense Preauthorization and Fee Statement Form

Non-attorney providers should submit bills for services directly to OPDS. To request payment, non-attorney providers must use the Non-Routine Expense Preauthorization and Fee Statement form generated by OPDS when the service or expense is preauthorized. A Travel Claim Worksheet, which details travel expenses, should be completed and submitted with the fee statement form if travel expenses are being claimed for reimbursement.

3.3.3 Services at the Request of Assigned Counsel

If a provider provides services *at the request of assigned counsel*, the provider should obtain *from the attorney* a copy of the Non-Routine Expense Preauthorization and Fee Statement form for the services, which is generated by OPDS when the service is approved.

The provider must fill in the provider's name, address, tax identification number, phone number, service rate (if applicable) and billed amount. The certification statement at the bottom of the form must be signed and dated. Except for transcript service providers submitting

a fee statement for transcription, the provider must attach a detailed invoice that describes the services provided *and* specifies the date(s) of service. Transcript service providers must indicate on the fee statement form the number of pages and the cost per page.

3.3.4 Missed Appointments

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

- a) when a client is responsible for missing an appointment because of illness, injury, lack of capacity, or other good cause that:
 - b)
 - 1) prevented the timely cancellation of the appointment; and
 - 2) is not attributable to another party, to counsel, or to the court; *or*
- b) when the client requesting the appointment was personally responsible for the missed appointment and cannot show good cause; however, OPDS will not pay for a second or later appointment for the same purpose.

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

3.4 Guideline Amounts for Non-Routine Expenses

The amounts shown in the Schedule of Guideline Amounts (Exhibit 3), are *guideline amounts* only, for most expenses. See Section 3.5 on how to request deviation from these guidelines.

3.4.1 Transcript Services

3.4.1.1 Rate

For the purposes of this policy, transcription is the process of converting a stenographic or electronically recorded spoken word to a written document.

For transcripts of court proceedings or other reporting services when requested by appointed counsel, OPDS will pay *no more* than the scheduled rate per page for the creation of the transcript. Additional transcripts produced are paid at the copy rate shown in the schedule. In circumstances where a transcript of a court

proceeding has already been prepared (e.g., co-defendants tried together, consolidated hearings for multiple cases), OPDS will compensate the transcriber for production of a subsequent "original" transcript at the guideline rate for copies of transcripts.

3.4.1.2 No Appearance or Other Fees for Transcripts

Except as provided below, OPDS will *not* pay any additional fees, such as:

- a) costs incurred attending depositions;
- b) appearance fees;
- c) reviewing notes, or similar tasks related to taking testimony or preparing transcripts.

The OPDS will pay additional fees *only* if before the expense is incurred a deviation is granted by OPDS based on compelling circumstances.

3.4.1.3 Number of Originals/Copies

Except for transcripts for cases on appeal, OPDS will pay for one original but no copies when appointed counsel is the first person to request transcription.

When another party or the court is the first to request transcription and appointed counsel for the person requests a copy, public defense funds will pay for one copy only.

In an appeal where an appellant/petitioner who qualifies for a state-paid transcript has requested a transcript, OPDS will pay for the creation of one original and two copies. When more than one appellate case is filed resulting from the same trial court proceeding or in juvenile appeals where there are multiple parties on appeal, OPDS will pay for a sufficient number of copies so that counsel for each party to the case has one copy of the transcript.

3.4.2 Forensic Investigation

~~Not to exceed the hourly rate shown in the schedule.~~ The hourly fee includes all overhead expenses. Routine case-related mileage may be reimbursed. Parking costs, ~~when the travel qualifies for mileage,~~ may be reimbursed in an amount not to exceed the guideline amount. ~~Other travel expenses must be preauthorized.~~

~~Counsel should consult first with the state crime lab and the state medical examiner to determine~~

~~whether counsel requires extensive independent forensic services.~~ A receipt for parking is required if the amount for any period exceeds \$10.

3.4.3 Handwriting Analysis

Not to exceed the hourly rate shown in the schedule. Travel expenses, including mileage, must be preauthorized.

3.4.4 Investigation/Mitigation

Not to exceed the hourly rate shown in the schedule. The hourly rate includes all overhead expenses, including secretarial services. Time should be billed in tenths of hours. OPDS will pay for investigation and mitigation services only:

- a) when it has been determined before the expense is incurred that investigation is reasonable and necessary *and* that an investigator would be the most economical;
- b) when counsel is unable to proceed without that investigation.

All requests for and approvals of investigative services must include a *conservative*, projected maximum amount and number of hours. If OPDS finds that the case may require extensive investigation, OPDS will approve investigation in conservative increments.

OPDS will reimburse the following out-of-pocket expenses for investigators:

- a) Actual cost of long-distance telephone calls and collect calls from a client.
 -
- b) The actual cost of scanning or copying documents, with detailed documentation and within the guideline amounts. Reimbursement for services provided by a vendor must be supported by a receipt.
- c) Case-related mileage at the guideline amount. Mileage will be reimbursed for private vehicle use for both in-state and out-of-state travel unless commercial transportation is more economical. See section 3.4.10.4. Parking costs when incurred during routine travel may be reimbursed in an amount not to exceed the guideline amount.
- d) Medical, school, birth, and other similar records when the cost of an individual record

does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. ~~Original receipt or invoice required.~~

- e) 911 recordings and emergency communication recordings and logs when the cost of an individual item does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. ~~An original receipt or invoice is required.~~
- f) Film, film developing, photos, audio and video tapes, compact discs, exhibit material and other similar expenses when the cost of an individual item or group of items from one provider does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. ~~Original receipt or invoice required.~~
- g) In-house production of digital photographs at the guideline amount.
- h) Other items similar to those described in this section with proper documentation that shows the expense to be both reasonable and necessary and properly payable from public defense funds. Provider should submit a written explanation with any request for payment of out-of-pocket expenses not listed in this section or in excess of the limits shown in the Schedule of Guideline Amounts unless OPDS has preauthorized those expenses. ~~Original receipt or invoice required if item is obtained from an outside vendor.~~
- i) Fax transmittal at the rate for regular long-distance telephone calls. For faxes received, provider may request reimbursement at the same rate as for in-house copies.
- j) Postage or shipping costs. Original receipt ~~or invoice~~ required if the cost to send an individual item is over \$5.00.

3.4.5 Paraprofessionals

When OPDS makes the findings required in Section 3.2.1, it will reimburse counsel for paraprofessional services as a non-routine expense at the rate shown in the schedule. Counsel should include in the request for this service a description of the tasks to be assigned. Paraprofessionals include law clerks, legal assistants, paralegals, and trial assistants.

Requests for payment must include the following supporting documents:

- a) time records listing the service dates, time expended in tenths of hours, and tasks performed on the case by the paraprofessional on each date listed; *and*
- b) counsel's statement and the paraprofessional's statement certifying that the time records are accurate.

3.4.6 Psychiatrists, Physicians, Psychologists and Other Experts

3.4.6.1. Hourly Rate

OPDS will pay the rates shown in the schedule. These rates include all overhead. Reimbursement for travel expenses must be specifically preauthorized. When a medical expert is required to testify, the trial court and counsel should accommodate these witnesses, whenever possible, by taking testimony out of order.

3.4.6.2 Standby Fees

OPDS will pay standby fees for experts only when the court or opposing counsel is responsible for incurring the standby expense. For example, the trial court refuses to take testimony out of order or grants opposing counsel's belated request for a continuance over appointed counsel's objection after the expert is on standby.

3.4.7 Nonresident Attorneys

OPDS will pay the rate shown in the schedule or the minimum public defense hourly rate of the state or county in which the attorney resides, whichever is more.

3.4.8 Polygraph

OPDS will pay an amount not to exceed the total shown in the schedule for examination and report. Reimbursement for travel expenses must be specifically preauthorized.

OPDS will authorize polygraph services only when the service is necessary to an adequate trial defense or negotiated disposition. OPDS will not authorize polygraph expenses for testing the truthfulness of communications between a client and appointed counsel.

3.4.9 Secretarial

When OPDS makes the findings required in

Section 3.2.1, OPDS will reimburse counsel for secretarial services as non-routine expenses, not to exceed the hourly rate shown in the schedule.

3.4.10 Travel Expenses

OPDS will pay for travel expenses up to the amounts shown in the schedule. The reimbursement amounts for lodging are limited to actual costs or the amount in the schedule, whichever is less. The maximum amounts for lodging in the schedule include tax and other assessments directly related to the cost of the room.

The person requesting reimbursement must submit original receipts ~~or invoices~~ for all expenses except meals with a completed Travel Claim Worksheet and the fee statement.

~~The following information does not apply to lay witnesses, whose per diem and mileage rates are set by statute.~~

3.4.10.1 Preauthorization Required

Mileage, meals, lodging, airfare and other similar travel costs are non-routine expenses except for mileage and parking defined as routine expenses for counsel, investigators and forensic experts. See Sections 3.2.2, 3.4.2 and 3.4.5. OPDS must review and approve proposed travel *before* the expenses are incurred.

3.4.10.2 Travel Time

OPDS will reimburse providers for travel time when the provider could not reasonably spend the time working on the case. If the provider works or could reasonably work on the case while traveling, OPDS will pay only for the time spent working. OPDS will not pay for the provider's time spent commuting from the provider's home to the office.

3.4.10.3 Airfare

Arrangements for airfare must be made through OPDS. When a request for airfare is preauthorized, OPDS will notify the travel agency having the state contract that the expense for the provider has been approved. OPDS will provide the travel agency with the pertinent information regarding the trip. The attorney or other provider must contact the travel agency to make travel arrangements. Authorizations for airfare expire after 60 days. The cost of airfare is billed directly to OPDS.

If a provider requests authorization and receives approval to purchase a ticket outside the state contract, OPDS will approve such a request only in accordance with the state contracts for airfare. An exception to purchase a ticket outside the state contract must be sought and granted prior to incurring the expense. If an exception is approved, the provider should also obtain cancellation insurance. Additional costs incurred because the provider failed to obtain cancellation insurance are not reimbursable.

3.4.10.4 Car Rental

Arrangements for a rental car may be made through the travel agency having the state contract for airfare. OPDS will reimburse the provider for a mid-size car. Rental of any other size or type of vehicle must be specifically approved. The provider should rent from the least expensive rental agency. In addition to the cost of the rental car, OPDS will reimburse for fuel upon submission of an original receipt. The provider is responsible for any insurance costs related to the car rental. Those costs will not be reimbursed.

3.4.10.5 Mileage and Parking

Reimbursable mileage is paid at the guideline rate shown in the schedule. Parking costs may be reimbursed, without specific preauthorization, if the travel qualifies for mileage reimbursement or if other travel expenses have been preauthorized. Submission of an original receipt is required if the parking cost is more than \$10.00 for any one period of time.

If a private vehicle is used for a trip when the use of a rental car or air travel is an option and is more economical than personal vehicle mileage, OPDS will pay the traveler the amount of the most economical method of travel. When determining the amount to pay, OPDS will consider the overall cost of the trip, including travel time.

3.4.10.6 Meals

Generally, a meal allowance will be approved only when lodging is authorized. Approval for meals for day trips may be approved when specifically requested and if the traveler's departure or return time and the distance traveled are such that lodging would be justified. Receipts for meals are **not** required.

If the traveler does not wish to record departure and return times, the schedule below shall apply.

First day of travel - the allowance for dinner as shown in the Schedule of Guideline Amounts

Second and subsequent full days of travel - the full per diem as shown in the Schedule of Guideline Amounts

Last day of travel - the allowance for breakfast and lunch as shown in the Schedule of Guideline Amounts

If the person traveling wishes to record departure and return times, the amount of the meal allowance on the first and last day of travel is ~~dependant upon~~ determined by the time the traveler departs and returns. The travel times below determine what meal allowance can be paid if the person traveling is away during certain times of the day. The allowance for a particular meal is shown in the Schedule of Guideline Amounts. The following times apply:

Breakfast allowance - Leave before 6:00 a.m. or return after 9:00 a.m.

Lunch allowance - Leave before 11:00 a.m. or return after 2:00 p.m.

Dinner allowance - Leave before 5:00 p.m. or return after 8:00 p.m.

3.4.10.7 Lodging

OPDS must preauthorize lodging expenses for all providers. Original itemized ~~invoices~~ receipts must be submitted with the travel worksheet and fee statement.

- 1) In-state Lodging. Total cost of lodging, including tax and other assessments related to the cost of the room not to exceed the amount shown for each county in the Schedule of Guideline Amounts. The traveler should request a government or commercial rate.
- 2) Out-of-state Lodging. An amount considered to be reasonable for a standard room for the area. The traveler should request a government or commercial rate.
- 3) Non-commercial Lodging. The amount shown for non-commercial lodging in the

Schedule of Guideline Amounts may be claimed if a traveler ~~spends the night with a friend or relative or arranges for some other type of~~ non-commercial accommodations. The traveler should submit a brief written explanation as to the type of alternate accommodation used unless the alternative accommodation was specifically authorized.

3.4.11 Client Clothing

OPDS may authorize the purchase of clothing for a client if the client needs appropriate attire for court appearances. Counsel agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is available prior to submitting a request to OPDS. (Contact OPDS for a current list of contractor's with "clothing rooms".) If counsel receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case. ~~Receipts for clothing purchased are required for reimbursement.~~ Dry cleaning or commercial laundering of purchased or borrowed clothing, prior to return or donation to a "clothing room", is considered a routine expense and may be reimbursed when supported by a receipt.

3.5 Requests for Deviation from Case Expense Guidelines - Timely Preauthorization Required

OPDS may grant a deviation from the expense guidelines. Counsel may request a deviation for these expenses *only* before the expenses are incurred. OPDS may grant deviation from the expense guidelines only when:

- a) OPDS finds the expense is reasonable and necessary; *and*
- b) counsel requests the deviation in writing before incurring the expense or explains what exigent circumstances existed requiring counsel to incur the expense before requesting the preauthorization or deviation (see Section 3.2.3.3); *and*
- c) the request specifies the circumstances that compel increased expenses, such as the inability to find any local competent provider to render the service within the guideline amount; *and*
- d) ~~the~~ OPDS issues *written* authorization for the expense at the higher rate *before* the expense is incurred or issues a proper late

authorization under Section 3.2.3.3.

4. BILLING DISPUTE RESOLUTION

When OPDS approves less than the amount requested by a provider, OPDS will send to the provider a Notice of Adjustment to Fee Statement (Exhibit 6) if the amount of the adjustment is more than \$5.00.

The notice will include the amount requested, the amount to be paid and describe the reason(s) for the adjustment and the right to request reconsideration.

Within 21 calendar days of the date of the notice, the provider may request reconsideration by submitting to OPDS an explanation of the facts and reasons to support the request, and supporting documents, if any.

Within 21 calendar days of the date the request for reconsideration is submitted, the executive director of OPDS, or the person designated by the executive director, will review the request and issue a final determination. A notice shall inform the provider that OPDS either has granted the request for reconsideration or has denied the request in whole or in part for the reasons stated in the original Notice of Adjustment or for other reasons, which OPDS will list in the notice.

The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

If OPDS denies in whole or in part the request for reconsideration, provider may appeal the denial to the presiding judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case. A motion requesting the court's review of the disallowance must be filed within 21 days of the date of the reconsideration letter from OPDS to the provider. The court will notify the provider and OPDS in writing when a decision has been made. The decision of the judge is final.

5. CONFIDENTIALITY OF BILLING AND NON - ROUTINE EXPENSE INFORMATION

~~Statutes effectively prohibit OPDS from disclosing information regarding the cost of representation of a client or requests for~~In order for OPDS to carry out its obligations under ORS 135.055, ORS 151.216 and other statutes regarding payment of counsel and authorization and payment of non-

routine expenses in public defense cases, it is necessary for OPDS to receive information that may be confidential or privileged, or both. ORS 135.055(9) prohibits disclosure of requests and administrative orders for preauthorization of non-routine fees and expenses, and billings for such fees and expenses, to the district attorney before the case concludes. See, e.g., ORS 135.055 conclusion of the case. ORS 135.055(10) permits disclosure to the district attorney of the total amount of moneys determined to be necessary and reasonable for non-routine fees and expenses at the conclusion of the trial in the circuit court.

ORS 40.255(5) provides that the lawyer-client privilege is maintained for communications made to OPDS for the purpose of seeking preauthorization for, or payment of, non-routine fees or expenses.

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

In light of the foregoing statutory provisions, the PDSC adopts the following policy.

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

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

f) ~~the court unseals the records by written order.~~

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

a) ~~to appointed counsel or appointed counsel's client on, except as follows:~~

1) It may release, upon request at the conclusion of the trial, the total amount of moneys paid for representation in the case.

2) It shall disclose information regarding non-routine expense requests in a particular case and the cost of representation of a client to: the attorney who represents or represented the client in the particular case; the attorney who represents the client in a matter arising out of the particular case; or upon written request, ~~or~~

b) ~~pursuant to written court order.~~

~~the client, except that OPDS shall not disclose information to the client that it is prohibited from disclosing under state or federal law.~~

3) This policy does not prohibit OPDS from disclosing statistical information that cannot be identified ~~to~~with any particular case.

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

4) OPDS may disclose to appropriate authorities information regarding non-routine expense requests and the cost of representation when such information is ~~confidential~~reasonably believed to be evidence of, or relevant to, alleged criminal activity on the part of the court-appointed attorney or other OPDS-paid provider.

5) OPDS shall disclose information regarding the cost of representation as required by law.

**EXHIBIT 1.
PUBLIC DEFENSE PROVIDER'S FEE STATEMENT
FOR ATTORNEY FEES AND ROUTINE EXPENSES**

(The fee statement for non-routine expenses is included in the preauthorization for such expenses.)

County/Court _____

Case Name _____ Case Number(s) _____

1. APPOINTMENT INFORMATION

Client _____

Appointed Counsel _____ OSB Number _____

Appointment Date _____ Appointment Type _____

Disposition Date _____ Disposition Type _____

2. PROVIDER INFORMATION

Provider's Name _____ Tax ID No. _____

Mailing Address _____ Phone No. _____

3. BILLING INFORMATION

<u>Code</u>	<u>Description</u>	<u>Hrs (in 0.1) or Quantity</u>	<u>Rate</u>	<u>Amount Billed</u>
4602	Attorney Fees	_____	_____	\$ _____
4601	Routine Expenses	_____	_____	\$ _____
4635	Mileage	_____	_____	\$ _____
4609	Discovery	_____	_____	\$ _____
4610	Other	_____	_____	\$ _____
			TOTAL	\$ _____

PDSC use only
<u>Amount Approved</u>
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____
\$ _____

I certify that the information above and in the supporting detail is true. I have not received and will not accept direct or indirect compensation for these services other than as approved by PDSC or authorized by contract.

Date _____ Signature _____

Send completed form and supporting documentation to:
Or fax to (503) 378-4462 if amount requested does not include expenses for which an original receipt must be submitted.

Accounts Payable
Public Defense Services Commission
1175 Court Street NE
Salem, OR 97301

INSTRUCTIONS FOR ATTORNEY FEES AND ROUTINE EXPENSES FORM

You must submit this form to OPDS to request payment, including advances, for fees or expenses to be paid from the Public Defense Services Account. The codes used on this form for appointment type and disposition type are listed after these instructions.

Caption

"Case Name" is the name under which the case was filed. If you represent a parent in a juvenile case, the case name is "IN RE: CHILD'S NAME".

Section 1, Appointment Information

"Client" is the name of the person you represent. For a juvenile case where you represent a parent, fill in the parent's name. The "Appointment Type" is the code which best describes the most serious charge involved in the case. A Measure 11 appointment type will be the most serious charge, even when there are other charges of a higher class. For example, a case has a Class B Measure 11 charge and a non-Measure 11 Class A felony charge. The appointment type code should be "BM11". A list of the appointment types and their ranking follows these instructions.

If counsel represented a client in more than one case and the cases were disposed close in time to each other, counsel should submit one fee statement and supporting documentation for all cases.

Section 2, Provider Information

The "Provider's Name" is the name of the person requesting payment. The "Tax ID No." is the provider's federal tax ID number or social security number if the provider does not have a federal tax ID number.

Section 3, Billing Information

Time should be reported in 0.1 (tenths) of hours. Hourly rates higher than the scheduled rates set forth in the Schedule of Guideline Amounts, Exhibit 3 to this policy, must have been pre-approved by OPDS. OPDS will complete the "Amount Approved" column.

Case expenses fall into one of the four categories listed under "Attorney Fees". Those expenses not itemized in this section are generally "Routine Expenses" expenses which can be grouped and entered as one dollar amount. A breakdown of the items included in the routine expense category should be shown in the provider's backup documentation with a cost per unit where applicable (e.g., 20 copies at 5 cents each). If the cost of an item or service is higher than the guideline amount, the provider should attach an explanation to justify a higher cost. Original receipts, invoices or a copy of a cancelled check must be submitted to support the claim for reimbursement of services or goods provided as required by the policy.

*Non-Routine Expenses - OPDS **MUST** PREAUTHORIZE NON-ROUTINE EXPENSES. Descriptions of non-routine expenses can be found in the PDPPP. Requests for payment of preauthorized non-routine expenses must be made by submitting the Non-Routine Expense Preauthorization and Fee Statement form which is generated when OPDS preauthorizes the expense.*

Certification

The provider must sign and date the certification section. Fee statements that are not signed or dated will be returned to the provider and not processed.

Submission to OPDS

If you are not submitting a fee statement which includes reimbursement of expenses for which an original receipt is required, you may fax the completed fee statement form along with the backup documentation to (503) 378-4462. All other fee statements must be mailed to Accounts Payable, Public Defense Services Commission, 1175 Court Street NE, Salem, OR 97301.

**APPOINTMENT TYPE CODES AND RANKING
FOR TRIAL AND APPELLATE CASES**

Rank	Code	Description
1	CMUR	Aggravated Murder, Adult Defendant
2	PCRA	Aggravated Murder Postconviction Relief - Sentence of Death
3	PCR	All other Postconviction Relief cases
4	MURD	Murder and Juvenile Charged with Aggravated Murder
5	AM11	Measure 11 Class A Felony
6	BM11	Measure 11 Class B Felony
7	JM11	Measure 11 A/B Felony - 15, 16 or 17 year old juvenile charged as adult
8	AFEL	Class A Felony
9	BFEL	Class B Felony
10	CFEL	Class C Felony
11	DFEL	Felony Driving Under the Influence
12	DVIO	Domestic Violence Assault IV Felony
13	UFEL	Unclassified Felony
14	DUIS	Misdemeanor Driving Under the Influence
15	MISS	Misdemeanors (Excluding DUIS/DWSS/OTMS and contempt)
16	DWSS	Driving While Suspended/Revoked Misdemeanor
17	OTMS	Other Traffic Misdemeanors
18	SCDV	Show Cause Diversion
19	EXTR	Extradition
20	CONT	Contempt (Includes misdemeanor contempt. Excludes FAPA & SUPP)
21	FAPA	Family Abuse Prevention Act Contempt
22	SUPP	Support Contempt
23	MHMI	Civil Commitment
24	HC	Habeas Corpus
25	PCR	Post-Conviction Relief (except Aggravated Murder PCR)
26	FPV	Felony Probation Violation
27	DPV	DUII Probation Violation
28	MPV	Misdemeanor Probation Violation
29	OTHR	Other (Please specify type of appointment or case.)
30	JUTP	Termination Parental Rights/Contested Adoption - Parent
31	JUTC	Termination Parental Rights/Contested Adoption - Child
32	JDEP	Juvenile Dependency - Parent
33	JDEC	Juvenile Dependency - Child
34	JPDP	Juvenile Post-disposition Review Hearing - Parent
35	JPDC	Juvenile Post-disposition Review Hearing - Child
36	JUDF	Juvenile Delinquency - Felony
37	JUDM	Juvenile Delinquency - Misdemeanor
38	JUDO	Juvenile Delinquency - Other (Modification, Emancipation, etc.)
39	JPV	Juvenile Delinquency - Probation Violation

DISPOSITION TYPE CODES AND DESCRIPTIONS

Code	Description
ACQC	Acquitted - Court Trial
ACQJ	Acquitted - Jury Trial
ADAK	Affirmed Without Opinion
ADAL	Affirmed On Appeal
ADAM	Affirmed, Reversed & Remanded in Part
CLCC	Convicted of Lesser Charge - Court Trial
CLCJ	Convicted of Lesser Charge - Jury Trial
CNVC	Convicted of Highest Charge - Court Trial
CNVJ	Convicted of Highest Charge - Jury Trial
COM	Committed
CONS	Consolidated for Plea
CONT	Continued (e.g., probation violations)
DENY	Denied, Petition or Writ
DIVR	Diversion/Conditional Discharge
DSCC	Civil Compromise
DSM	Dismissed
DSMA	Dismissed on Appellant's Motion
DSMC	Dismissed by Appellate Court (court's own motion)
DSMR	Dismissed by Respondent
DSMS	Dismissed by Stipulation
EMAN	Emancipated
EXTR	Extradited
GRNT	Granted, Petition or Writ
INSA	Guilty But Insane
INTM	Interim Billing
JUDP	Jurisdiction Found/Disposition Ordered
JUNF	Jurisdiction Not Found
MSTR	Mistrial
OTHR	Other Disposition
OTPA	Other Post-Adjudicative, Post-Commitment, Or Post-Conditional Release
PLGY	Pled to Highest Charge
PLLC	Plead to Lesser Charge
PRT	Parental Rights Terminated
RCOM	Recommitted
REVK	Revoked
RMND	Remanded
RMWR	Remanded to Trial Court
RVR	Reversed
RVRD	Reversed and Remanded
RVWO	Reversed Without Remand
TERM	Terminated
WAIV	Waived Extradition
WTBN	Bench Warrant
WTHD	Withdrew

EXHIBIT 2. TRAVEL CLAIM WORKSHEET FOR NON-ROUTINE PREAUTHORIZED EXPENSES

Provider's Name: _____

Tax ID No.: _____

County: _____ Case No.: _____

Case Name: _____

Authorization No.: _____

Date	Departure From (City)	Destination (City)	Depart Time	Return Time	Number of Miles	Mileage Amount	Meal Allowance	Lodging Amount	Total
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
						\$	\$	\$	\$
TOTALS						\$	\$	\$	\$

Date	Description of Other Travel Expense	Amount
		\$
		\$
		\$
		\$
		\$
	TOTAL	\$

The total amount for each type of travel expense and a description of the type of other travel expense should be entered on the fee statement form. Attach this travel expense worksheet to the fee statement form when submitted.

EXHIBIT 3. SCHEDULE OF GUIDELINE AMOUNTS

ATTORNEY FEES - TRIAL AND APPELLATE LEVEL CASES		
Non-capital Case	\$45 per hour	Includes juveniles charged with aggravated murder.
Capital Case, Lead Counsel	\$60 per hour	See definition in section 2.1.2
Capital Case, Co-counsel	\$45 per hour	Initial cap of 300 hours for trial-level cases. See definition in section 2.1.2.
Out-of-State	\$45 per hour	Or the minimum public defense hourly rate of the state in which the attorney resides, whichever is more.
NON-ATTORNEY FEES (Must be preauthorized by OPDS)		
Paraprofessional	\$10 per hour	
Transcription	\$2.50 per page for original \$0.25 per page for copies	Reimbursement for postage with receipt.
Guardian Ad Litem	\$45 per hour maximum	For attorney and non-attorney providers
Handwriting Expert	\$90 per hour	
Forensic Expert	\$90 per hour	Mileage paid without specific preauthorization.
Investigator	\$28 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Fact Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$39 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Mitigation Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$44 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Psychiatrist, Psychologist, Physician, Other Expert	\$110 per hour	Travel expenses must be specifically preauthorized.
Polygraph Exam	\$200 – in office \$300 – in custody, in county \$350 – all others	Flat fee for exam and report.
INTERPRETER FEES (For attorney/client communication, does not require preauthorization by OPDS)		
Qualified Interpreter	\$25.00 per hour	Travel time at one-half the hourly rate and mileage at the guideline rate.
Certified Interpreter	\$32.50 per hour	
ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (Preauthorization not required)		
Blank CD/DVD, case and label	\$1.00 each	For media, case and label
Film Developing/Photograph Production, In-house and Vendor	Actual cost if vendor. Photos in-house at \$0.40 for 3 x 5 or 4 x 6. \$1.20 for full page.	Receipt required if produced by vendor.
Photocopies and Scanning, In-house	Maximum \$0.05 per page	Also applies to in-coming faxes.
Photocopies and Scanning by Vendor	Maximum \$0.10 per page	Receipt or invoice required.

Photocopies, State Court/Other Government Entities	Maximum \$0.25 per page	Certification costs also paid if necessary. Receipt required.
Mileage -3/19/08 through 7/31/08 From 8/1/08 through 1/31/09 From 2/1/09 through 12/31/09 from <u>2/1/09 through 12/31/09</u> From 1/1/10 through 12/31/10 <u>From 1/1/11 to 4/16/12</u> <u>From 4/17/12 to 12/31/2012</u> From 4/1/11 <u>1/1/2013</u> to present	Maximum \$0.505 per mile Maximum \$0.585 per mile Maximum \$0.55 per mile Maximum \$0.50 per mile Maximum \$0.51 per mile <u>Maximum \$0.555 per mile</u> <u>Maximum \$0.565 per mile</u>	Excludes counsel's trips between office and courthouse unless specifically authorized.
Parking - routine travel	Actual cost	If trip qualifies for mileage payment. Receipt required if over \$10 per period.
Telephone	Actual cost	Long-distance charges, including those for faxes, and charges for collect calls from client held at an institution.
Discovery	Actual cost when supported by invoice or receipt	Material obtained from district attorney, DHS or county juvenile department.
Postage	First-class mail	
Computerized Legal Research	Actual cost when supported by invoice or receipt or \$0.40 per minute	Only actual on-line usage paid. No payment for monthly service fees. Provider may submit log of actual on-line time.
OJIN Online Searches	\$0.25 per minute of usage	When provider has subscription for OJIN.
Service of Process	\$30 per location of service	Use of sheriff's office is encouraged.
Special Delivery	UPS, Federal Express, USPS Express mail, messenger service	Explanation and receipt required. See Section 3.2.2 of policy for details.
Other Items		See Section 3.2.2 of policy for details.
TRAVEL EXPENSES (Must be preauthorized by OPDS)		
Meal Allowance Amounts - When on overnight business and departure and return times are not reported	\$20 for first day of travel \$19 for last day of travel \$39 for each full day between first and last	May qualify for additional allowance for first and last day depending on time of departure and return if traveler notes times on worksheet. Receipts are not required.
Breakfast - When on overnight trip	Maximum \$9.00	If leaving home or office prior to 6:00 a.m. or return is after 9:00 a.m.
Lunch - When on overnight trip	Maximum \$10.00	If leaving home or office prior to 11:00 a.m. or return is after 2:00 p.m.
Dinner - When on overnight trip	Maximum \$20.00	If leaving home or office prior to 5:00 p.m. or return is after 8:00 p.m.
Mileage (other than routine mileage for counsel, investigators and forensic experts)	See date ranges and rates listed above.	Must be preauthorized for providers other than attorneys, investigators and forensic experts.
Parking	Actual cost	Receipt required if over \$10.

Rental Car	Various	Mid-size vehicle plus fuel with submission of original receipts. Insurance costs will not be reimbursed.
Airfare	Various	Through state contract. Contact OPDS.
LODGING, MAXIMUM PER NIGHT, INCLUDING TAX (Must be preauthorized by OPDS for all providers)		
Maximum \$90		
Maximum \$100		
Maximum \$110		
Baker Benton Crook Douglas Gilliam Grant Harney	Jefferson Lake Linn Malheur Marion Morrow Polk	Sherman Umatilla Union Wasco Wallowa Wheeler Yamhill
Clackamas Clatsop Columbia Coos Curry Deschutes Hood River	Jackson Josephine Klamath Lane Tillamook Washington	Lincoln Multnomah
Out-of-state Lodging	A rate for a standard room that would be within the guidelines for in-state lodging and for which the cost would be deemed reasonable for the area. Traveler should request government or commercial rate.	
Non-commercial Lodging	\$25 allowance when traveler uses alternative accommodations. Provide a short written explanation.	

**EXHIBIT 4. PUBLIC DEFENSE INTERPRETER'S FEE STATEMENT SUMMARY
FOR OUT-OF-COURT SERVICES (ATTORNEY/CLIENT COMMUNICATIONS)**

(The fee statement for non-routine expenses is included in the preauthorization for such expenses.)

1. PROVIDER INFORMATION

Provider's Name _____

Mailing Address _____

Phone No. _____ Federal Tax ID or SSN _____

2. BILLING INFORMATION

For cases filed in the county of _____ (Complete one summary for each county.)

Number of detail pages submitted with this summary: _____

For interpreter services for the period: _____ to _____

<u>Code</u>	<u>Description</u>	<u>Hrs (in 0.1) or Quantity</u>	<u>Rate</u>	<u>Amount Billed</u>
4613	Interpretation Fees	_____	_____	\$ _____
4613	Travel Fees (At ½ the regular hourly rate)	_____	_____	\$ _____
4635	Mileage	_____	_____	\$ _____
			TOTAL	\$ _____

PDSC use only Amount Approved \$ _____ \$ _____ \$ _____ \$ _____

I certify that the information above is true. I have not received and will not accept direct or indirect compensation for these services other than as approved by PDSC or authorized by contract.

Signature _____

Date _____

Send completed form and supporting documentation to: Accounts Payable
Public Defense Services Commission
1175 Court Street NE
Salem, OR 97301

Or fax to (503) 378-4462

WORKSHEET INSTRUCTIONS: Use a separate worksheet for each different county. Complete one section for each client for whom services were provided. Enter actual start and end times, even if a 1-hour minimum is claimed. All time should be entered in tenths (6 minute increments) and may be rounded up to the nearest tenth. Travel time may be claimed in addition to the 1-hour minimum for interpreter services. Mileage is paid at OPDS guideline rate. Transfer the total amounts claimed from the worksheet(s) to the Interpreter's Fee Statement Summary. For more information regarding policies, procedures and guideline rates, visit OPDS website at www.oregon.gov/opds.

INTERPRETER WORKSHEET FOR OUT-OF-COURT SERVICES (ATTORNEY /CLIENT COMMUNICATION)

Provider's Name: _____

Page ____ of ____ pages submitted with fee statement summary

County:			Case Number:			Client's Name:
Date	Start Time	End Time	Interpretation Time	Travel Time	Number of Miles	Printed Name of Counsel/Designee
						Signature of Counsel/Designee*
County:			Case Number:			Client's Name:
Date	Start Time	End Time	Interpretation Time	Travel Time	Number of Miles	Printed Name of Counsel/Designee
						Signature of Counsel/Designee*
County:			Case Number:			Client's Name:
Date	Start Time	End Time	Interpretation Time	Travel Time	Number of Miles	Printed Name of Counsel/Designee
						Signature of Counsel/Designee*
County:			Case Number:			Client's Name:
Date	Start Time	End Time	Interpretation Time	Travel Time	Number of Miles	Printed Name of Counsel/Designee
						Signature of Counsel/Designee*
TOTALS THIS PAGE:						

*By signing this fee statement, assigned counsel for the client, or the assigned counsel's designee, certifies that the information on this form pertaining to the services provided by the interpreter for counsel's client is accurate.

EXHIBIT 5. NON-ROUTINE EXPENSE REQUEST FORM

C O N F I D E N T I A L

REQUEST FOR PREAUTHORIZATION OF NON-ROUTINE EXPENSES (ORS 135.055(3))

A detailed justification stating the reason the requested service/expense is necessary and reasonable
MUST be submitted with this form.

Email to NRE@opds.stae.or.us OR Fax to 503-378-4462

Email is the preferred method of delivery. If you email or fax, please do not also mail.

County: _____ Case Type: _____ Case Number: _____ Retained
Appointed

Client's First Name: _____ Client's Last Name: _____

Attorney Name: _____ Bar #: _____ Email: _____

Provider's Name: _____ Provider's City: _____ Provider's Phone: _____

I. SERVICE OR ITEM REQUESTED

- | | | | |
|--|-------------------------------------|--------------------------------------|--|
| <input type="checkbox"/> Investigation | <input type="checkbox"/> Forensic | <input type="checkbox"/> DNA | <input type="checkbox"/> Psychosexual Evaluation |
| <input type="checkbox"/> Psychiatric/Psychological | <input type="checkbox"/> Polygraph | <input type="checkbox"/> Mitigation | <input type="checkbox"/> Other Expert |
| <input type="checkbox"/> Copies of _____ | <input type="checkbox"/> Transcript | <input type="checkbox"/> Interpreter | <input type="checkbox"/> Other _____ |

Type of Service	No. of Hrs.	Rate Per Hr.	Total
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Total Fees for Service			\$ _____

Type of Item	No. Each	Cost Each	Total
_____	_____	_____	\$ _____
_____	_____	_____	\$ _____
Total Cost of Items			\$ _____

II. TRAVEL REQUESTED

For Whom: _____

Leaving from: _____ Going to: _____

Auto Mileage: Estimated number of miles _____ at \$ _____ per mile Total: \$ _____

Air (Note: If air travel is approved, arrangements MUST be made through Azumano Travel.)

Rental car Number of days _____ Total: \$ _____

Lodging Number of nights: _____ at \$ _____ per night Total: \$ _____

Meals Number of days: _____ at \$ _____ per day Total: \$ _____

Other Travel Expense (describe) _____ Total: \$ _____

Total Travel Requested: \$ _____

GRAND TOTAL REQUESTED: \$ _____

I am the attorney representing the client named on this form and I have reviewed and approve this submission.

Signature of Attorney

Signature Date

Effective Date

EXHIBIT 6. NOTICE OF ADJUSTMENT TO FEE STATEMENT

Notice of Adjustment to Fee Statement

Notice Date:

Provider:

Case Number:

Client's Name:

County/Court:

Voucher:

Under the Public Defense Services Commission Payment Policy and Procedures, the amount requested on your fee statement for the above-referenced case has been adjusted for the following reason(s):

- _____ exceeds guideline amount: ___ rate per hour ___ rate per mile ___ rate per day ___ rate per page
- _____ expense or fee requires preauthorization
- _____ without sufficient documentation for an exception
- _____ lacks sufficient supporting documentation (receipt or detail) for _____
- _____ exceeds preauthorized amount(s)
- _____ was billed at incorrect rate (see PDSC Payment Policy)
- _____ was billed beyond statutory or policy deadlines
- _____ mathematical error: ___ hour/miles billed were _____ but were actually _____
_____ hours, fees or miles multiplied incorrectly by rate
_____ expenses added incorrectly
- _____ not a public defense expense
- _____ other

Notes:

WITHIN 21 CALENDAR DAYS OF THIS NOTICE, YOU MAY REQUEST RECONSIDERATION BY SUBMITTING ADDITIONAL INFORMATION TO OUR OFFICE:

Attn:
Accounts Payable
Public Defense Services Commission
1175 Court St NE
Salem, OR 97301

Accounts Payable Representative

Business Services Manager

**EXHIBIT 7. PUBLIC DEFENSE SERVICES COMMISSION
SCHEDULE OF COMPENSATION
FOR PURPOSES OF RECOUPMENT PURSUANT TO ORS 151.505(2)**

	Typical Contract Rate	Average Expenses (rounded)	Total Cost
Murder	\$20,000	\$16,000	\$36,000
Measure 11 felony	\$1,600	\$1,900	\$3,500
Non-M11 A felony	\$980	\$320	\$1,300
Non-M11 B felony	\$820	\$180	\$1,000
C/U felony	\$600	\$150	\$750
Misdemeanor, contempt, extradition	\$310	\$40	\$350
FAPA & Support	\$600	\$0	\$600
Probation violation	\$200	\$0	\$200
Habeas corpus	\$1,500	\$100	\$1,600
PCR	\$2,300	\$1,100	\$3,400
Civil Commitment	\$310	\$40	\$350
Juvenile felony	\$600	\$400	\$1,000
Juvenile Misdemeanor	\$310	\$40	\$350
Juvenile probation violation	\$200	\$0	\$200
Juvenile dependency	\$700	\$100	\$800
Termination of parental rights	\$2,300	\$300	\$2,600

Effective October 22, 2010