

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, June 12, 2008
9 a.m. to 1 p.m.
Mt. Washington Room
Seventh Mountain Resort
Bend, Oregon

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's May 8, 2008 Meeting
<i>(Attachment 1)</i> | Barnes Ellis |
| 2. PDSC 2009-2011 Budget Proposal
• Essential Budget Level
• Policy Option Packages
<i>(Handout)</i> | Kathryn Aylward |
| 3. Action Item: Approval of Contracts
<i>(Attachment 2)</i> | Kathryn Aylward |
| 4. Commission Discussion of Service Delivery Plan for Judicial District 14 (Josephine County)
<i>(Attachment 3)</i> | Barnes Ellis
Commissioners
OPDS Staff |
| 5. Report on Site Visit Findings
<i>(Attachment 4)</i> | Paul Levy |
| 6. OPDS's Monthly Report | OPDS's Management Team |

Lunch will be provided at the end of the meeting for Commission members.

The next meeting of the Commission will be held on August 14, 2008 from 9:00 a.m. to 1:00 p.m., followed by a Commission retreat from 2:00 p.m. to 5:00 p.m. at a location to be announced in Baker City, Oregon.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

Thursday, May 8, 2008
9 a.m. to 1 p.m.
1320 Capitol St., NE
Salem, Oregon

MEMBERS PRESENT: Shaun McCrea
John Potter
Hon. Elizabeth Welch
Janet Stevens
Chip Lazenby

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

[The meeting was called to order.]

Agenda Item No. 1 Approval of the Minutes of PDSC's April 10, 2008 Meeting

MOTION: Hon. Elizabeth Welch moved to approve the minutes; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 2 Approval of the Minutes of PDSC's March 21, 2008 Retreat

John Potter noted that the minutes failed to reflect that he had been present at the March 21, 2008 retreat.

MOTION: John Potter moved to approve the retreat minutes, as amended to reflect his presence; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 3 Commission Discussion of Service Delivery Plan for Judicial Districts 1 (Jackson County) and 14 (Josephine County)

Ingrid Swenson provided a summary of the information received prior to the Commission's meeting in Medford in April 2008 regarding the service delivery system in Jackson County and a summary of the testimony provided at the meeting. Commissioners received copies of a letter from the Jackson Juvenile Consortium and a summary of workload studies and caseload limitations from other jurisdictions. Ingrid Swenson described a pilot project in Washington State that limited the total number of cases that could be assigned to attorneys for parents in dependency cases at any given time and required that they meet a series of expectations in order to receive enhanced compensation. The pilot was a success and was extended to half of the jurisdictions in the state. The Oregon Legislature received testimony about this project in the 2007 legislative session in support of SB 411 which would have increased compensation

for attorneys in juvenile cases in Oregon. Commissioners also received copies of documents provided to legislators that set forth the expectations OPDS proposed to establish for Oregon attorneys to qualify for enhanced compensation, a list of best practices in juvenile cases that are often overlooked when attorneys have too many cases, and the Oregon State Bar's performance standards for attorneys in juvenile dependency cases.

Commissioners discussed the caseload information received from the Jackson Juvenile Consortium.

Ingrid Swenson reported that she had spoken with additional Jackson County juvenile officials after the Medford meeting who indicated that the principal deficiency they observed in representation provided to juvenile dependency clients in Jackson County was the lack of active representation during the period following adjudication. Commissioners then discussed some of the things that attorneys should be doing during that phase of the case; whether the Commission should consider establishing caseload limits, particularly in juvenile cases; and what the service delivery plan should be for Jackson County. OPDS will work with the Jackson Juvenile Consortium to identify immediate actions that the consortium can take to reduce attorney caseloads and will provide additional information to PDSC regarding public defense caseloads statewide.

Agenda Item No. 4

Approval of Service Delivery Plan for Judicial Districts 6 (Umatilla and Morrow Counties) and 10 (Union and Wallowa Counties)

Ingrid Swenson summarized the proposed service delivery reports and plans for Judicial Districts 6 and 10 and provided Commissioners with information about developments since the Commission meeting in Pendleton in November 2007.

Chip Lazenby raised the issue of whether there is a separate justice system for minority youth in Umatilla County and Hon. Elizabeth Welch noted that this is an issue that may need to be brought to the attention of other agencies or individuals.

Ingrid Swenson said that minority overrepresentation in the Jackson County juvenile system may well be a focus of the ongoing detention alternative initiative in that county. She also noted that PDSC's preliminary report had recommended that local juvenile justice officials meet to discuss this and other issues, including the lack of representation for many youth. Hon. Elizabeth Welch said that judges are often the key to resolving issues in the legal community. She requested that this issue be brought to the attention of the Chief Justice.

MOTION: Hon. Elizabeth Welch moved to approve the service delivery plan; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Ingrid Swenson summarized the findings and recommendations of the service delivery report and proposed plan for Union/Wallowa Counties.

MOTION: Chip Lazenby moved to approve the service delivery plan; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 5

Update on Clatsop County Service Delivery Plan Implementation

Ingrid Swenson reported on her meetings with the judges, the district attorney and the defense providers in Clatsop County in a follow-up to the Commission's 2006 service delivery review. She noted that some of the issues identified in original report, such as the rapid pace of the docket, the lack of structure in both of the local consortia, and the less than enthusiastic representation of juvenile court clients by members of one of the consortia have not been resolved. Recruitment of new attorneys to the area also remains a problem. Judge Cindee Matyas offered a suggestion for training new defense attorneys, however, that might address

one obstacle to the recruitment of new attorneys. She proposed that an attorney receive initial training by working in the district attorney's office for a year or so before becoming a part of one of the defense consortia, since consortia members don't feel they have time to provide such training. Finally, the judges, the district attorney and the defense providers did agree to review materials from Washington County regarding its early disposition program and consider whether such a model would be appropriate for Clatsop County.

Agenda Item No. 6 OPDS'S Monthly Report

Ingrid Swenson introduced Sally La Joie from the Oregon State Bar and John Borden with the Legislative Fiscal Office. She reported that Commissioner Mike Greenfield had resigned and that the Chief Justice would be appointing a replacement. She noted that Commissioner Greenfield would be missed and expressed appreciation for the guidance he had provided to the management team at OPDS.

Peter Gartlan invited Commissioners to attend the half-day CLE event that the office was planning for May 22. He reported that several Legal Services Division attorneys would be speaking at various CLE functions throughout the state and that the new juvenile unit had begun accepting cases. He also noted that the Oregon Court of Appeals had reduced the "no further extensions" date for filing briefs to 300 days in January and then to 250 days in March, but that the office had made significant progress over the last year as a result of the new attorney positions approved by the legislature. Finally, he noted that the courts would be transitioning to an e-filing system over the next four years, beginning with the Oregon Supreme Court.

Paul Levy said that OPDS's next site review will be in Lane County and that Jim Hennings will be the chair of that site team. He reported that he had submitted an inquiry to the Oregon Government Ethics Commission and received a report from the executive director. A workgroup will be established to hear and address concerns with the new provisions of the law and he invited Commissioners to bring any concerns they have with the new provisions to his attention so that he can pass them along to the workgroup.

MOTION: John Potter moved to adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

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TAPE 1, SIDE A

[The meeting was called to order.]

Agenda Item No. 1 Approval of the Minutes of PDSC's April 10, 2008 Meeting

001 Chair McCrea Barnes is in trial so I will be chairing the meeting. Thank you all for being here. Our first action item is approval of the minutes from the April 10, 2008 meeting. Are there any additions or corrections? Hearing none, I would entertain a motion to approve.
MOTION: Hon. Elizabeth Welch moved to approve the minutes; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 2 Approval of the Minutes of PDSC's March 21, 2008 Retreat

008 Chair McCrea Second action item, approval of the minutes of the March 21, 2008 retreat. Are there any additions or corrections?

010 J. Potter The only correction I have, Madam Chair, is I was at that meeting.

012 Chair McCrea Are you sure? Okay, we will amend that to include Commissioner Potter. With that amendment I would entertain a motion to approve the minutes.
MOTION: John Potter moved to approve the retreat minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 3 Commission Discussion of Service Delivery Plan for Judicial Districts 1 (Jackson County) and 14 (Josephine County)

017 Chair McCrea Our third agenda item is a discussion of the service plan for Jackson County and Josephine County where we were at our last meeting. Ingrid, would you like to begin that discussion for us?

019 I. Swenson I would be happy to, Madam Chair. If it is helpful, I could do a quick summary of the system as we found it. Then you have some materials that have been provided to you this morning including a letter received yesterday from the Jackson Juvenile Consortium.

When we were there last month we found a county that is growing in population, by about one and a half percent a year. They made most of their budget cuts from the timber funding shortfall in '06, so they are not currently looking at further drastic cuts, although the '06 cuts to their public safety system and their social services systems were significant.

The Circuit Court has nine judges. Judge Mark Schively is the presiding judge.

With respect to criminal court cases, it was notable that attorneys do appear at arraignments. They don't appear, as you know, in all counties but they do there. The trial rates in the county are relatively low. In 2007, 2.7 percent of the felonies and 2.4 percent of the misdemeanors were tried. I think we heard the defense representatives report that they found the district attorney's office to be reasonable and the court indicated that in its opinion attorneys resolve cases in an appropriate manner.

They have a Family Community Court, which is a combined family and drug court, which currently serves about 50 families with open dependency cases. Attorneys don't represent clients in that court but they have continuing representation in connection with the underlying dependency matter. Every week when they go to court, however, they are unaccompanied by counsel. There is a drug court in the county. Defense attorneys do participate in that court on a weekly basis.

In juvenile court, Judge Orf is the judge who handles most of the dependency cases. Attorneys do not attend initial hearings, shelter hearings, in those cases. There are occasional second shelter hearings for parents or others requesting them but they are very rare and they cannot be scheduled sooner than a month after the initial hearing. The court there appoints counsel for children in all cases in which it appoints attorneys for the parents, so that is the guide they use. In delinquency cases, Judge Mejia is the principal judge hearing those matters. He reported that counsel was being appointed in approximately 95 percent of the cases in which petitions were filed, contrary to the practice you heard about in Umatilla County where it is less than 50 percent.

The District Attorney is Mark Huddleston. He has been there since 1992. He has 19 deputies and currently reports no recruitment or retention problems in his office and said that he is able to pay an attractive initial salary.

We have three contractors in the county. Bert Putney is the Executive Director of Southern Oregon Public Defender. That provider has two offices with 15 attorneys in the Jackson County office. They handle about two-thirds of the criminal caseload and about a third of the juvenile caseload in Jackson County, but they have only been doing juvenile cases for about two years. That office has an active and longstanding board of directors. They have a policy manual, a procedures manual; they have a trainer, and assign a mentor to every new attorney in the office. They sponsor regular CLE events for themselves and other members of the legal community. They regularly monitor attorney performance and report that the increase they received under their new contract will help them with recruitment and retention, but they still anticipate continued difficulty recruiting and retaining lawyers there. Their starting salary is well below that of the DA, I think about \$9,000 less per year.

Los Abogados is a consortium of seven attorneys who participate on reportedly a 3.03 FTE basis, so they all do other things besides criminal public defense cases. They have no board, no written bylaws and the members confer only informally and yet they report no performance problems and no one else in the system reports performance problems on their part, either now or historically. In fact they are considered the “A” team by a lot of people in that county.

Jackson Juvenile - there were four attorneys participating in that consortium at the time of our hearing. They have added back an attorney who was formerly associated with the consortium. Their FTE number, as reported in conjunction with the new contract, was 2.82 but with the addition of this fifth attorney that will be adjusted. I haven’t been informed how much of his time he intends to devote to juvenile cases. They also handle civil commitment cases. They have a board of outside members but they report that their board is not very actively involved. They have an operating agreement between their members. As I say, you did receive a copy of an email that was forwarded by Jim Mueller, who is the new administrator of that consortium, which raises some questions about the information provided in the initial report and about the statistics and we can talk more about those later.

The structure in this county certainly appears to be working well. In criminal cases we have a very effective public defender office, and a very effective consortium, and that is a good structural combination. It adds stability and flexibility through both of those providers. Bert Putney did suggest that you consider, in the long term, the use of regional public defense provider. He was thinking specifically of the southwestern counties in the state and he thought there might be an administrative advantage in the sense there would be one administration with a number of offices and that you could move lawyers from one place to another as needed.

Caseload is probably the main issue that arises here. We weren’t just picking on the Jackson Juvenile Consortium. It has, as far as I know, the highest number of cases or case credits that anybody in the State of Oregon currently has on a public defense contract. There are some interesting questions about what that means and how you compare one provider with another and we can talk further about that. I have prepared for you and provided some additional materials that you haven’t had a chance to look at. I will just quickly tell you what they are. You may want to continue some of this discussion to another time if you wish to study some of this. I gave you an outline of a workload discussion. This was prepared for our Contractor Advisory Group, to talk about what caseloads amount to, how we compare them, and whether Oregon should add some kind of limitation other than that that appears in our RFP on the number of cases that attorneys handle. On page one, I started with a reference to our RFP document. The caseload numbers contained in that document have been in place for some time. It recommends that contractors propose caseloads not in excess of 200 new felonies a year per FTE, 400 misdemeanors per year per FTE, 250 juvenile cases assuming that there will be a combination of delinquency and dependency cases, and then 300 mental commitment cases per year. When asked, sort of on the spur of the moment, to produce a statewide number in terms of where we are, and just as a “guesstimate” if you will, Kathryn said that if we added up all the new cases, all the case credits that are awarded each year and divided it by the number of FTE attorneys we would end up with 346 case credits per attorney per year, which would be a mix of all of those case types. Under national standards that number would be 265 so we estimated, in general, that our public defense attorneys have caseloads that are probably about 30 percent above national standards. That may not be good, but it is certainly a lot better than some states where caseloads are sometimes twice the recommended number. Other states limit them very carefully and are either on target or below the recommended numbers, but it varies significantly from one state to another.

I referred to the American Council of Chief Defenders (ACCD). The national standards most people refer to were actually devised in 1973, so they are very old. Very recently this group of defenders – the ACCD - decided to take a look at standards once again. They reviewed all

of the literature, all of the studies that had been done since 1973 and their determination was that those standards were “resilient.” In other words they are still valid today even if the cases have gotten more complex. They saw no reason to change those numbers, recognizing that in each jurisdiction, and for each provider, it would be advisable for that jurisdiction to look at their own cases and the effort and time that are involved in handling each particular case type and do its own analysis. There is no way that any national standard can take into account the differences from one jurisdiction to another in how cases are handled. If you don’t have Measure 11 it is a very different equation in terms of figuring the amount of time and effort that needs to go into a particular felony case. I won’t call all of these to your attention at this point but the next standard that is referred to is the one enacted recently in Spokane, Washington. They just adopted caseload standards in October of 2007. In Washington State most of the funding for public defense is provided by the counties, but the state subsidizes public defense as long as the county meets certain state requirements and one of the requirements is the setting of caseload limits. So when Spokane adopted caseload standards the county then qualified for state funding. They did not address juvenile dependencies, which apparently are not handled by public defenders. But they did adopt a limit of 250 delinquencies per attorney, per year. I included standards from some of the other states. On page two, I would call your attention to Montana which is a state that Peter Ozanne visited when they were trying to figure out how to reorganize their public defense system. They needed to make some significant changes and they did. They now have a Commission very much like this Commission and among the tasks undertaken by that Commission was the establishment of caseload standards. They created “suggested standards” at this point, so they are not mandatory, but it is interesting that in dependency cases they set a limit of 20 cases per attorney at any given time. This is another approach that some jurisdictions are using to measure caseloads. One is how many new cases do you get every year, assuming some of them close and some new cases are opened. Other states are measuring the number of cases at any point in time. That is particularly true in juvenile dependency cases, the thinking being that these cases last a long time, that a certain amount of involvement and effort is required over that entire period of time, so for each client that you have at that time you need to be devoting a certain amount of energy and effort to that case. Twenty is the lowest I have seen anywhere, and I’ll inquire further of them if that is actually being applied, and if so how it is working, but it is pretty new.

On page three, I set out some of the caseload standards and limits that are being recommended in juvenile cases in particular. One study is the Child Advocate Attorney Representation Workload Study. This arose out of the *Kenny A* litigation in Georgia and it has been going on for some time in terms of what kind of representation parties to juvenile cases are entitled to. In any case, they recommended three different standards. There were some internal and external reforms that they also suggested, internal being within the public defense provider’s office, external being system-wide changes. They said, “If you make no changes internally or externally then nobody should be handling more than 80 open dependency cases at any given time. If you enact the internal reforms only, then you could handle up to 100 because the reforms would include additional staff, and if you adopt both internal and external reforms then you could handle as many as 120 open cases at any given time.” In 2006 the American Bar Association adopted standards of practice for attorneys representing parties in abuse and neglect cases. There had already been standards adopted for representation of children. They recommended a caseload of no more than 50 to 100 cases at any time. That is a substantial range and perhaps they were thinking it depends on whether they are termination cases, or dependency cases, or cases in review status. I am not sure. The U.S. Department of Health and Human Services adopted 100 children as the standard for anybody who represents just children in dependency cases. If there are three children in one family they count as three of your 100 children. Then I included some state guidelines. Some of these are a little old now. Arkansas had a limit, and this is current, of 75 dependency cases at any given time. California did a monumental study of case weighting. They studied every single county; they measured the time every lawyer spent doing every task for each client and then they tried to determine from that, “Okay, this is what they are doing now and here is how many lawyers it

would take if we assume they are only working 2,000 hours a year.” They came up with that number and then they extrapolated and said, “But, they should also be doing X, Y, and Z, which they are not doing now and which would be beneficial to do if they could, so what would the caseload be if we added that on?” Well, they came up with some numbers and they ultimately recommended a maximum of 141 clients. They said, “That is not optimal, but unfortunately we can not afford the optimum. Eighty-two would be the appropriate number, per attorney, at any given time.” They have not implemented these standards. They did this huge study, found the result, and so far have not implemented them.

I think Washington State may be the most useful example for us to examine. They did a pilot project, I think it started in 2003 or '04, selecting two counties and this had to do with representation of parents not children. It resulted from an effort by some legislators to enhance the representation of parents, which the legislators had determined was inferior to the representation that was being received by children and others in the system. They created this pilot in two counties and initially they imposed a limit of 90 clients per attorney at any given time at the pilot sites. They accompanied that with a series of expectations in terms of what each lawyer would do in each case. They then measured the outcome and in Washington this was the only thing that changed significantly in the child welfare system at the time they implemented the pilot. They could look at certain kinds of statistics and say that must be an effect of the change we made because we have no other significant changes that could account for it. The reduction in the number of terminations was huge. I am sorry I don't have the number here but I will get it for you. It was something like 42 percent fewer terminations. The other thing that they were doing – Oregon no longer does this - but they were paying stranger foster providers but not paying family foster providers. There was a significant savings if you were able to find members of the child's family to care for them instead of placing them in stranger foster care. That was another major change because by having better representation of parents, they were better able to identify qualified family members who could take children in. Because of the savings and the good outcome, they then extended the pilot to half of the providers in the state. There was an effort in the last Washington legislative session to extend it statewide. They did not have the funds to do that because it is a significant funding increase for parental representation, but they did come and testify in our legislature in support of an effort which was made last legislative session to enhance juvenile dependency representation in Oregon.

There were four legislators who came together as the result of information they received about a single case that concerned them significantly, and they put together Senate Bill 411 in the 2007 session, which would have increased public defense funding by \$23 million statewide to enhance representation of both children and parents, limit caseloads, create a resource center, and do some other things. It didn't pass. It ended up in Ways and Means. It passed through Judiciary Committee unanimously but it did not survive the Ways and Means process.

Then, thirdly, in this document, starting on page four is a discussion of caseload measurement methodologies just for your information. It talks about the three principle systems which are case-based systems, time-based systems, and number of open files systems.

I also provided you with the bar performance standards in juvenile dependency cases. Some of you will have seen this and be familiar with it. It is a very useful document. It was originally approved by the Oregon State Bar Board of Governors in 1995 and then modified in 2006 to update it with new statutory references, new expectations, and so forth. It is based largely on national standards and standards from other states, but also incorporates specific Oregon provisions. It describes what a lawyer should do, or should at least consider doing, in every case at every juncture in the case, so for that reason it is a great help, a great training device for lawyers. A lawyer can say, “Let's see. I have a new case. How do I get started? What do I need to do?” The standards describe how you might approach that case, the things you should be familiar with the things you should do. They also address review hearings and

what you do between hearings and all of those things. They are an excellent guide. They are considered aspirational standards, not mandatory. You don't have to do all of these things in order to provide adequate assistance of counsel.

The other document I gave you includes two items. These were prepared in connection with Senate Bill 411 last session. The first is a letter to Bill Taylor. I prepared it. You will notice on page 3 it jumps from the top line to the next page. I am sorry. I don't know what happened there. In any case, this letter was an attempt to say, "If we were to receive the funding that we are asking for in Senate Bill 411, these are the things we would want to implement as part of that new approach to dependency cases. These would be the new expectations for lawyers." There were two workgroups that worked throughout the interim before the 2007 session, very broad based groups including the Department of Human Services, the Attorney General's staff, legislative staff and others with the purpose of saying, "What do we need to accomplish in order to provide representation that would enhance the entire system and how is that different from what we are doing now?" It was a very useful process and most of this, most of the contents of this letter, were things that were discussed in those workgroups as to what lawyers should be doing in these cases.

Then at the conclusion of that letter I added a copy of an email that I sent to Bill Taylor. You will find some typographical errors there. I apologize for those. That was prepared somewhat in haste at the request of some of the legislators. It was a response to the question, "What is it that lawyers are failing to do currently? What doesn't get done if lawyers are significantly overworked? We had done approximately ten site visit reviews of juvenile providers by then, so we were able to go through all of those reports and say, "Well, these are the things we noticed." And very often the judges, the DHS staff, and other people would say, "It's their caseload. That is why they can't do X, Y and Z. We would like them to do it but they can barely make it to their court hearings let alone do all the things that we think they should be doing."

I made a quick list of those. One was the failure to appear at initial hearings. I can't tell you what the percentage of counties is where attorneys are not present at initial hearings. It is changing and in some counties attorneys have been appearing for years. Both parents and children need to have representation at that critical, initial hearing where the court often has to make a decision about whether a child is going to be placed in care and, if so, where? That is a critical piece and yet it cannot happen in some counties. You will notice in Union County, where there are very few providers, sometimes traveling 130 miles round trip to court, that they are there for every one of those hearings. They get the same 24 hours notice that most lawyers do and they are getting there. It is just an interesting difference. The second main concern is failure to contact clients in a timely way. In a number of places we heard that attorneys may not see their clients until the next court hearing which may be as long as a month after the shelter hearing. A lot has transpired in that time. Sometimes bridges have been burned and that kind of thing, so attorneys should be accelerating that initial contact, and complying with the terms of the OPDS contract, which essentially says, "For out of custody clients you must contact the client within 72 hours." That doesn't mean that you have to do a full interview but you have to have contacted them and set up that interview within that period of time.

A third common failure is the failure to maintain contact with the client, DHS, and other parties between hearings. Again, a lot is happening or not happening in these cases. Time frames are short and unless you are maintaining contact you don't know that your client is no longer engaging in services or that the agency has declined to provide the services they had agreed to provide, whatever it is; failure to litigate significant legal issues. The judges report that they almost never hear challenges to practices that invite challenge. The appellate lawyers have also reported to us that there are challenges they would like to see being brought that they are not seeing at the trial level and that they can't deal with on appeal since they are not in the record.

Another deficiency is failure to attend important meetings with clients. There are a lot of informal meetings beyond court hearings and citizen review hearings. There are family meetings. DHS doesn't use these meetings in the same way in every county, but in some counties these meetings are the principle place where plans are made for the family's reunification, for identifying services for each of the family members, and if you fail to attend with your client, your client is at a significant disadvantage, but lawyers often cannot and do not attend these.

Also, there is often a failure to perform independent investigations or obtain independent expert opinions. In almost every case there is going to be at least one expert opinion because you can be assured that in probably 90% of the cases the state is going to have, at some point, obtained an evaluation of the parent's mental health or addiction history or something of that nature. There are many times when the parent's attorney says, "That is a good report. It is supportive of you. It lists some things that you need to do." You understand that it is what you would expect to find from a good evaluation. Many other times it is biased. At the very least, it is only one opinion and so it is appropriate in many cases for a parent to obtain an independent evaluation. Maybe it will confirm the finding of the earlier evaluation but that is useful too. Maybe it will say, "That is absolutely the wrong analysis. This isn't the way I would view this case at all." As indicated in the second document, in one of our site visits we found that no lawyer in that county had requested any service of any kind on behalf of a client for the last three years. No evaluation. No investigation. No funds for any of extraordinary expenses for three years. Look at the disadvantage to those clients compared with clients in counties where lawyers do this routinely. We like to save money. OPDS funds pay for these expenses, but of course we approve them when they are reasonable and necessary in the context of the case. It is not heartening to see that some people don't get the advantage of those essential services.

Then lawyers can fail to obtain proper training and there are certainly other ramifications of just being too busy, but that said, I had hoped that somebody from the Jackson Juvenile Consortium could be here. They can't. They are in court. Thursday, if you recall, is their principle juvenile dependency day. They could not extricate themselves today. Jim Mueller, or one of the other attorneys will be available by phone at noon. He is willing to answer questions and we can certainly provide him with any information that we have. I did look at the written materials that they provided and we could talk a lot about different numbers. You can read what he has to say and there is, of course, a difference between a new case and a case in review status. Although when you look at the bar performance standards many of the same kind of things have to be done on an ongoing basis. You don't meet with your client once; you need to meet with them periodically. You may need to investigate after an event of some kind not just at the outset of the case. An evaluation is rarely required in connection with the initial adjudication unless there is a trial, but the need for one frequently arises between those hearings. So, yes, there are differences between newly filed cases and cases in review status, and we don't pay them as much for review credits. We pay them approximately half as much for a review as for a new case.

Now when Mr. Mueller talked about FTEs, the number that we used to do this analysis was the number the consortium gave us – the percentage of their lawyer's time that was going to be devoted to public defense cases. Because even if they work really hard and devote much more time than the eight hours per day used to define an FTE, they also have other cases. Some of them are also members of the criminal consortium so there are part-time FTEs there, sometimes halftime. It is fine to say, "These FTEs are a public employment concept we don't know what that means," but these lawyers aren't just doing juvenile cases.

497 Chair McCrea

I'm sorry. When you talk about the number that we use is the number that they gave us, you are talking about the number on page 21 on the chart?

498 I. Swenson Yes.

498 Chair McCrea Okay. I just wanted to confirm.

499 I. Swenson Yes, 2.82 is the number they provided us, at least with the new contract and I am not sure if it was true in 2007, but that is what they said. That is how many lawyers are going to be able to devote full-time to juvenile cases, so it is a convenient method of measuring cases per FTE attorneys instead of somebody who is doing a little of this and a little of that. They have added back another attorney so that FTE number will probably be adjusted and that would be a good thing.

508 Chair McCrea He seems to say, on page two in the first paragraph that during 2007, five attorneys, not four handled the cases set forth.

510 I. Swenson What he is indicated is that Mr. Kochlas had at least 245 case credits for reviews that carried over from earlier cases. He had ceased taking new cases, but 245 of the 2,298 case credits were his cases rather than the people who were apparently included in the FTE. He talked about the 348 new dependencies, but they also had 149 new delinquencies and 98 new civil commitments, so that is a total of 595 new cases per 2.8 FTEs or essentially 200 new cases per lawyer and 500 cases per lawyer in review status. That is a lot. You would have to handle all activities in one new case and two reviews every single working day of the week in order to do that. These lawyers work hard and they probably exceed the 40-hour week every single week. We're talking about a 2,000-hour work year. They are not. We do have to keep that in mind.

537 J. Potter Ingrid, assuming that we take into account their corrections, have we refigured the total cases per FTE?

541 I. Swenson If we add Mr. Kochlas?

541 J. Potter Yes.

541 I. Swenson To the new contract numbers?

542 J. Potter That is right.

542 I. Swenson I don't know if anybody has had a chance to do that?

544 B. Strehlow If you subtract out the 245 cases for Kochlas that comes to 2,053 divided by 2.82 FTE that is 728 per FTE or 513 per attorney.

549 J. Potter That is helpful, thank you.

550 I. Swenson The only other comment I would have about the email from Mr. Mueller is that he says the harshest criticisms seem to be coming from somebody who has an interest in competing against us, and I'm sure he is referring to Judge Orf who said she was inclined to think about applying for a contract, herself. I want you to know that I checked back with other agency and state representatives and asked for more information for them, and before preparing this final report I included all the information they provided too. The interesting thing that they emphasized, and this is what I included in the final report, is that, unanimously, they would say these are good, experienced lawyers. They do a very good job at the outset of the case and in the adjudication phase. They handle the CRB hearing professionally and well and when it gets to termination they are good trial lawyers. They do a good job even when they represent children. (In some counties attorneys for children reportedly just watch instead of participating actively in the case. That is not true in Jackson County.) But these same people said that it is between the outset of the case and the termination that they see almost no

activity by these lawyers, certainly no actions taken on their own initiative. That is not to say that if a client calls them they don't respond, or if the client has an issue that they don't assist them, but my guess is – no it is not a guess because I confirmed this with a consortium attorney. They consider those cases as dormant. So the case files are there in the office and if the client calls, and they have instructed the client to call if there is an issue, the case file comes off the shelf. It is this period of time, when the case is “dormant,” that I think explains their ability to have these huge case numbers.

- 587 Chair McCrea Okay, so what should they be doing during that time that they consider the case dormant? What would we like them to be doing? The kinds of things that you talk about in your email?
- 591 I. Swenson Exactly, and, yes, you can wait for a client to call, you can wait for DHS to call, or you can institute a system where you make regular contact, certainly with the case worker. “How is it going? How is my client doing? Did she get in that program? So she has dropped out of treatment?” You need to know that. There are family meetings and in Jackson County DHS says they do a lot of family meetings and that they are critically important but they say these lawyers are never present for those meetings. At those meetings you do the kind of planning where you say, “Okay, we are all together. We have all the resources in this family seated at this table. What are we going to do?” Some family member might say, “I think we ought to just give up on her,” and only if you are there as the attorney to say, “Let's just take a look at this. What has she done? What does she need to do,” can you have a significant impact on the planning for reunification, family placement, or whatever the immediate issue is. As I say, a need may arise for additional investigation. Somebody may say in an updated DHS report that the mother has reportedly to be seeing the violent father whose conduct caused the removal of the children. You may need to investigate that. Maybe it is a rumor; maybe it is true. If it is correct, you need to meet with the client and figure out what is going on. All of these things happen and if you wait until you get the court report that is prepared by DHS just prior to this review hearing, you can scramble around and try to get ready for that at the last minute but, even that may not be happening because the report I received was that it is not uncommon for lawyers not to have met with their clients before that hearing, so they have that report, with no information from the client. They are out there in the hallway going over it. It is not uncommon for court reports to include psychological evaluations of the clients. You need to go over those with great care. The Department of Justice attorney assigned to this region indicated that they send out case plans to these clients at least every six months. They have to do this in order to obtain continued funding. It appears that nobody is going over those plans with the clients. The parents aren't aware of what is expected of them unless they happened to be present at the meeting where it was prepared. Otherwise, it would be the expectation that the lawyer would review it with them. There are all these kinds of things committed, hard working lawyers need to be doing at that stage of the case. It is critical to act quickly because it is very often too late if you wait for the next hearing. Too much time has gone by. Other options have to be examined and potentially pursued.
- 654 Hon. Elizabeth Welch Where to begin? The issues here are gigantic, just gigantic, and I am wondering since we talked about this at the last meeting whether the staff has talked about separating out delinquency just to simplify the discussion a little bit. In other words, in trying to solve this, if there is anything to be solved, and I don't know if you all think there needs to be something done here. I do, but it seems to me the delinquency is so uni-dimensional by comparison, let's put it that way, to take those out so that we can look at case numbers consistently.
- 669 K. Aylward We do keep track of the cases separately.
- 671 Hon. Elizabeth Welch Remember Umatilla County and the fact that a lot of kids apparently plead guilty in Umatilla County without a lawyer, then a county like Multnomah and many others where that is not permitted. It is another way of just simplifying. Just some of the issues here that you haven't

talked about have to do with the role of the CRB, which varies all over the state, in terms of how much responsibility the court delegates to the CRB. Do you know what ASFA is? The Adoption and Safe Families Act was passed by Congress in, I believe, 1988 and it created some very, very firm, short timelines for parents to get their acts together or lose their kids permanently. That revolutionized the practice in juvenile court. Back to another thing you said, Ingrid, the idea that there doesn't need to be a reexamination of the standards for representation of children and parents in dependency cases since 1973. The process is unrecognizable to anyone who was in the system before 1973 and continuously since then, it is simply not true. The expectations, all those hearings, none of that stuff happened in the good old days. It was much more like what you are reporting happens maybe in some of the counties now where we are raising questions. That whole role of how much – when you have a case in the CRB does the lawyer go, or does the investigator go – and I am not saying that is a bad thing. A lot of lawyers' offices, Jim's I'm sure does this, sends people other than lawyers because nothing happens in the CRBs. CRBs don't have any authority. Obviously, if you have a hearing to go to and a CRB to go to, you are going to go to the hearing. There may be representation but who is it? How thin are you spreading your legal resources, your lawyer resources I should say.

The final thing, and I have a lot to say but I am trying to restrain myself here a little bit, is philosophical. This business about lawyers who don't have any contact with clients between review hearings. I have always felt that there is a problem with people, and Ingrid is a good example of why this isn't always true, but lawyers come from a criminal background and they end up representing parents, they sometimes don't really morph in the process of making that move. They continue to have a very criminal system perspective on what they are doing. That is, "You are on your own lady and you take care of yourself and you do what you are supposed to do here. You know what the rules are; you know what the expectations are, and I will see you in court." I think that somebody who practices law like that would say, "I am a lawyer. I am not a social worker. I am not a parent here. I am a lawyer and this isn't my job." I don't know how much you do in all the training that you put on to address that. I am sure there is some, but, as an observer I know I can just about label these attorneys for you. The final thing I am going to say, and I really will stop for the moment at least, as a result of being retired I get to travel around the state and boy is that an education. I haven't blinked since I started doing plan B. I almost always am asked to do juvenile which is fine with me. The only place I do domestic relations is in Multnomah County. The variability of everything is just breathtaking and these poor lawyers. I feel so sorry for them. I was in Burns last October. It was a life-altering experience for me. The lawyers all came massive distances to represent these clients. How practical is it if your lawyer is in Bend and you live in Burns for there to be regular, meaningful communication. I am criticizing no one just noting the realities are horrendous.

781 J. Stevens

They do the same thing to see their doctors though too.

781 Hon. Elizabeth
Welch

Exactly, and I bet you there are not a lot of dependency clients who go to Bend for anything, even to go to Costco, which I understand is one of the cultural events in town.

788 Chair McCrea

Well, Ingrid, I want to say thank you for the materials that you put together for us because the synthesis of the workload information is extremely helpful. It is slightly disturbing, I guess I would say, and it indicates to me that really what we as a Commission are dealing with here are potentially three different issues. One is the general question of whether we should set caseload limitations or standards in cases in general; the second is whether we want to try to set something concerning juvenile matters, and I don't think we are going to get to either one of those today. The third question is what, if anything, do we want to do with Jackson County and with the JJC and I want to come back to that in just a second. The performance standards you provided us are great and somehow I didn't get exactly where those are coming from?

809 I. Swenson They are from the Oregon State Bar and on their website but they have been notoriously difficult to find. Now it is much better. They are now in a place where people can find them under “performance standards.”

816 Chair McCrea I am assuming that is something that we are encouraging juvenile practitioners to do.

817 I. Swenson Yes.

817 Chair McCrea What you provided us concerning your letter to Bill Taylor concerning Senate Bill 411 is extremely helpful in terms of practices and the issues as you have outlined them. Then I guess coming back full circle, my question becomes do you have a recommendation for the Commission as to what we may want to do with JJC? I know that Mr. Mueller is prepared to answer any questions we have by phone at noon. He has set out at pages three and four of his response to the draft report, a number of things that JJC wants to do in terms of trying to implement and facilitate even better representation, and those all look fine, but the question of the caseload is still at least, for me, a concern.

841 I. Swenson Well, Madam Chair, I think the Commission has a number of options. We have a current contract in place and frankly I really appreciate their willingness to make some changes at this stage including adding Mr. Kochlas back to the contract and taking some other steps to maximize the availability of lawyers. One other thing I have spoken with them about is it may not just be a matter of adding more lawyers. Kathryn and I were talking about them and other providers and thinking that if you can add staff sometimes they can do a lot of the necessary client contact if they are well trained, can do a lot of the DHS contact, those kinds of things, and we do have providers who have added paralegal FTEs to their contract. They are less expensive. They can be very effective. Some of them can be shared even in a consortium setting. Others can't. We had suggested that they contact Klamath Defenders, for example, because they have a contract with a former DHS worker who does all the child visits, the visits with very young children, who is very skilled in observing the child's circumstances. They also use this person to evaluate information in DHS files. There are different approaches that can be taken and I do believe that they are examining some of those things.

Although the numbers are extreme here, this is but one example of a situation that prevails more broadly than that. Our group of four legislators is still interested in pursuing this issue although they have determined that probably, since our package failed last time, that they would prefer a pilot approach. We are working with them on identifying some potential pilot sites for a bill that they would prepare and sponsor. But in June at the next meeting of the PDSC you will be looking at, among other things, potential policy option packages for our budget for the 2009-11 biennium and one of those policy packages could be for enhanced representation in juvenile dependency cases, a specific legislative appropriation. Twenty-three million was the number that best described what we thought was needed [end of tape]

TAPE 1; SIDE B

037 I. Swenson of significant interest to them, much more so than the quality of representation in criminal defense cases. We could be looking at additional funding. There are training efforts under way because to some extent it really is a training issue and the philosophy that has prevailed is changing. The amendments to the performance standards attest to that, so that is another forum in which we can make some of these changes. But this Commission may want to direct OPDS to study caseloads, to look at dependency cases separately if we can do that and make some recommendations. Maybe we can't. Maybe it is going to be apples and oranges across the state and there really are no firm limits, but maybe we could propose a set of criteria for analyzing caseloads, looking specifically at the percentage of new cases, what areas of representation are suffering the most, those kinds of things. I certainly wouldn't expect you to

make any long-term decisions today about that and we can come back with additional information for you if the Commission is inclined to look at either setting some limit or a series of guidelines for caseloads in this area in particular. We don't hear quite the same concerns in criminal cases. Obviously all public defenders are overworked and our statewide survey certainly supports that, but I think it is more extreme in the juvenile area. We would like to continue working with Jackson Juvenile to look specifically at what they are doing. They sent half of their members to the last juvenile CLE conference sponsored by the Criminal Defense Lawyers in April. They often attend training sessions so they are familiar with the expectations.

- 067 Chair McCrea Well, I think we have identified the issues and we are well aware of them and we can try to move forward.
- 070 I. Swenson Any other thoughts from other contractors?
- 070 Chair McCrea Thoughts from any other Commissioners? I will note that Commission Lazenby slipped in quite a while ago and has been present.
- 070 C. Lazenby And quiet.
- 070 Chair McCrea That goes without saying because you haven't been on the record yet. Any comments?
- 072 J. Potter Ingrid, do you have any sense at all of how long an average dependency case goes on or how long an average delinquency case goes on? I ask that because in one of the models for case counting is adding 70 cases, or adding 80 new cases a year, if the cases go on for more than a year and the cumulative effect is significantly more than the 70 or 80...
- 078 I. Swenson I doubt that we have a number. We could tell you a percentage of reviews which tells you what percentage of cases remain in the system, but some of those are multiple reviews in the same case. Some counties have reviews every 30 days, others have them every 90, others every six months, so that varies dramatically. It is not just the absolute number. Commissioner Welch, did you ever find an average in Multnomah County?
- 085 Hon. Elizabeth Welch I wouldn't be able to pull anything out. It is certainly different. There are numbers and I am just trying to think of what the source was about the number of cases. How long it takes to set to resolve cases? Within 90 days – not resolve but litigate and actually close cases. There are a lot of dependency cases that get closed in some counties because their screening isn't as good as it is in other counties. In other words, in Portland, I think the screening is pretty good so most of the cases that come in the door are serious - over generalized but to make my point. Then there are cases that come in and wash out – something that I read for today, I think it might have been in one of the eastern Oregon counties said that a lot of them are resolved at shelter. That doesn't happen very much in the metropolitan area. I think that Tim's operation would probably have some data that could be useful.
- 100 J. Hennings Ingrid, I was just reviewing the review hearings in our office the other day, ones that were set over the last four months, and we number them sequentially so they are a "J" with a number after them. In the last four months there were probably 40 cases set in two counties, Washington and Multnomah County and the number was in the high teens. That is how many review hearings there are. We also have the date because it is the original number. That includes the year and some of those cases go back to the '90s. They don't close. Some cases do close and get settled, but if there is an ongoing problem as a general rule they don't close. They are not bad enough that they are automatically pushed toward a termination, but they still are reviewing those cases.

- 112 I. Swenson It will be interesting to see Jim's numbers and I am familiar with the Judicial Department's data. It may not answer John's question but I will see what I can find.
- 118 J. Potter Well, anecdotally you certainly hear from lots of lawyers that we have these juvenile cases forever. It is not forever, but it is a long time.
- 120 I. Swenson As Commissioner Welch was saying because of this new, not new, its been here 20 years now, because of the requirements of the federal Adoption and Safe Families Act you have to be moving along and cases that could go on indefinitely in the past can no longer do that. Essentially you are supposed to resolve a case within a year. That is probably rare but it pushes the system to try to do that and some of them are resolved in that period. I will try to get you some more information.
- 127 Hon. Elizabeth Welch On a slightly more humorous note, I wondered when you were talking about your discussions with DHS regarding the lawyers, my experience, having done a lot of training of caseworkers over my career, is that what they are looking for and what you are looking for bear very little connection to each other. Their idea of a good lawyer is somebody who doesn't make trouble and doesn't get in the way. That is a generalization and therefore isn't true all the time, but I would be cautious, personally. I go to do the training and people will say, "How do those lawyers take those stupid positions on behalf of their client?" I have to give them the primer on what a lawyer's job is. The lawyer's job is to represent their client and that is something that even people who know better don't necessarily accept when they are on the receiving end of it.
- 141 I. Swenson It is true and, frankly, we do the same with DAs and judges. We understand that they come at it from a different perspective, but that makes it all the more striking when DHS says they are not advocating strongly enough for their clients.
- 146 Chair McCrea Okay. Other comments or questions for Ingrid? Thank you. We will take a 10-minute break and come back.
- [Break]
- Agenda Item No. 4 Approval of Service Delivery Plan for Judicial Districts 6 (Umatilla and Morrow Counties) and 10 (Union and Wallowa Counties)**
- 150 I. Swenson Okay Ingrid, if you could facilitate us through our next action which is approval of the Service Delivery Plan for Judicial District 6, Umatilla and Morrow Counties, and District 10, Union and Wallowa Counties.
- 154 I. Swenson Madam Chair, these are here for you to approve as final service delivery plans if you choose to do so. You certainly may still amend them and ask us to bring you additional information. It was November when we were in Pendleton and you were next scheduled to look at this in December. We didn't have time, as you will recall, because of contract approval and then just have not had an opportunity on our busy agenda to get back to them. That is why the long delay.
- There were some developments during that period that I will try to summarize for you. Looking at Umatilla and Morrow, Judicial District 6, you will recall that like Coos and Curry Counties they have three courthouses in one district. Two are in Umatilla County and one in Morrow County. These are all quite far apart. They have five circuit judges, two of whom sit in Hermiston and three in Pendleton including the family law and juvenile judge who sits only in Pendleton. They all rotate out to Heppner in Morrow County. Otherwise, they are permanently seated in these other two courthouses. There is a lot of traveling for the

attorneys, judges, the district attorneys, everybody, but the purpose is to serve the public as close to their own residences as they can.

In criminal cases in Umatilla County attorneys are present for arraignments. The quality of representation by both the providers in Umatilla is said to be good. Their trial rates are a little above average. They seem to be adjudicating a significant number of cases. They have a drug court. It is fairly new in the county and they reported to us they had graduated their first class, I think it was in the summer of 2007, and now they actually have one in Hermiston as well as the one in Pendleton, so they have two drug courts. They focus on high-risk offenders. Later this year, or I hope, early next year, the Commission will look at drug courts as a separate area of representation. I think it will be very interesting. There are something like 54 specialty courts statewide, maybe more than that, and they differ dramatically from one another in terms of who is eligible and how you qualify. The interesting thing in Umatilla County was that - at least as far as I am aware this is a little bit unusual - a defendant in order to be accepted into the drug court has to plead guilty to all of the allegations in the information. No plea negotiations occur at that stage. That is an unusual model. They are working to create an early disposition program and we have provided to them this Commission's guidelines on early disposition programs - what PDSC's expectations are of the attorneys who participate in these programs. I also provided them with the summary of information about Washington County's EDP program which we understand to be a successful program from the perspective of all of those who are involved.

In juvenile dependency cases lawyers are present for initial appearances. Attorneys, however, are reported to not be meeting regularly with their child clients. They are reported to attend CRB hearings, but, except for two attorneys, they are not very active at those hearings. A number of people told us that the lawyers could use some additional training in Indian Child Welfare Act cases. They don't have a lot of them but they have enough with the Umatilla reservation and other tribal groups in the area that they need to work on that aspect of representation.

In delinquency cases, as you will recall, we learned from Judge Pahl that only about half of the youth against who petitions are filed, and who actually come before the court, receive court appointed counsel. Prior to that time a lot of cases are resolved informally within the juvenile department. Of those in which formal petitions are filed only half are receiving representation. Attorneys are present for shelter hearings in juvenile delinquency cases. They are there at court and it seems like they certainly could provide some level of representation to youth who may at least need the assistance of counsel to determine if they need to be represented. Unfortunately, the information I have been provided by others in that system is not good about the quality of representation in delinquency cases. That was something I examined further after our hearing in November, trying to understand why so few lawyers were appointed in those cases. The interesting comment from the juvenile department was, "Well we don't like them on cases." Now that could be because, as Commissioner Welch indicated, it is a nuisance if you have a lawyer in a case and they would rather just take care of business, but again these comments weren't of that nature. They were of a different nature which was to say, "Why do we need them when then don't really do anything and they just slow us down because they are never available and we have to set cases out three months for a hearing because the lawyers aren't available." Of course we also know that the court devotes only one half a day a week to these cases. There is limited judicial time and obviously limited lawyer time. It was also the nature of representation that was concerning - It was reported that lawyers didn't see their clients, didn't communicate effectively with them and so juvenile department staff considered it a waste of time.

The Umatilla County District Attorney is Dean Gushwa. He appeared before the Commission when you were out there. The Morrow County DA is Elizabeth Ballard. She essentially works with one lawyer who is a Blue Mountain Defender representative. They have a very small caseload in Morrow County and she reported that this attorney is always prepared and is

a vigorous advocate. In Umatilla County the two providers are Intermountain Public Defender (IPD) and Blue Mountain Defenders (BMD). Doug Fischer is the administrator at IPD. He testified there are eight full-time attorneys who handle juvenile, criminal, and civil commitment cases in the county. They also represent clients in the drug court. That office has a board of directors that sees its primary function as fiscal oversight. The office has a written policy manual but no formal training program. They do have significant recruitment and retention problems, which are among the most difficult in the state. They are continuously losing lawyers. They do have some experienced lawyers who stay and/or come back occasionally and they did train all of the lawyers at Blue Mountain Defenders who were formally at their office, so they do perform the same functions that public defenders in other jurisdictions do of training lawyers both for their own office and for other providers as well. Doug Fischer is open to assistance and advice in terms of how he can improve the training that they do, that they are constantly doing, because they currently use an open door policy which means the senior lawyers are willing to talk and meet with you to discuss cases at the request of the newer lawyers, but that overlooks some of the things that they may not know that they need help with, some of the obvious things that all lawyers need to learn when they represent public defense clients. Jim Hennings has previously offered to permit Doug's attorneys, as well as attorneys from other places, to participate in his trial skills training program at MPD if there is an opening at a time when training is needed. I don't know if Doug has followed up on that. He indicated that he would and Paul Levy will be working with Doug to look at some other potential options for training attorneys there. That office received a 17.86 percent increase in rates in the new contract. Prior to that they had also received a change in case rates that affected them positively. We are hoping that the increased rates will assist with recruitment and retention, but it may be too early to say.

BMD is the consortium there and they have two principle members and a number of other members who accept a limited proportion of the caseload. You heard from Craig Childress who is the manager of that consortium. They handle criminal, juvenile, civil commitment, and post conviction cases. They have a set of by laws which has not yet been enacted that provide for a board of directors and some other structural components, and as you will recall the Commission initially approved a short extension of their previous contract while we looked at management issues within the consortium and some representation issues in terms of juvenile dependency cases. We did that and we were satisfied that they were making a good effort in those areas and that the other members of the consortium were participating in the way they wanted to, so we recommended to you at your last meeting that you approve a contract for balance of the '08-'09 period. They received a significant increase - 29.58 percent - in case rates. The proposed service delivery plan is essentially to continue with this same structure we have seen in many counties throughout the state, a public defender office and a consortium, which has the flexibility to add members as needed. We would recommend that we come back to you in a period of time, maybe within the next six months, to update you on training, recruitment and retention in the public defender's office and juvenile representation, and to allow us to check back with the consortium members and see how the management of that consortium is going. We could do that later this year. No further recommendations there.

319 Chair McCrea

Commissioner Lazenby, you looked like you were going to say something or were you just twirling your glasses?

320 C. Lazenby

Well, one of the things that bothers me with what I am reading here, but I don't think there is anything that we can really do about, is what seems to be almost a separate justice system for minority youth, especially non-English speaking minority youth. They have one counselor for both of these counties that speaks Spanish. There are indications, even from the courts, that some of the law enforcement agencies are over-citing, obviously, Hispanic and Indian youth and bringing them into court and then there is sort of a pattern because of the lack of staffing of putting people in the systems where one of the first priorities is to have them waive counsel. That is pretty atrocious in the 21st century. It is actually pretty atrocious for the 20th

century, but I don't know what we can do through the granting of contracts to public defender organizations to begin to address that. That was what was giving me dyspepsia. It just leaps out of the page at me that that is the prevalent condition over there. Everyone just seems to sort of shrug and say, "That is the way it is over here in Umatilla and Morrow County."

339 Hon. Elizabeth
Welch

Well, that relates to my inquiry earlier about what our role is when we identify significant concerns in terms of making sure that anybody who could do anything about it at least knows about it. I don't know if this is a good or a bad example of that and I don't have any inspirations about who ought to be told that either, the newspaper or what, but it is troublesome.

346 I. Swenson

A couple of thoughts. One is that they are now a JDAI site. This is the Juvenile Detention Alternative Initiative sponsored by the Casey Foundation. Multnomah County was one of their major sites. They spent many years working on minority overrepresentation, among other issues. Initially they had enormous success. It was a national model simply because they applied objective criteria to decide who would be detained, as opposed to the subjective considerations that were allowed by the system that was previously in place. Umatilla is now a JDAI site and I think that will have more impact than they may know. The focus is usually on reducing the detention population but the Casey Foundation is determined not to just reduce it but to analyze it and not to let it work to the disadvantage of minority youth. I think that that piece of it, in terms of law enforcement citing a disproportionately high number of minority youth, may be addressed there. In some of the other contract offices, and I don't know how this works and maybe Kathryn can comment on it, there is a differential available for Spanish-speaking staff and lawyers and I don't know if this particular office is included, or has looked at that. They do have some Spanish speaking staff in the public defender's office. I don't recall whether they do in the consortium. One of the things that we have recommended to our providers is that they have a meeting, and it was also a suggestion that came from within the community, of all the juvenile delinquency system partners to talk about the delinquency system. Is there something we can do to provide representation at the right stage to make sure there is meaningful representation for the youth in the area? Overrepresentation of minority youth is another issue that would be appropriate for the group to look at.

382 Hon. Elizabeth
Welch

It would seem that for that kind of issue, and for some of the other ones that we have talked about recently, that the judges are the key. They are the only people on the ground there that could do something about some of these issues. I will give you an example. I participated in a preliminary hearing in Marion County, the first appearance of a 12-year-old Hispanic kid and he did not have a lawyer. He did not have a parent present and the juvenile court counselor was suggesting that he was ready to plead guilty to a felony and I said, "No way," and they were very upset which suggested to me that this was not the way that such things were handled. I don't think any 12-year-old can waive their right to counsel. I just personally don't believe that we should allow that to happen to kids but especially a kid whose language isn't even English.

399 C. Lazenby

You have got to wonder about that. You read through this and there is this footnote about how a lot of the Latino defendants end up taking this kind of early disposition piece. That has minimal penalties inside the system but is deemed to be a conviction for immigration purposes. The implications of that and what ends up happening to these folks in the long term and what goes on with them in terms of their status to remain in the United States. The court is kind of aiding and abetting that sort of abuse. But, again, that is kind of the way we do things over here.

410 Chair McCrea

Well, Ingrid set out some things. I think that, Commissioner Lazenby, you put it out on the table and that is an important aspect of it.

- 414 Hon. Elizabeth Welch I think the idea of going to the judges is probably the most effective. Talk to the Chief Justice about it.
- 418 I. Swenson I would be happy to meet, as often as I can, with the Chief to update him when he can't attend these meetings and I would be happy to talk with him about this particular matter.
- 421 Chair McCrea Jim?
- 421 J. Hennings Perhaps you need to be more proactive and actually put an attorney at that initial hearing site with a specific obligation and I think the Commission could do this and they would be an advice counsel for all of those children prior to waiving an attorney. You have money and you can direct that that money be used to staff such a position, or you have staff in your appellate office that could be used on a very targeted, limited basis. I guarantee you that would be very newsworthy and I think very, very constructive.
- 440 Chair McCrea Okay. Any other comments or questions for Ingrid on this service plan, delivery plan? Okay, I would entertain a motion for approval.
MOTION: Hon. Elizabeth Welch moved to approve the service delivery plans; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Agenda Item No. 5 Update on Clatsop County Service Delivery Plan Implementation

447 Chair McCrea The next item is the update on the Clatsop County Service Delivery Plan implementation.

449 I. Swenson Madam Chair, if I may, I sort of lumped these together on the agenda. The other piece we have to review is Union and Wallowa, Judicial District 10, which I treated in a separate report. Then I can do a quick Clatsop County update.

Union County was not greatly affected by the loss of timber funds but Wallowa was, so they are in different situations. Union has, of course, Eastern Oregon University and other resources that Wallowa doesn't. There are two courthouses, one in each county. They are about 65 miles apart. They have two judges who cover both courthouses and counties. There are, of course, separate district attorney offices but the criminal and juvenile defenders cover both counties.

With respect to criminal cases in Union County attorneys do appear at arraignments there and in Wallowa now as well, so that is amazing. They arranged for an attorney who is otherwise not a consortium attorney to make those initial appearances in Enterprise on their behalf. They have an EDP program in Union County which is staffed by a consortium attorney. They have drug courts in both counties and, unlike the practice in Umatilla County; the defendant doesn't have to plead guilty to all the charges to be accepted into the drug court. They are looking at starting a juvenile drug court in Union County.

In juvenile cases, 70 percent of the youth in delinquency cases are represented there and the staff from the juvenile department and others report that the attorneys are in good contact with their clients. But they also reported that attorneys rarely use experts in delinquency cases. We were told that private attorneys often retain experts in sex abuse cases, but public defenders don't appear to be doing that. We will need to make sure they understand that they can use them when they need to. In dependency cases attorneys are also present at shelter hearings in both Union and Wallowa Counties. I mentioned earlier that it is pretty remarkable that they are able to do that.

The DA in Union County is Tim Thompson; he is relatively new, but with lots of experience as a deputy DA and Assistant Attorney General. He expressed a lot of appreciation for the

experience level of the attorneys who are out there. The DA in Wallowa County is Norma Williams; she is also very new, but also brand new to any kind of criminal practice. She reported that she was tested regularly at the outset. There were two consortia until recently in that area, but under the 2008-09 contract they have consolidated into a single provider as we knew they were proposing to do. There are now six members all of whom are very experienced lawyers. They are called the Grand Ronde Defenders consortium. That group received a 22 percent increase in case rates to ensure that they would be able to continue providing public defense services in both of those fairly remote areas. The structure of the system is probably the most appropriate one for that area. There is no public defender office because the area is probably too small to maintain a public defender office since they could only represent one client in a particular case. It makes sense to have a single consortium.

One of the issues that you heard about in November was the availability of experts, investigators, and so forth, and services for clients, and we did look into that. I included in the report a discussion about the Spanish language interpreter, and there is only one. She interprets for everybody but they told me that wasn't really a problem. She is doing fine. She is available and flexible. But it is with other languages, particularly interpreters for Pacific Islanders, that they are having difficulty. That is not surprising. It's true everywhere and they are having to make use of friends and family members, or the AT & T interpreter service.

533 Hon. Elizabeth
Welch

They get a lot of kids from the South Sea Islands at Eastern Oregon, so they have more in the area.

536 I. Swenson

Maybe they need to share interpreters in those counties. I did talk to the Judicial Department's interpreter services staff person and she said that they are attempting to recruit additional Spanish speaking interpreters. They hadn't given any thought to looking for more interpreters of more unusual languages in that area because they don't need them very often in court. In terms of investigators, as I looked at our database I found that there were at least 10 who are used on a regular basis. They may not always be available but it is hard to imagine the area supporting a lot more than 10 investigators. In terms of experts, that should not be a significant problem. In a given case there may be conflicts on the part of one or two of the local experts if it is a case involving the Department of Human Services, but we do pay experts from the Willamette Valley area to go there if we need to and have done that before. We have tried to make clear to the consortium members that that is always an option if there are no local people who are qualified or without a conflict in that county. There are no unusual recommendations there.

561 Chair McCrea

Any questions or comments on Union and Wallowa Counties for Ingrid? So, for clarification, Judge Welch's previous motion which passed was as to Umatilla and Morrow Counties. Now I will entertain a motion concerning approval of the service delivery plan for Union and Wallowa Counties.

MOTION: Chip Lazenby moved to approve the service delivery plans; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

569 Chair McCrea

Now we will go to Clatsop County.

572 I. Swenson

The Commission was in Astoria in September of 2006. It has been quite a while since the visit there. We finalized the report in December of 2006 and I needed to get out there but wasn't really able to do that until recently. Both Billy Strehlow and I did go out and visit with the judges, the DA and the defense providers last week. I wanted to update you on a few changes that have occurred, perhaps not as many as we might have hoped for. There are six lawyers in two consortia. There is the Murk consortium, which is essentially two women providers, and then there is the men's consortium - the Clatsop County Defender's Association - with four members. It is generally a very experienced group of lawyers. They are all well settled in the community. One of the problems that was reported by Judge

Brownhill, one of the now three judges in Clatsop County, was that some of these lawyers are approaching retirement in fairly short order and there is nobody on the horizon to replace them. She had personally done some recruiting at the University of Oregon and other people have also tried to make personal contacts with potential providers. They have had difficulty persuading people to resettle in that area. The current providers indicate that, although they understand the need for somebody to take their place, they don't have the time to train anybody. They don't feel that they have the time to bring somebody on board and train them from scratch, so that challenge continues. I think partly in response to this report but for other reasons as well, the Oregon Criminal Defense Lawyer's Association did a recruiting campaign at all three law schools law year, the winter before last, and encouraged law students to consider public defense and criminal defense as potential careers. I don't know, John might know, if there has been any specific fallout from that. At OPDS we interviewed some of the students who attended those. I am assuming that some of them got placed successfully among our contract offices as well. But recruitment continues to be a problem in Clatsop County. One of the people I spoke with was the new judge. When you were there there were two circuit court judges, Judge Brownhill and Judge Nelson, and they have since added a third, Cindee Matyas. She was just recently appointed to that seat. She is a former prosecutor from the county and she had a very good idea. She said, "Why don't you put somebody in the district attorney's office, or why doesn't one of the providers let Josh Marquis do the training with the understanding that this person isn't going to be a long-term district attorney, but would be there just for initial training and come out of that office and do defense representation." I thought that was a good idea and I think Mr. Marquis, the district attorney there, would be very open to that. He reports not having a lot of difficulty with retention of his folks, so it might be something to consider. He reported that the issues that we had discussed when we were there remain. One of them had to do with the Early Disposition Program. At the time of arraignment a deputy district attorney approaches the defendant and says, "Here is an offer you can consider." If the defendant wants to accept it he waives counsel and then accepts the offer. If he wants counsel he can apply, but if he wants to dispose of the case on that particular day he must waive counsel. On all sides they have been skeptical about looking at any other model, but I learned that they also have an Early Case Resolution system which a lot of counties use and it is a little bit different and it occurs later in the case. It does involve represented clients at that stage. It doesn't have the benefit of resolving the case as quickly and expeditiously as they do in a good EDP program, and Clatsop County does have a significant jail overcrowding problem. They are looking at building a new jail, as a matter of fact, and they are constantly over capacity. For that reason they may now be more interested in taking another look at EDP. We did provide the court, the district attorney and the defense attorneys with the Commission's guidelines and with a summary of the Washington County program and encouraged them to consider that model. My instructions were pretty clear from the Commission in December of '06 that OPDS should help them implement such a process, if possible. There was no interest at the time, but last week I found them more open to the suggestion.

There was an issue about contract rates. I think that issue was resolved with the new contract rates. They were concerned that their rates didn't compare to rates which had been paid in the past to another provider who temporarily handled juvenile cases in their location.

There is a lot of docket pressure in Clatsop County. They move their cases very quickly in that county and, as I say, these lawyers are all very busy, so for lots of reasons it would probably be helpful to have more attorneys, but at this point that does not appear to be likely. Maybe, in the long term, the addition of the third judge will relieve some of the docket pressure.

The Commission recommended that at least the Clatsop County Defender's Association consider adding more structure to their consortium. They expressed no interest in pursuing that recommendation, however. They have been working together for a long time. They are willing, however, to look at whether they need to have a formal process for dealing with

lawyers who may not be able to continue to perform adequately, but other than that they don't see a lot of need for further organization on their part.

The interesting thing in juvenile cases is that Judge Brownhill said the women's consortium was doing consistently good work in these cases and men's consortium remained less than enthusiastic about them. They saw themselves as criminal lawyers more than juvenile lawyers. They were trying to do the job but it wasn't a passion for them. They confirmed that that is in fact that case. And that is where that stands. I wish I had more progress to report.

739 Chair McCrea Questions for Ingrid? Comments? Okay. Let's move on to the monthly report.

Agenda Item No. 6 OPDS'S Monthly Report

740 I. Swenson Let's see. Kathryn do you have anything you want to cover today?

745 K. Aylward Nothing specific.

745 I. Swenson I should introduce some of our guests today. Sally La Joie is here from the Oregon State Bar. She is our liaison and she has attended other meetings. John Borden is our new legislative fiscal analyst. For those of you who were in Medford, he traveled all the way down there to hear that presentation as well. This is a relatively new area for him and he is interested in learning what you do and what criminal and juvenile providers do.

I have to report, with great regret, that Mike Greenfield has resigned from the Commission. He sent a letter of resignation to the Chief Justice. Barnes was able to speak with him about that and I think will probably give you more information about that in June. I have nothing further to say at this point except that we really appreciated, in the Office of Public Defense Services, the fact that he spent some time with us at our request doing some management training. He also met with Kathryn and me to talk about management issues. That was very useful. We will miss him. I wanted to mention quickly that our next meeting is in June in conjunction with the Criminal Defense Lawyer's Annual Conference. I am hoping that all of you can be in Bend for that meeting. There will be some major ...

784 J. Stevens I am usually out of town when you are in Bend but I won't be this year.

785 I. Swenson Good. I hope you will be there. You will be looking at budget issues because the budget proposal will be due shortly thereafter. Kathryn is working hard to put together a recommendation for you. I also hope we will be able to update you on developments in post conviction representation and some other areas. Then I wanted to just mention that we will probably cancel the July meeting. I suppose we should wait until June and make sure we don't have any critical business that is not resolved there before making a final decision. Then in August the plan is to have this full-day meeting and retreat in Baker City. I hope you will all be able to make that journey. It is a long one but we will get to stay in the Geyser Hotel which I hear is a wonderful place. So I think that will be enjoyable. We will try to fit all our business into a single day because it will require a day's journey on each end of the meeting. I don't know if we want to look at some alternate transportation. You can fly to Boise and rent a car from there. That does save some time but it is still a major drive once you get to Boise. I suppose we could think about a van or a bus. We will be looking at some of those options and if you have preferences about that please let me know.

833 Chair McCrea What is the date for that Ingrid?

833 I. Swenson It will be Thursday, August the 14th, a full day. That would make Wednesday a travel day and Friday a travel day.

841 J. Potter So, no meeting at all on the 15th?

841 I. Swenson Right. Since we had a recent retreat it seemed like we wouldn't need a full day in addition to what we have already done. I think that is all the business that I have. Pete, can you give us a little bit of an update on the appellate division?

852 P. Gartlan I only have a few things to report on. One, our annual May Daze CLE is May 22, Thursday; you're all invited. It is a half-day program. We put on two annual CLEs in-house every year. One is the May Daze and the other is the Holidayze. We are going to have Angel Lopez who will be speaking on diversity. We will have a little lunch afterwards and you are all invited. Secondly, we are continuing with our outreach. Several of our attorneys are speaking at different CLE functions throughout the state including the OCDLA annual conference in June. Third, the juvenile unit has started to take some cases, so we are gearing up with the juvenile cases and creating forms and letters to standardize the juvenile cases. This has been kind of an ongoing topic, but I would say last year at this time the NFE [no further extensions] date for our briefs was 350 days from settlement of record. Just to compare that with other practitioners, the Oregon Rules of Appellate Procedure contemplate that the opening brief will be due in 49 days. [end of tape]

TAPE 2; SIDE A

001 P. Gartlan to file a brief is 350 days. I am pleased to report that as of January that the no further extension date was reduced from 350 days to 300 days. As of March it was further reduced from 300 days to 250 days. We have made significant progress over the last year thanks in large part to the legislature giving us extra attorneys, eight attorneys, during the last session. We are really pleased about that. We were in crisis mode several years ago, a crisis that I remember testifying about before the legislature. When a system, a state system, takes as a matter of routine two years to process appeals the federal courts get interested and can step in and take over the state system. We have made a lot of positive progress, thanks in large part, to Judge Brewer and the legislature giving more assistance. Fifth, the courts have announced that they are going to e-filing. It is going to be a transition over the course of the next four years, but e-filing is starting in the Oregon Supreme Court. We are trying to make internal modifications and adjustments to comply with that. Other than that I don't have anything else.

020 Chair McCrea Okay. Thanks.

024 P. Levy The site visit process continues. Our next site review will be in Lane County looking at the providers of adult criminal representation - the Public Defender Office and the administered panel. Jim Hennings will be the chair of that site team. It will occupy almost all of his time in the week before his last day of work. We are very happy that he has agreed to continue with that project. One thing that I want to mention is, I have talked to you a number of times about the revisions to the Oregon Government Ethics Law and we have finally had the experience this week of getting staff advice from the Commission. I am happy to report that the response came back almost immediately and it was from the executive director. They were prompt and helpful. The substance of the advice, though, was somewhat concerning. It wasn't all bad. There is now a review team established to hear about and to address concerns with the law. They want written comments later this month and I will be providing written comments primarily addressed to the rules and the statutes governing reimbursement for travel expenses. The application just doesn't make much sense. It doesn't make sense for OCDLA and for our office, and frankly for any public official. If there are other concerns that the commissioners have already encountered, and you would like to share them with me, I would like to know about them. I would communicate them to the review team as well.

057 Chair McCrea Okay. Thank you.

- 056 C. Lazenby The committee that is reviewing this is going to take a pretty broad look at it. It includes Kelly Skye from the Governor's Office and some other folks from DOJ. All the state agencies have been asked to express their concerns about Senate Bill 10. I think the big public event occurred when everybody saw mass resignations from rural planning commissions. I think those people refused to abide by the report.
- 063 Hon. Elizabeth Welch They didn't read it.
- 063 C. Lazenby Who didn't read it?
- 063 Hon. Elizabeth Welch The ones who resigned.
- 063 C. Lazenby I think that is part of the confusion around Senate Bill 10 - the fact that it was a solution for the legislature but when you apply it to all public officials it has different impacts and makes it difficult to interpret. I am working at Portland State right now. We are a state agency. We have professors who work with corporations and these rules are designed to prevent a public official from taking money from corporations. The bill wasn't drafted with those sorts of nuances in mind and so while they have political problems retreating from ethics reform, I think that there are enough practical problems that they really need to limit it in some ways.
- 074 P. Levy Since Sally La Joie is here I want to mention that she is the staff liaison from the State Bar to the Post Conviction Relief Task Force. We are meeting next week and I think making good progress. Hopefully we will end up with a document much like the Juvenile Dependency Performance Standards that will really be useful in raising the level of practice.
- 079 Chair McCrea Thanks for being here, Sally. We appreciate your presence.
- 080 I. Swenson Madam Chair, it is only 11:15. You worked very efficiently this morning and your lunch hasn't arrived yet. Mr. Mueller, from Jackson County, was available only through the noon hour. I told him that you might or might not be able to hear from him at that time. If you are not, that is fine. We could talk about anything you wish to. We could give you a tour of our offices if you haven't seen them, or you could decide to skip lunch and adjourn your meeting and just leave.
- 087 Chair McCrea Well, I will bow to the will of the Commission, but I don't feel that we need to hear from Mr. Mueller and I don't have any questions to ask him. Does anyone? There seems to be a consensus on that and I am sure that there are hungry people in OPDS who would like to have those lunches. Unless there is further business that the Commissioners wish to address I would entertain a motion.
MOTION: John Potter moved to adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 5-0.**

Attachment 2

Presenter: Kathryn Aylward

Public Defense Services Commission Meeting Action Item

June 12, 2008

Issue

PDSC review and approval of contracts

Discussion

1. New contract with Daniel J. Casey for death sentence appeal and death sentence post-conviction relief appeal cases. Pending approval, the contract would begin July 1, 2008. Annual amount \$162,000.
2. New contract with Steven H. Gorham for trial-level aggravated murder and death sentence post-conviction relief cases. Pending approval, the contract would begin July 1, 2008. Annual amount \$162,000.
3. New contract with Steven L. Krasik for trial-level aggravated murder and death sentence post-conviction relief cases. Pending approval, the contract would begin July 1, 2008. Annual amount \$162,000.

Recommendation

Staff recommends approval of the three proposed contracts.

Attachment 3

**OPDS's Draft Report to the Public Defense Services Commission
Report on Service Delivery in Judicial District No. 14 – Josephine County
(April 2008)**

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 to 2007, the Commission completed investigations of the local public defense systems in Benton, Clatsop, Coos, Curry, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Washington, Yamhill, Hood River, Wasco, Wheeler, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of the public defense systems in Josephine County and a summary of the testimony presented to PDSC at its April 10, 2008 meeting in Medford. The final report will include a service delivery plan for this county.

PDSC's Service Delivery Planning Process

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

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

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a "service delivery plan," which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

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

Background and Context to the Service Delivery Planning Process

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality

public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Douglas, Jackson, Multnomah and Umatilla Counties. In 2006, teams visited all of the juvenile contractors in Multnomah and Lane Counties and criminal and juvenile contractors in Linn and Lincoln Counties. In 2007 site teams have visited the sole juvenile contractor in Clackamas County, the largest contract office in the state in Multnomah County and the sole juvenile and criminal providers in Benton County and Columbia County.

In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC undertook a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to develop a statewide Service Delivery Plan for juvenile law representation.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was

approved by the Commission in June of 2007.

In February of 2008 the Commission began a review of the delivery of public defense services in post-conviction relief cases. That review is ongoing.

The Commission is also concerned about the “graying” of the public defense bar in Oregon and the potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. The Commission has also found that the impact of such shortages is greatest in less populous areas of the state, where fewer lawyers reside and practice, but where the demands for public safety and functional justice systems with the requisite supply of criminal defense and juvenile attorneys are as pressing as in urban areas of the state. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

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

Most of PDSC’s other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the “performance” of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission’s service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed

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

through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractor Advisory Group and others, is usually in the best position to address performance issues.

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense

services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

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

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

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

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

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

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

Consortia offer the advantage of access to experienced attorneys, who

³ Id.

prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

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

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

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

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually

well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Judicial District 14 – Josephine County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like this.

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

On February 20 Commissioner John Potter, OPDS public defense analyst Billy Strehlow and Executive Director Ingrid Swenson visited with stakeholders in Josephine County. In addition to meeting with PDSC's contractors in the district, they also talked with judges, the trial court administrator, the District Attorney, juvenile department staff, representatives of the Citizen Review Board, the Department of Human Services and the Court Appointed Special Advocates. Written responses to questionnaires were also received from the two contractors in the district. Copies of these responses are attached as Exhibits A and B.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Josephine County's public defense system and services, and the range of policy options available to the Commission – from concluding that no changes are needed in this county to significantly restructuring the delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Judicial District 14's justice systems could turn out to be the single most important factor contributing to the quality of the final version of

OPDS's report to the Commission and its Service Delivery Plan for Josephine County.

OPDS's Preliminary Findings in Josephine County

The population of Josephine County is 82,390⁴. Grants Pass is the county seat and the largest city in the county. Since 62.4 percent of the land in the county is owned by the federal government the county has relied for seventy years on O&C funds to offset the lack of local tax revenue from this land.⁵ When federal O&C funds were terminated the county lost \$12 million, or more than 60% of its general fund dollars. After a Criminal Justice Systems Local Option Levy failed in May of 2007 Congress extended O&C funding for an additional year. Unlike Jackson County, which did not restore cut services when O&C funding was restored, Josephine County did restore public safety services. No local option levy has been placed on the May, 2008 ballot and it appears unlikely that O&C funding will be extended again. If additional funds are not forthcoming before July 1, 2008 it may again be necessary for the county to make significant cuts in its public safety budget. Among the proposals that came to OPDS's attention were closing the juvenile detention facility and limiting prosecution to major crimes.

The Circuit Court

There are four circuit court judges in Josephine County and a part time pro tem judge. Judge Lindi Baker is the presiding judge. Most of the judges and the trial court administrator are relatively new to their positions. The court uses a central docketing system for scheduling all matters except for criminal arraignments.⁶

Criminal Court Proceedings

Criminal arraignments are held daily at 1:00 p.m. for both in and out-of-custody defendants. In-custody arraignments are conducted by video. At attorney from either the public defender's office or the consortium is present at arraignments. Status hearings are scheduled for Monday three weeks after arraignment for in-custody cases and four for out-of-custody cases. If cases are resolved at the status hearing they are then scheduled at a later date for sentencing.⁷ Matters that are not resolved at the status hearing are either set for trial or continued. Trials for out-of-custody matters are set for three to four months later.

⁴ Source: Portland State University, 12/15/07 as reported by the Association of Oregon Counties.

⁵ The county's permanent property tax rate as fixed by Measure 50 is .5867%, the lowest in the state.

⁶ District Attorney Stephen Campbell credits the central docketing system with eliminating a previous backlog of cases.

⁷ One interviewee noted that it is inefficient for the court to set these cases over for sentencing. Court staff indicated that without judicial assistants to prepare the appropriate documents sentencing cannot occur at the time of the plea. There is a bench/bar committee that meets quarterly where these kinds of issues can be discussed.

Trials are generally scheduled for Tuesdays through Thursdays. Docket call for all matters scheduled for trial the following week is held on Wednesday. Two judges are generally assigned to handle trials. Multiple trials are often scheduled for the same time since many are settled on the day of trial. The other two judges hear motions, arraignments and other matters. Status hearings and sentencings occur on Mondays, except for in-custody sentencings, which occur on Thursdays. Although in-custody arraignments are conducted by video, in-custody sentencings are held in a courtroom in the jail. Jury trials may continue into Friday. In addition the drug court and court trials are scheduled for Fridays.

Josephine County Drug Court Program

Josephine County has a well-established drug court program⁸ that had graduated 203 clients as of January 1, 2007. The program lasts a minimum of one year, but graduation often does not occur until 15 to 17 months after enrollment. The court recently added a new family treatment component called the PRO team which is directed at families with children and which provides resources such as mentoring, parenting classes, family activities, education and counseling to participants. This new component is funded with a 2006 Byrne Grant and an Enhancement Grant from the Oregon Criminal Justice Commission. Josephine County's presiding judge serves as the drug court judge.

Mental Health Court

A mental health court is currently in the planning stage. Judge Pat Wolke is overseeing planning for the court. There is a large group of interested individuals and agencies who participate in the Oversight Committee. Representatives of both public defense contractors are involved in committees which will be designing and overseeing the work of the new court. It was reported that the District Attorney is not a participant in planning meetings at this stage.

Juvenile Court System

Judge Michael Newman is the designated juvenile court judge. Shelter hearings in in-custody juvenile delinquency matters and in dependency cases are held at 11:30 every day. Attorneys are not present for these initial hearings. Youth who are detained appear with counsel within a day or two following the initial appearance. Out-of-custody youth make their initial appearance on Mondays. "Admit or deny" hearings in dependency cases are set within 30 days after the shelter hearing and trials within 60 days, with a status call hearing before the trial date. Review hearings are generally heard at 9:00 am and are scheduled with the individual attorney. The court staff has available the vacation and court

⁸ Although Jackson County is nearly three times the size of Josephine County and at least some Josephine County officials look to the Jackson County court system as a model, it was the Josephine County drug court which served as a model for the more recently created Jackson County drug court.

schedules for each attorney and contacts them by email when there are scheduling choices.⁹

There is an active CASA program in the county.¹⁰

The county detention center has a capacity of 14 but only six or seven of the beds are usually occupied. The facility does not provide an appropriate meeting space for attorneys and clients. There is a small room with no table that is available.

District Attorney

Stephen Campbell is the District Attorney for Josephine County. Prior to becoming the county's district attorney he served as a deputy district attorney in both Coos and Josephine Counties for more than twenty years. He currently has eight deputies but has found it difficult to retain experienced lawyers, requiring the regular training of new deputies. One deputy district attorney recently resigned to accept other employment in the area. Currently one deputy is assigned to the juvenile court. The office stopped filing misdemeanors in May of 2007 for a period of two weeks when it appeared that funding cuts were imminent. It is not clear what the staffing level will be after June 30, 2008. One option being considered is for the City of Grants Pass to fund a prosecutor position in the district attorneys' office since a high percentage of the cases processed arise within the city and are investigated by the Grants Pass Police Department.

Public Defense Providers

1. Josephine County Defense Lawyers, Inc. (JC DL)¹¹

This nine member consortium handles criminal, juvenile and civil commitment cases. Holly Preslar is the president of the board and the administrator of the consortium. The consortium's board of directors is comprised exclusively of member attorneys. The board meets often to talk about issues such as attorney performance, attorney compensation, case assignment, caseloads and continuing legal education.

⁹ Court staff indicate that this scheduling system is working well. Attorneys are very responsive to email communications, often responding on the weekends.

¹⁰ OPDS was advised of friction between some CASA volunteers and some consortium attorneys. The CASA volunteers may need additional training in the role of attorneys but some of the attorneys may act unprofessionally towards CASAs who disagree with the attorney's position. Attorneys don't always return phone calls from CASA volunteers but CASAs are learning that it is best to leave detailed voice messages for attorneys rather than requests for return phone calls. One veteran CASA indicated that most of the attorneys do a good job representing their clients.

¹¹ The consortium's response to OPDS's questionnaire about consortium structure and practices is attached as Exhibit A.

Quality assurance is dealt with both in the members' participation agreement and in the bylaws of the corporation. Attorneys agree to provide legal services under the agreement "with the same care as would be provided if the client had been able to privately retain Attorney." The organization's bylaws permit suspension or termination if a member's conduct is not in the best interests of the corporation.

The length of time that each of the members has been part of the consortium ranges from more than twenty years for three members to only two months for the most recently admitted member. All of the members except one currently devote approximately 40-50% of their time to consortium cases. One member handles only public defense cases. Cases are distributed evenly among member attorneys, although the bylaws permit an attorney to deduce their participation under certain circumstances. The consortium provides continuity of representation to clients by assigning a client's new cases to the attorney who has already been appointed to represent the client on another matter or who has represented the client in the past.

Consortium members meet regularly and communicate frequently by email. The consortium maintains a library of CLE materials and state bar publications. It provides Westlaw to all its members as well as access to the Oregon State Bar's "BarBooks."

Consortium members participate in many committees, including the Bench-Bar Committee, the Juvenile Agency Committee, the Model Juvenile Court Committee, and the Mental Health Court Committee.

Comments regarding JCDL:

Comments received about the consortium from the persons interviewed indicated that in the past the consortium was not always responsive to complaints and concerns about the conduct of some members, reminding those who complained that each attorney was an independent contractor. Recently, however, the consortium has had to deal with some difficult personnel issues and appears to have managed them successfully, if not as promptly as some would have liked.

Some consortium attorneys were singled out as providing excellent representation and the group on average was said to provide good quality services. In juvenile cases, consortium attorneys were credited with providing very "active" representation and were said to

be better at maintaining contact with clients than their Jackson County counterparts. Although attorneys do not attend shelter hearings they contact clients promptly, especially in delinquency cases.¹² The juvenile system is said to be working smoothly. Attorneys do particularly good work on behalf of parents and youth, but somewhat less good work for children in juvenile dependency cases. Although they provide zealous representation for children, only a couple attorneys are said to meet often with their child clients. Others meet with them and their foster parents only rarely. Indian Child Welfare Act cases arise with some frequency and a DHS representative observed that in a recent case the attorney did an excellent job of holding the agency's "feet to the fire."

2. Southern Oregon Public Defender (SOPD) dba Josephine County Public Defender¹³

SOPD is a private non-profit corporation established in Jackson County in 1985. Bert Putney organized the office and continues to serve as its administrator. Gary Berlant is the senior attorney and manager of the Josephine County office of SOPD. The office has seven attorney positions and five staff positions, including investigators, paralegals, a polygraph operator and a drug court coordinator who staffs the drug court. SOPD handles only criminal cases in Josephine County.

SOPD has a five-member Board of Directors that reviews major actions by the director, makes decisions not appropriate for the administrator to make, and oversees the office's functioning within the local criminal justice system. The office has a written policy manual which is distributed to all employees and which describes procedures for handling personnel matters. The office also provides attorneys with a manual outlining local procedures, forms and expectations. Although the office manager and the administrator oversee the work of the entire staff, training and supervision are principally provided by the attorney or staff person who is assigned to supervise each new employee.

SOPD conducts monthly in-house CLEs, sponsors CLE sessions for local attorneys emphasizing issues of particular significance to local

¹² One juvenile department representative said that attorneys do not challenge youths' ability to aid and assist even when they have well documented cognitive deficits. OPDS was told these youth need someone to fight for them. It was also said that attorneys may not meet with their clients until the day of their court hearing or the day before. It appears that lawyers for youth do provide the same kind of representation to juvenile clients as they do to criminal clients, however, not substituting their own judgment about what is in the youth's best interest, which has been an issue in some jurisdictions.

¹³ A copy of SOPD's response to OPDS's questionnaire for public defender office administrators is attached as Exhibit B.

practitioners, and sends it attorneys and staff to OCDLA and other CLE trainings in areas of more general interest. SOPD uses an informal evaluation process for attorneys and staff that is based on open and regular communication and feedback. There are plans to initiate a formal evaluation process in the spring of 2008. Underperformance is addressed by consultation, mentoring, establishment of timelines, and when necessary, termination. Excellence is most often rewarded by acknowledgment in the presence of co-workers.

Caseloads of individual attorneys are monitored weekly and monthly.

By its own policy, as well as PDSC's SOPD requires that every in-custody client be seen within one working day.

SOPD has recently implemented a client feed-back process. Clients are given a form to complete at the conclusion of the case which is submitted to the court and then forwarded to SOPD.

SOPD received a 13.48% increase for the 2008-2009 contract period. Recruitment and retention of attorneys has been a challenge for this office where attorney's starting salaries have been significantly lower than the starting salaries of their counterparts in the district attorney's office.¹⁴ Under the new contract the entry level salaries were increased to \$45,000. Vacancies can now be filled in a more reasonable time although it has been more difficult to fill vacancies in the Josephine County office than in the Jackson County office. In the past it was not unusual for it to take two to three months to fill a vacancy in either office. Mr. Putney believes that it was equally important to increase salaries for mid-range attorneys in order to increase retention of attorneys with two to four years of experience.

Comments regarding SOPD: Specific comments about the public defender office were that the senior attorneys do really good work and that entry level attorneys get good if they stay. The staff person assigned to the drug court is rated as "fantastic" for her work in the court and for providing trainings to the whole legal community.

Caseloads

¹⁴ The current starting salary in the Josephine County District Attorney's Office is \$50,004.

In FYE 2006 there were a total of 4,079 public defense cases¹⁵ in Josephine County. In FYE 2007 there were 4018 cases, which represented a 1.5% decrease. JCDL received a total of 1,778 case credits in FYE 2007, 914 of which were in juvenile cases and the balance, or 864, in civil commitment, criminal or quasi criminal cases. SOPD received 2,210 case credits, all for criminal or quasi-criminal cases. In the 2008-2009 contract, JCDL attorneys have agreed to handle an average of 367 cases per FTE attorney per year. SOPD's seven FTE attorneys have contracted for a caseload of 321 cases each.

OPDS's Recommendations for Further Inquiry at PDSC's April 10, 2008 Meeting in Medford

The public defense delivery system in Josephine County appears to be working well. Although it is a small county it has an established public defender office which is performing the role such an office is expected to perform. While recruitment and retention remain a challenge, experienced attorneys in the office are well regarded and provide mentoring and training to newer attorneys. In addition, the county has a well-established consortium with many very experienced attorneys. After encountering some significant performance issues, in one case due to serious illness, the consortium appears to have developed appropriate mechanisms for addressing such issues in the future.

Although OPDS was informed by more than one interviewee that the relationships within the court system are, and always have been, contentious and adversarial, OPDS did not observe any evidence of unusually adversarial relationships. The two contract offices appear to work effectively together and cases get resolved between the state and the defense.¹⁶ It may be that the adversarial relationships are more often displayed in the courtroom.

The overall quality of representation appears to be very good. There were six Josephine County respondents to OPDS's 2007 statewide survey. In criminal case both contractors were rated overall as providing "very good" representation. Consortium attorneys were described as "always" possessing the legal knowledge, skill and training necessary for effective representation and SOPD was described as possessing such attributes "most of the time." Caseload levels were not seen as preventing adequate representation by consortium attorneys and were seen as only "sometimes" preventing such representation by SOPD attorneys. In juvenile cases the consortium's representation was again rated as "very good" and lawyers were said to possess the legal knowledge, skill and

¹⁵ A "case" is a unit for which OPDS awards a case credit and does not necessarily correspond to a case as defined by the court and other justice system agencies.

¹⁶ The trial rate in Josephine County is only slightly above average for both misdemeanor and felony cases.

training necessary for effective representation “most of the time” and for having adequate time, despite their caseloads, to devote appropriate time and resources to each of their clients “in most cases.” A number of the specific comments noted that the caseloads are high and the pay low and that attorneys cannot afford to work in public defense.

Testimony Received at PDSC’s April 10, 2008 Meeting in Medford

Bert Putney is the Administrator of Southern Oregon Public Defender, Inc. SOPD was founded in 1985 in Jackson County and began providing services in Josephine County in 1991. Seven attorneys are currently assigned to the Josephine County office. SOPD provides representation only in criminal cases in the county. Mr. Putney believes that the office is able to achieve administrative efficiencies by providing services in more than one county. Currently a Jackson County attorney is handling a murder case in Josephine County because there are too many murder cases for the Josephine County lawyers to handle. There is a core group of three experienced attorneys in the Josephine County office. It has been difficult to recruit and retain additional attorneys there.

Mr. Putney said that the court system in Josephine County is antiquated, that a costly computer update is needed, and that the trial court administrator has not been given the necessary authority to put the system in order. There has been a history of conflict in relationships between members of the bar in the county and the county’s population is generally more litigious.

SOPD has an active board of directors with a very stable membership. Mr. Putney keeps the board informed about developments in the office at meetings that occur at least quarterly.

Mr. Putney has an investigator who is trained to administer polygraph examinations. He would recommend that other offices consider having a staff polygrapher as well.

Mr. Putney also recommended that the Commission consider having a single organization provide services in all of the southwestern counties in the state in order to create administrative efficiencies and improve quality. He described some recent quality control issues in the Medford office and how they were handled and said that he solicits information from the judges about the work of his attorneys on a routine basis.

Presiding Circuit Court Judge Lindi Baker testified that she and the other judges see the public defense attorneys in court regularly and their experience with both defender groups has been very positive. The consortium attorneys are more experienced but the public defender group, although younger and less experienced, brings a lot of energy and commitment into their representation. In addition, the public defender office has some very experienced lawyers who act

as mentors and leaders to help the newer attorneys. If judges had a concern about an attorney they would know to whom to go to with that concern. Holly Preslar would be the contact for the consortium. She believes there is good communication between the parties in criminal cases. Generally speaking the defense bar and the prosecution seem to work together and they are resolving more cases than they did in the past. Despite the uncertainties in county revenue, the district attorney may not need to reduce the number of deputies this year. But, in the long term, if funding issues are not resolved it could be a very different story. The sheriff's patrol might have to be discontinued and it might be necessary to close the jail. Judge Baker described the Josephine County Drug Court, which has been operating for 13 years and is expecting to have its 230th graduate in the near future. She noted that the public defender's office had been a partner in the program since its inception and that a member of the public defender's staff is the coordinator for the court. The three year recidivism rate for graduates is 9.7 percent. Statewide, the recidivism rate for non-drug court clients is 38% and for non-drug court clients in Josephine County, 47%.

Dan Simcoe testified on behalf of the Josephine County Defense Lawyers, Inc. He said the consortium currently has nine members. One attorney recently resigned and another was removed from the group. The group is open to accepting new members and would like to have a total of ten to 12. Consortium members, on average, devote approximately 40-50% of their practice to public defense cases. He explained how the consortium manages performance issues. There is a participation agreement that permits the consortium to suspend and remove members for non-compliance with expectations. The organization has a board of directors comprised of consortium members but may consider adding outside members in the future. Consortium members as well as attorneys with the public defender's office participate in monthly bench/bar meetings. Although the public defender's office may believe it should receive a higher percentage of the cases, Mr. Simcoe thinks the current distribution is working well

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Josephine County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Josephine County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the County.

A Service Delivery Plan for Josephine County

[This portion of the report will be completed after the PDSC has developed its service delivery plan for this county.]

Exhibit A

Questionnaire for Administrator of Consortium

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide. YES AS TO BY-LAWS (SENDING VIA EMAIL -- SEPARATE ATTACHMENT)

2. Does the consortium have a board of directors? YES. If so describe the role that your board plays. SEE BY-LAWS ALSO. BOARD MEMBERS ARE ELECTED BY JCDL MEMBERSHIP FROM THE MEMBERS. PRESIDENT ACTS AS CONTRACT ADMINISTRATOR, TROUBLESHOOTS ISSUES WITH ATTORNEYS/OPDS/COURTS/AGENCIES/COMMUNITY PARTNERS Who are the members? SEE ABOVE. How often does it meet? BOARD MEETS MINIMALLY ONE TIME PER YEAR AND THEN ON AN AS NEEDED BASIS (TYPICALLY 4-6 TIMES PER YEAR) What kinds of issues are directed to the board? ISSUES RELATED TO ATTORNEY PERFORMANCE, FISCAL RESPONSIBILITY, ATTORNEY MEMBER PAY, DIRECTING OF ADMINISTRATIVE ASSISTANT, ATTORNEY CASE ASSIGNMENT/CASE LOAD ISSUES, ONGOING CONTINUING EDUCATION ISSUES, AND OTHER ISSUES AS NEEDED. Are there limits on how long a board member can serve or how long one member can chair the board? NO. Are there seats designated for "lay" or "community" board members? NO, ALTHOUGH HAS BEEN PART OF ONGOING DISCUSSION WITH MEMBERS, AND HAVE HAD COMMUNICATIONS WITH NON-PARTICIPATING MEMBERS AS TO POSSIBILITY OF ADDING THEM TO THE BOARD (AND AMENDING BY-LAWS)

3. How is the administrator of your consortium selected? (SEE BYLAWS) BY FULL MEMBERSHIP VOTE TO THE BOARD, AND THEN BY BOARD AS TO WHO IS PRESIDENT. Compensated? VIA A REDUCTION IN CASELOAD PER MONTH COMPARED WITH OTHER JCDL MEMBERS Evaluated? BY VOTE OF THE MEMBERSHIP EVERY YEAR.

Are there formal qualifications to be the administrator? ONLY THAT THEY MUST BE MEMBER OF JCDL. Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next? YES, SEE BYLAWS. FURTHER, LAST TIME NEW PRESIDENT IN PLACE ACTING AS ADMINISTRATOR, THAT INDIVIDUAL CONTINUED ON THE BOARD TO TRAIN OTHER BOARD MEMBERS, AND SAME IS DONE AT THIS POINT IN TIME.

4. What percentage of the administrator's overall workload is related to consortium matters? AT LEAST 40-50%. Is there a formal limit to the percentage? NO.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? VICE PRESIDENT AND/OR SECRETARY/TREASURER (OTHER BOARD MEMBERS) ACT IN PLACE OF PRESIDENT/ADMINISTRATOR. Is there a formal or informal back-up administrator? FORMAL PER BY-LAWS.

6. What are the requirements for membership in the consortium? SEE BYLAWS; HISTORICALLY ATTORNEY APPLYING FOR MEMBERSHIP MUST BE ABLE TO TAKE ALL CASE TYPES CONSORTIUM IS CONTRACTED TO HANDLE; MUST HAVE PRACTICE/OFFICE IN JOSEPHINE COUNTY; MUST BE MEMBER OF OSB AND IN GOOD STANDING; MUST BE VOTED ON BY ALL CONSORTIUM MEMBERS.

7. What is the process for applying for membership? MUST SUBMIT LETTER REQUESTING MEMBERSHIP INTO CONSORTIUM, ALONG WITH RESUME AND/OR LETTERS OF REFERENCE. THEN THEY ARE GIVEN FORM AS TO QUALIFICATIONS, STANDARDS TO FILL OUT AND RETURN PRIOR TO VOTE BY CONSORTIUM MEMBERS.

8. How long has each of the attorneys been a part of the consortium? Robert Graham (2 months); Mary Landers (3 years); Robert Bain (9 years combined; most recently 6 months) ; Deborah Cumming (6.4 years); Rebecca Peterson (4.3 years); Dan Simcoe (20+ years); Claudia Browne (20+ years); Chris Mecca (20+ years); Holly Preslar (14 years)

9. To what extent do consortium attorneys specialize in criminal/juvenile defense, representation of the allegedly mentally ill? ALL ATTORNEYS HANDLE ALL CASE TYPES. In public defense? ABOUT 40-50% of each attorney's practice is public defense, although one attorney currently limits his entire practice to public defense. Is there a limit on the percentage of an attorney's practice that can be consortium related?
No

10. How do you insure that new attorneys can become part of the consortium? We actively recruit members of the legal community on a regular and ongoing basis.

11. What materials and orientation are provided to new consortium members? All OPDS guidelines/rules; Copy of by-laws and participation agreement; And all new members sit down with contract administrator and administrative assistant to go over general local issues and contract requirements.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? ALL PARTICIPATING MEMBERS AGREE TO ASSIST NEW MEMBERS AT ANY TIME WITH CASES (and in fact have tried cases with new members when needed and/or requested) Do you have a formal mentoring system? NOTHING FORMAL. Please describe your system. SEE ABOVE, BUT ALSO RECOGNIZE THAT WE DO NOT ALLOW NEW MEMBERS UNLESS THEY CERTIFY THEY ARE QUALIFIED UNDER INDIGENT DEFENSE POLICIES AND GUIDELINES TO HANDLE ALL CASE TYPES WE CONTRACT TO TAKE WITH OPDS.

13. How are cases distributed among attorneys? ON AN EQUAL BASIS BY OUR ADMINISTRATIVE ASSISTANT. Do you have a process for assigning cases based on

the seriousness and complexity of the case? NO --- SEE ABOVE. If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

14. How soon are attorneys notified of appointment to a case? ATTORNEYS ARE GENERALLY NOTIFIED SAME DAY AS THE JCDL ADMINISTRATIVE ASSISTANT RECEIVES THE APPOINTMENT. Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC? YES---WE STRIVE FOR THAT!

15. Does your system provide continuity of representation when possible? YES. IN FACT, PREVIOUS CLIENTS ARE GENERALLY ASSIGNED TO THE SAME ATTORNEY WHEN AVAILABLE, AND IF AN ATTORNEY HAS AN OPEN CASE, ALL NEW CASES ARE ASSIGNED TO THE SAME ATTORNEY AS WELL. If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney? YES, IN MOST SITUATIONS AND WHEN ATTORNEY IS AVAILABLE.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? FIRST, JCDL ADMIN. ASST. CHECKS HER DATA BASE TO DO INITIAL CASE CONFLICT CHECK WHERE INFORMATION IS KNOWN. THEN, EACH ATTORNEY AND/OR LAW FIRM HAS ITS OWN CONFLICT CHECK SYSTEM, SINCE THEY ARE IN PRIVATE PRACTICE AND MUST HAVE THE SAME FOR THEIR PRIVATE CASES AS WELL. When are conflict checks conducted? CONFLICT CHECKS ARE DONE IMMEDIATELY IN NEARLY EVERY CASE BEFORE CASE IS ASSIGNED; HOWEVER, SOME TIMES WITNESS INFORMATION IS NOT READILY AVAILABLE, AND CREATES CONFLICTS AFTER DISCOVERY IS RECEIVED. How soon is a case reassigned after a conflict is identified? ASAP...GENERALLY WITHIN 24-48 HOURS OF DISCOVERY OF CONFLICT.

17. Do consortium members meet regularly as a group? REQUIRED BY BY-LAWS TO MEET ANNUALLY. ALSO, WHEN NEEDED. AND, WE TRY TO HAVE "CRIMINAL DEFENSE BAR" MEETINGS TO DISCUSS RELEVANT ISSUES WITH PRACTICE MATTERS, CONTINUING EDUCATION, ETC. If so, how frequently? SEE ABOVE.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing? WE COMMUNICATE VIA EMAIL NEARLY ONCE PER WEEK, OR AS NEEDED.

19. Is there a mechanism for sharing research or forms? JCDL MAINTAINS A LAW LIBRARY OF CLE MATERIALS, ETC; WE ALSO PROVIDE WESTLAW TO ALL MEMBERS AND OSB BAR BOOKS AS WELL. WE ALSO ROUTINELY SHARE FORMS, AND SEND EMAILS WHEN NEW ISSUES ARISE.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? OUR ADMIN. ASST. MONITORS CASE ASSIGNMENT TO EACH ATTORNEY BASED ON A LIST FORMAT. How do you ensure that attorneys are not handling too many cases? EACH ATTORNEY SELF-MONITORS....AND WE ENCOURAGE AND ROUTINELY ASK FOR INPUT FROM MEMBERS (THEY GO OFF ROTATION, REDUCE CASELOAD PER BY-LAWS, WHEN THEY NEED TO REDUCE THE SAME)

21. How do you ensure that attorneys are providing quality representation? VIA PARTICIPATION ON A NUMBER OF COURT AND COMMUNITY PARTNER COMMITTEES (Bench-Bar Committee, Juvenile Agency Committee, Model Juvenile Court Committee, Mental Health Court Committee) AND THROUGH MEETINGS WITH PRESIDING JUDGE AND TRIAL COURT ADMINISTRATOR. Are there regular evaluations of attorneys? NOT OF ANY FORMAL TYPE. If so, how and by whom are they performed? Are there other mechanisms in place to ensure that consortium attorneys are providing quality representation. SEE ABOVE.

22. How do you address problems of underperformance by attorneys? SEE BYLAWS; WHEN ISSUES FROM CLIENTS COME TO CONTRACT ADMIN., THEY ARE FIRST ADDRESSED WITH OTHER BOARD MEMBERS, AND THEN GENERALLY DIRECTLY VIA CONVERSATION WITH THAT ATTORNEY. LESS FORMALLY SOMETIMES JUST DIRECT CONERSATION WITH SAID ATTORNEY IS ALL THAT IS NEEDED. IF MATTER DOES NOT RESOLVE, OR IS CONTINUING COMPLAINT FROM CLIENTS, COURTS, OR COMMUNITY PARTNERS, SOMETIMES FORMAL INVESTIGATION IS LAUNCHED AFTER GIVING MEMBER OPPORTUNITY TO RESPOND AND THEN BOARD REVIEWS, AND MAY REFER TO ENTIRE MEMBERSHIP IF ACTION IS NEEDED. ADDITIONALLY, PER BYLAWS, MEMBER MAY BE SUSPENDED AND/OR TERMINATED FOR A VARIETY OF REASONS (and in fact have been in recent past).

23. Do you provide training or access to training for consortium lawyers? SEE ABOVE #17, 18 & 19. Please describe. Do you require a minimum number of criminal/juvenile/civil commitment law or trial practice-related CLE credits per year? NOT FORMALLY, BUT ALL MEMBERS HAVE ACCESS TO CLE MATERIALS PURCHASED BY JCDL AND ARE INFORMED OF THE SAME.

24. Are attorneys required to report disciplinary action by the bar? YES, BUT SOMETIMES NOT KNOWN UNFORTUNATELY. How many consortium attorneys have been disciplined by the bar? IF YOU INCLUDE ADMONISHMENTS, I BELIEVE 4 MEMBERS. What were the circumstances? One member was disciplined by public reprimand for private retained civil case for neglect of legal matters; two members admonished for conflict of interest issues (on retained private matters), and one for ex parte contact with court (admonished).

25. What is the consortium's process for handling complaints from judges? SEE ANSWER TO #22. GENERALLY CONTRACT ADMINSTRATOR SPEAKS TO

JUDGE, THEN TO ATTORNEY, BUT ALSO ENCOURAGES JUDGE TO SPEAK DIRECTLY TO THE LAWYER IN QUESTION IF POSSIBLE. Clients? SAME ANSWER AS TO JUDGES COMPLAINTS. Others? SAME ANSWER. Is there a designated contact person for complaints? YES, CONTRACT ADMINISTRATOR. Is that person's identity generally known in the criminal/juvenile justice community? ABSOLUTELY!!!!!!!!!!!!!!

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences? ALL ATTORNEYS HAVE ATTENDED TRAINING, AND ROUTINELY INFORMATION IS PASSED ON TO ALL ATTORNEYS VIA EMAIL, CLE INFO, ETC.

27. Do you have a system in place that allows clients to evaluate the quality of services received from consortium attorneys? NO. HAVE TRIED IN THE PAST VIA FORMS GIVEN OUT AT END OF CASE, AND RESPONSE HAS BEEN LESS THAN 1%.

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

29. What are some of the things your consortium does especially well? Please describe. WE WORK VERY HARD FOR CLIENTS, WE STAY WELL CONNECTED TO THE COURTS AND EACH OTHER FOR INFORMATION SHARING, WE HAVE LAWYERS WITH MANY YEARS OF EXPERIENCE, WE ARE NOT AFRAID TO CHALLENGE THE "SYSTEM" WHEN NEEDED AND NECESSARY

30. Are there any areas in which you think improvement is needed? I WOULD SAY IMPROVEMENT BY WAY OF ADDING NEW MEMBERS TO LOWER CASE LOAD, AND TO COMPEL ATTORNEYS TO ACTIVELY PARTICIPATE IN CLE'S BASED UPON OUR AREAS OF PRACTICE AS CONSORTIUM MEMBERS.

Exhibit B

ADMINISTRATORS' RESPONSES TO QUESTIONNAIRE
SOUTHERN OREGON PUBLIC DEFENDER, INC.

Board of Directors

1. Do you have a board of directors of other body overseeing the operation of the office?

Our office has a Board of Directors consisting of five (5) directors.

2. Who serves on your board of directors?

Presently, the Board consists of Richard Stark (President), who is a Medford attorney in private practice since 1969 and one of the patriarchs of the local Bar. Wayne Crutchfield (Secretary), former Under-Sheriff with the Jackson County Sheriff's Department and an employer of SOPD from its origination in 1985 until 2000 as an investigator and polygraph operator. He is presently retired. Kelly Rasmussen, who is a local business person and travel agency owner. Herbert Putney (Administrator), an attorney since 1970 and Administrator of SOPD since its origin in 1985. There is a Board vacancy because of the death of Peter Naumes.

3. How are board member selected and how long do they serve?

Prospective Board members are selected by existing Board members and Board members serve a two (2) year term on a staggered basis.

4. How often does the board meet?

The Board of Directors meets quarterly plus other appropriate times (i.e. during the budget crisis in 2002-2003).

5. What are the functions of the Board?

Our Board has three (3) main functions:

- A. To review and approve or disapprove major actions by the Administrator;
- B. To review with other members of the "Criminal Justice System" the role SOPD plays and to make any decisions, suggestions or observations appropriate.
- C. To make decisions in matters that it is not appropriate for the

Administrator to make unilateral decisions.

6. Does the board have written policies and procedures?

Each Board member has a "Board of Directors Manual" which sets forth procedures and policies.

Personnel

1. Do you have written policies and procedures for handling personnel matters? If not, do you have a system you use? Please describe.

We have a written policy manual which we distribute to all employees. Employees then sign an acknowledgement that they have read the manual and agree to abide by its conditions. Within the manual, procedures for handling personnel matters are described.

2. Do you have written job descriptions? If not, please outline the functions of each category of employee involved in public defense work.

We do not have written job descriptions. The categories of employees are as follows:

- a. Administrator
 - i. Contract administration
 - ii. Budgeting
 - iii. Human resources manager including hiring, firing, benefits management, etc.
 - iv. Staff attorney duties
 - v. Court and Community liaison
- b. Office Manager
 - i. Assistant to the Administrator
 - ii. Maintain personnel records, financial accounts
 - iii. Supervise secretarial staff
- c. Staff Attorney
 - i. Full responsibility for all legal aspects on assigned cases
 - ii. Cases assigned based on level of experience
- d. Investigator
- e. Polygrapher
- f. Paralegal
- g. Secretary

- h. Receptionist
- i. Interpreter
- j. Training Coordinator

3. Do you have written policies regarding supervision of your staff? If not, describe your system of supervision.

We do not have written policies regarding supervision of attorneys and staff. Instead, upon hiring a new employee, they are assigned either a supervising attorney, or supervising staff member (depending on assigned duties). The supervisor is then charged with monitoring and advising of the new employee, with regular feedback to the Office Manager and Administrator.

4. What is your staff evaluation process?

We intend to initiate a formal evaluation process in Spring 2008.

5. How do you address issues of underperformance?

Issues of underperformance are addressed on a case by case basis. Intervention is attempted at the earliest opportunity. Various techniques are employed such a consulting with the individual, arranging for mentoring with other employees, setting of timelines for improved performance, and as a last resort, termination of employment.

6. How do you acknowledge and reward excellence?

Excellence is rewarded on a daily basis by acknowledging that performance in the presence of co-workers.

7. Do your salary scales compare to other local attorney offices?

Every attempt is made to keep salary levels as close to comparative salaries in the District Attorney's office as possible. However, because of budget constraints, our salaries range from 20% to 35% below salaries in the District Attorney's Office.

8. Do you have a plan in place to permit new attorneys to join your office?

New Attorneys are added to the firm as openings develop, either by resignation of current staff, or in the event of case load increases. Generally, open positions are filled as entry level to allow advancement of current employees.

9. How do you monitor the general quality of the working environment at your firm? Are there regular staff meetings? Is there a process for obtaining feed-back from staff regarding the working environment?

Every effort is made to maintain an open door policy with all staff at all levels. This allows for a continual opportunity and a high degree of comfort for all employees to express opinions about the office working environment. Suggestions and criticisms are encouraged and acted upon when deemed valid and appropriate. Office meetings are held on a regular basis.

Competence

1. What standards do you use for the hiring, monitoring and management of the professional competence of staff involved in public defense cases?

Generally, all attorney position openings are filled as entry level positions. Therefore, the review of qualifications are based on educational background, prior experience, both legal and otherwise, recommendations, and personal interviews. From there, it is relatively easy to watch the progression of professional growth of the individual. This is done through information peer review, and monitoring by the Administrator and supervising attorneys. Feed-back is also solicited from the local judiciary and court staff. Issues are dealt with as they arise, and when necessary, further training is offered. Additionally, with our in-hour program of CLE, area specific sessions can be developed to address problem areas.

2. How do you review the casework of your staff? How is that review shared with the staff?

Casework is reviewed by constant observation, and periodically, physical review of files. That review is shared with staff, when necessary, through meetings and conversation, on a fairly informal basis.

3. Do you have a complaint process for use by staff, clients, others? How is it used?

Complaints by staff are accepted cheerfully at all levels. Staff are encouraged to bring any and all issues to the attention of either the Office Manager or Administrator, or both. Complaints by clients are referred to the Administrator, as are any complaints from anyone outside of the organization. Complaints about the Administrator can be directed to the Board of Directors.

4. Do you have a procedure in place to obtain regular feed-back from public

defense clients regarding the representation they received from your office? Please describe.

We have just implemented a client feed-back form. Clients are given the form at the conclusion of the case and give it to the court clerk to be forwarded to our office.

5. Have any post-conviction relief petitions been granted against attorneys in your office? What were the circumstances?

There has been one post-conviction relief petition granted against an attorney from this office. It dealt with obligations of the attorney to determine a defendant's immigration status.

6. Have any attorneys in your office been disciplined by the Oregon State Bar for violation of the Rules of Professional Conduct or the former Disciplinary Rules? What were the circumstances.

One attorney received a private reprimand because it was felt that he revealed a client confidence in open court.

Cultural Competence

1. What steps have you taken to provide culturally competent representation to clients of diverse backgrounds?

We provide, in house, a minimum of one CLE diversity credit per year. We employ people of various races, gender and sexual orientation. We encourage attendance and participation in any and all CLE's that deal with cultural diversity issues.

Training

1. How do you orient new staff to your office?

New staff are provided with the employee manual and paired with a supervisor. There is also a manual for new attorneys which provides a whole range of information about the local procedures, forms and expectations.

2. How do you insure that attorneys are familiar with and abide by the the Oregon Rules of Professional Conduct?

Attorneys are expected to periodically review the Rules of Professional

Conduct. Additionally, we provide sufficient funding to allow all attorneys to maintain required levels of CLE training, including ethics credits. We also provide in-house ethics CLE's.

3. What ongoing professional development training is offered to staff by your office?

We provide a monthly OSB approved one hour in-house CLE for all our attorneys. When appropriate, these CLE sessions are open to the local legal community. These CLE's cover the whole range of general, practical and ethics requirements. All attorneys are encouraged to observe each other during court proceedings and give each other constructive feedback.

4. What assistance or support do you provide to staff in order to encourage participation in professional development training outside the office?

We encourage participation by staff to participate in professional development training outside the office by paying for it when appropriate, and by allowing time for their participation in these programs as part of their work hours. Employees do not have to use personal time or vacation time to participate in these opportunities.

Case Management

1. What is your case file protocol for public defense cases?

When the office is appointed to represent a defendant, a file is opened on the case or cases assigned that day. Typically, if multiple cases or credits are received, they are all contained in the single file, so each file represents a single days assignment. Each credit, however, is given a separate and distinct SOPD case number. These case numbers are assigned sequentially and include the case type code. The file includes a log sheet and closing form, OJIN printout of the case, and any received discovery. At the time the file is opened, it is assigned to an attorney. The assigned attorney handles all cases pending on nay particular defendant. The file is kept in the office of the assigned attorney. The case log is maintained by the attorney and any other staff member who has any interaction on the case, include investigators, secretaries, etc. All events are logged. When any particular case is concluded, the attorney completes the closing form and the case is closed and filed. All closed cases are retained for the required retention period.

2. What is your case assignment process in public defense cases?

Cases are generally assigned by a front office staff person who has been designated by the Administrator to perform that role. That person is familiar with the competency levels of each attorney and the types of cases appropriate for each attorney, and the number of cases per month that each attorney is supposed to take. Those differences are determined by experience and seniority. Measure 11 cases are separately reviewed by the Administrator and assigned by the Administrator.

3. How do you determine whether case are being distributed fairly among attorneys?

Case assignments are monitored daily to insure that the distribution is fair. Our computer system prints out a daily report showing how many cases and which type have been assigned to each attorney per month. Based on that, new assignments are made. Projected monthly case-loads are modified monthly based on actual assignments of the previous month. Additionally, over all caseloads for each attorney are monitored weekly, and if necessary, adjustments are made based on that.

4. What policy or procedure do you have for case relief when needed?

Case relief is done on an as needed basis. Attorneys are expected to talk with the Administrator if they feel that some relief is necessary. Based on the situation, adjustments can be made, either in the reduction of newly assigned cases, or the transferring of cases to other attorneys. Additionally, by ongoing monitoring of caseloads, potential problems can be identified and inquires made by the Administrator, or other supervising attorneys.

5. What is your procedure for identifying and handling conflicts?

Our computer case management system includes a conflict checking component. As individuals are identified as being associated with a case, their personal information is entered into the computer as part of that case' information. Upon entering the information, the computer then indicates any other cases that that individual is associated with. Generally, it is the secretaries' responsibility to enter the information into the computer database. The secretary then informs the assigned attorney of identified potential conflicts. The attorney then conducts a further review of see whether a conflict actually exists. Then, all conflicts are reviewed by the Administrator prior to filing a motion to withdraw with the court.

Availability

1. Under what circumstances are attorneys in your office made available To indigent members of the public seeking information about criminal And juvenile matters?

Attorneys may only give advice on cases that this office has been appointed on. When appropriate, attorneys may field questions from the public about general criminal procedures, or occasionally on issues which are public record. This may include inquires from family members of clients, from the general public, from other agencies, from the news media, and from the local schools. All of our attorneys are encouraged to participate in any and all activities that are an outreach to the general public. This includes volunteering for speaking engagements, mock trial competitions, and legal forums.

2. When is an attorney with your firm first available to an indigent person suspected of a law violation?

An SOPD attorney is available to a person immediately upon this office being appointed.

3. Is an attorney present for the initial court appearance in criminal and juvenile public defense cases? If not, why not?

An SOPD attorney is present at all arraignments, both in custody and out of custody, felony and misdemeanor.

4. Do you have a policy requiring contact with in-custody and out-of-custody public defense clients within a specified period of time? What is the policy? How is the policy generally followed?

SOPD's policy is that every in-custody clients is seen within one working day. Out-of-custody clients are notified by mail to contact their attorney immediately to set an appointment. We have an assigned person to do the initial contacts with in-custody clients, and log notes are always entered regarding that contact. The client's attorney can then monitor that the contact was made. Out-of-custody clients are expected to initiate the personal contact. That is generally monitored on a complaint basis. Complaint about lack of contact are fielded by the secretarial staff and forwarded on to the assigned attorney and to the Administrator for follow-up. Generally, these policies are followed very closely.

Appeal

1. How and when are public defense clients advised of their appellate rights in criminal and juvenile cases?

Generally, clients are advised of their appeal rights at the time of sentencing. Additionally, the plea petitions that are submitted to the court include a recitation of appeal rights and clients are required to sign that portion, acknowledging that they have read and understand those rights. The client gets copies of these documents.

In cases where issues have arisen which have generated appeal issues, the attorneys review them with the client at the time they arise, and the attorney is responsible for initiating the appeal with the Office of Public Defense Services, Legal Services Division. This is done immediately upon completing the case at the local level.

Community Education

1. How is your office involved with the local community (local government, local criminal and juvenile justice systems, and local legal community)?

Every attempt is made to insure that SOPD is an integral part in all parts of the local community. We are a permanent member of the Jackson County LPSCC, and all ad-hoc criminal justice committees. Our attorneys are encouraged to participate in all levels of local government. Often our attorneys serve on various boards, both government and non-profit. At times, some of our attorneys have served in elected positions, such as City Council. They have also served on local bar committees and advisory groups. We allow attorneys to participate in these activities without having to use personal or vacation time.

2. Does your office provide trainers to the local community? If so, how and on what topics?

We are often called on by outside groups to make presentations, provide expertise and training, or participate in discussion groups. This has run the gamut of school presentations, service clubs, mock trial competitions, CLE's, local television broadcasts, etc. Generally, it is on criminal justice related issues, but may also involve areas of particular interest or training of specific attorneys.

3. If not described in response to items 1 and 2, how does your office participate in efforts to improve the local public safety system?

In addition to items mentioned above, our staff has participated in efforts to pass local law enforcement levies, city and county budget meetings, and ad-hoc groups focused on review of various procedures within the criminal justice system, e.g. implementing electronic notices, electronic judgments, etc.

Zeal

1. What steps have you taken to inspire and support your staff in providing zealous representation of public defense clients?

We provide regular training. We publicly acknowledge success or hard work. We make it clear that we expect nothing less than zealous representation and respect for our clients.. Perhaps unfairly, we aren't hesitant to gossip about any poor representation we see from other practitioners at the courthouse. This may be elitist, but it raises a certain expectation in the office that unless an attorney cares about their clients and knows what they are doing, they don't belong here. We hire good people. We acknowledge that it is really not paranoia when they are really out to get us. We try to make the office a fun and exciting place to work and we are very quick to support each other. We may rely on black humor and cynicism for stress relief, but I think we are able to maintain a positive attitude nonetheless.

In addition, we are trying to bring prominent speakers to our continuing legal education programs such as the one that we are presenting on April 11, 2008, which will include: Gina Raney, D.O.C. Operations and Policy Manager, Salem, Oregon; Rita De-Hann Sullivan, Ph.D, OnTrack, Inc., Medford, Oregon; Sr. Trooper Ken Snook, Sgt. Tim Plummer, Oregon State Police; and Jesse W. Barton, Attorney at Law, Salem, Oregon.

Conclusions

1. In what areas do you believe SOPD excels?

SOPD excels at maintaining a high level of competency and cost effective administration of justice, insuring that the interests of the individual defendant are protected and respected. We steadfastly provide excellent legal representations to indigent clients. We are highly respected within our community. We provide ongoing continuing legal education second to none. We provide excellent attorney support through our staff of Investigators, Paralegals, Polygraphers, etc.

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

SOPD could benefit with some technological improvements. We have not availed ourselves enough with advanced methods of trial presentations, e.g. computer generated demonstrations and power point presentations. Also, general use of computers in the courtroom. Some of this is funding issues related to acquisition of equipment, and some of it is training of staff in the technologies. We plan on organizing additional CLE's in this area, and consultations with experts in these fields, and attempting to budget additional money to increase our capabilities.

In addition, we have worked very hard with young attorneys to help them keep case loads down by analyzing their cases as early on as possible so if they are resolvable they can be resolved quickly so that the attorney will have more time to handle the complex cases that need "real lawyering".

2. Are there any areas in which improvement is needed? What are they? How do you intend to address them?

SOPD could benefit from more training on the uses of technological improvements such as computer generated demonstrations and power point presentations. In addition, we need to continue to work on setting up more formal processes such as evaluations.

Attachment 4

OPDS QUALITY ASSURANCE TASK FORCE SITE VISIT SUMMARY
June, 2007

1. **Crabtree & Rahmsdorff** (Deschutes County) – criminal, juvenile and civil commitment cases. May, 2004. Team members: Marty Cohen (Clackamas County), team chair; Tom Sermak (Lane County); Doug Fischer (Umatilla County).
2. **CIDC** (Clackamas Indigent Defense Consortium) – criminal cases. September, 2004. Team members: Tom Sermak (Lane County), team chair; Dave Audet (Washington County); Robert Elliott (Washington County); Guy Greco (Lincoln County); Cathy Ruckle (Multnomah County); Robert Thuemmel (Clackamas County)
3. **Metropolitan Public Defender Services, Inc.** (Washington County) – criminal, juvenile and civil commitment cases. November, 2004. Team members: Janise Augur (Lane County), Ann Christian, Tom Crabtree (Deschutes County), Ron Gray (Clackamas County), Carole Hamilton (Coos County), Julie McFarlane (Multnomah County) and Bert Putney (Jackson and Josephine Counties).
4. **Jackson County Public Defense Contractors**, February, 2005. Team members: Carole Hamilton (Coos County), chair; James Arneson (Douglas County); Angel Lopez (Multnomah County); Karla Nash (Deschutes County); Janet Miller (Multnomah County); Keith Rogers (Washington County); Kathy Wood (Benton County).
 - a. **Southern Oregon Public Defender, Inc.**, Jackson County office – criminal cases
 - b. **Los Abogados** – criminal cases
 - c. **Jackson Juvenile Consortium** – juvenile and civil commitment cases
5. **Umatilla/Morrow Counties**, April, 2005. Team members: Tom Sermak (Lane County), chair; Tom Crabtree (Deschutes County); Jamesa Drake (LSD attorney); Lynn Holguin (Multnomah County)
 - a. **Intermountain Public Defender, Inc.** -- criminal, juvenile and civil commitment cases.
 - b. **Umatilla/Morrow Consortium** – criminal, juvenile and civil commitment
6. **Portland Defense Consortium** (Multnomah County) – criminal and juvenile cases, July, 2005. Team members: Lisa Greif (Jackson County), chair; Tom Collins (Washington County); Hollis McMilan (Multnomah County); Shawn Wiley (LSD attorney); Jack Morris (Gilliam, Hood River, Sherman, Wasco and Wheeler Counties); Steve Krasik (Marion County)

7. **Douglas County** – September, 2005. Site team: Paul Levy (Multnomah County), chair; Gary Berlant (Josephine County); Jeni Feinberg (Jackson County); Carole Hamilton (Coos County); Jennifer Kimble (Crook, Jefferson Counties); Janet Miller (Multnomah County) Bert Putney (Jackson County)
 - a. **Umpqua Valley Public Defender** – criminal, juvenile, and civil commitment cases
 - b. **M.A.S.H.** – criminal, juvenile and civil commitment cases
 - c. **James A. Arneson, PC** – criminal and juvenile cases
 - d. **Richard Cremer** – criminal and juvenile cases

8. **Multnomah County Juvenile Contractors** – January, 2006. Site team: Leslie Harris (University of Oregon, chair), Mike Clancy (Clackamas County), Daphne Mantis (Lane County/statewide appeals), Jennifer Nash (Benton County), Holly Preslar (Josephine County), Tahra Sinks (Marion County), Karen Stenard (Lane County)
 - a. **Bertoni & Todd**
 - b. **Alan Karpinski**
 - c. **Ronnee Kliewer**
 - d. **Juvenile Rights Project**
 - e. **McKeown & Brindle**
 - f. **Metropolitan Public Defender**
 - g. **Multnomah Defenders, Inc.**
 - h. **Native American Program Oregon Legal Services Corporation (NAPOLS)**

9. **Linn County** – March, 2006. Site team: Jim Hennings (Multnomah and Washington Counties), chair; Janan Billesbach (Clackamas County); Jeff Carter (Marion County); Steve Krasik (Marion County); Valerie Wright (Deschutes County)
 - a. **Linn County Juvenile Defense Consortium** – juvenile cases
 - b. **Linn County Legal Defense Corporation** – criminal and civil commitment cases

10. **Lane County Juvenile Contractors** – June, 2006. Site team: Sibylle Baer (Multnomah County), chair; Dan Cross (Washington County); Valerie Eves (Deschutes County); Dick Garbutt (Klamath County); Liz Sher (Multnomah County); Dean Smith (Washington County)
 - a. **Lane Juvenile Lawyers Association**
 - b. **Public Defender Services of Lane County**

11. **Lincoln Defense Consortium** – September, 2006. Site team: David McDonald (Multnomah and Clark Counties) chair, Andrew Chilton

(Multnomah County), Ron Gray (Clackamas County), Greg Hazarabedian (Lane County), Stuart Spring (Multnomah County), Mark Taleff (Linn County)

12. **Independent Defenders, Inc.** (Clackamas County juvenile provider)—February 2007. Site Team: Jeff Carter (Marion County), chair; Lissa Kaufman (Multnomah County); Inge Wells (Lane County); Christine Herbert (Jackson County); Clare Bruch (child welfare specialist, Jackson County).
13. **Metropolitan Public Defender** (Multnomah County, adult criminal)—April 2007. Site Team: Kathryn Wood (Benton County), chair; Bert Putney (Jackson County); Lisa LeSage (Multnomah County); Gordon Mallon (Harney, Grant Counties); Tom Sermak (Lane, Marion Counties); Ellen Pitcher (Federal courts).
14. **Benton County Legal Defense Corporation**—July 2007. Site team: Robert Elliott, chair (Washington County); Kelly Skye (Marion County); Jack Morris (Hood River, other counties); Greg Hazarabedian (Lane County); Robin Wolfe (Multnomah County).
15. **Columbia County Indigent Defense Corporation**—December 2007 Site team: Robert Suchy, chair (Yamhill County); Angel Lopez (Multnomah County); Sandra Vallejo (Multnomah County); Louis Miles (Marion County).
16. **Lane County Adult Criminal Contractors**—September 2008 (planned)
 - a. **Public Defender Services of Lane County**
 - b. **Lane County Public Defense Panel**
17. **Crook/Jefferson County**—October 2008 (planned)
18. **Marion County Juvenile Advocacy Consortium**—December 2008 (planned)