

**Members**

Barnes H. Ellis, Chair  
Shaun S. McCrea, Vice-Chair  
James M. Brown  
Henry H. Lazenby, Jr.  
John R. Potter  
Janet C. Stevens  
R. Jon Yunker



**Ex-Officio Member**

Chief Justice Wallace P. Carson, Jr.

**Executive Director**

Peter A. Ozanne

**PUBLIC DEFENSE SERVICES COMMISSION**

Public Defense Services Commission Meeting

Thursday, June 17, 2004 – 11:00 a.m. to 3:00 p.m.  
Inn of the Seventh Mountain  
Bend, Oregon

**Agenda**

1. **Action Item:** Approval of Minutes (*Attachment 1*) Barnes Ellis
2. OPDS's Monthly Report OPDS staff
  - The June 24th Emergency Board Meeting
  - CBS's Status Report and the Move
  - LSD's Status Report
  - LSD's Appellate Panels (*Attachment 2*)
  - Contractor Site Visit in Deschutes County
  - Multnomah County's Service Delivery Plan
  - A new PDSC Complaint Policy
3. **Action Items:** PDSC Policies
  - Renew PDSC's Substitution Policy (*Attachment 3*) Ingrid Swenson
  - Changes to PDSC's Payment Policies (*Attachment 4*) Kathryn Aylward
4. **Action Item:** Approval of Draft Performance Measures for the Legislative Audit Committee (*Attachment 5*) Kathryn Aylward
5. **Action Items:** Region 4 Service Delivery Plans Peter Ozanne & Kathryn Aylward
  - Lane County (*Attachment 6*)
  - Linn County
  - Lincoln County
6. New Business Barnes Ellis

*Next PDSC Meeting:*

*Thursday, August 12, 2004; 9:00 a.m.  
Location to be Announced*

PUBLIC DEFENSE SERVICES COMMISSION

April 12, 2004  
State Capitol Building, Room 50  
Tapes 1-4

MEMBERS PRESENT: Barnes Ellis  
Janet Stevens (by phone)  
John Potter  
James Brown  
Chief Justice Wallace P. Carson, Jr.

STAFF PRESENT: Peter Ozanne  
Kathryn Aylward  
Peter Gartlan  
Becky Duncan  
Lorrie Railey

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**TAPE 1, SIDE A**

**Agenda Item No. 1 Approval of March 2004 Meeting Minutes**

001 Chair Ellis Calls meeting to order at 9:07 a.m.

Any additions or corrections? I have a couple of corrections to the March meeting minutes at page 11. In the large paragraph in the middle of the page where it refers to "confidence," I am sure that is supposed to be "competence." On the following page, four lines up from the bottom, the word "hire" should be "higher." Any other additions or corrections?

**MOTION:** J. Brown moved approval of the minutes; J. Potter: 2<sup>nd</sup>  
**VOTE:** 3-0, hearing no objection, the motion **CARRIES**

**Agenda Item No. 2 Monthly OPDS Report**

016 P. Ozanne First a couple of positive developments. Barnes and I went to the Executive Committee of the Oregon District Attorney's Association last month. We drove over to Bend, which was appreciated. I think the majority of the district attorneys in the state were there. After presenting a summary of what the Commission and OPDS have been up to, we spent the rest of our time with the district attorneys answering their questions. They warned us that they had many hard questions but, frankly, I thought most of the questions were easy to address. For example, one district attorney said, "Nobody ever comes to my county and talks to me about what is going on and what public defense is doing." As you know, the Commission is currently engaged in such a process. There were also a number of questions regarding our budget and how we are handling it. We had answers to those questions too. By the end of the meeting, the group said they were satisfied and

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pleased with the work we were doing. Barnes do you want to add anything?

- 035 Chair Ellis I thought this was a good follow-on to the good feelings that existed in the last legislative session, particularly that segment of the system—law enforcement—which in prior years has been as adversarial in the legislative process as in the courtroom. I think they really do seem to recognize that we are essential to their ability to carry out their function. I thought the tone at the meeting was professional and cordial. Still, there are issues between that side of the ledger and our side of the ledger. But I thought it was constructive and I think it is part of what Peter has been doing and I do commend you for it—reaching out to others who we relate to in the system overall and working with them on issues of common interest. I left the meeting feeling like the relationship we are now experiencing with the DA community is pretty healthy and positive.
- 052 P. Ozanne I agree.
- The other development that we talked about at the last meeting was our report to the Emergency Board last Thursday. You may recall that we were not originally scheduled for an appearance until their meeting in late June. But you concluded during our last meeting in Corvallis that, while we shouldn't be seeking funds from the E-Board before the June meeting, a status report to the Board would be a good idea. Jon Yunker and others suggested this approach. We received the assistance of Robin LaMonte, who is here today, throughout the preparation of the report, which we certainly appreciated. We expected that our presentation of the report before the E-Board would be quite brief. But the subcommittee of the Board we were assigned to—the Education Subcommittee—spent about 15 or 20 minutes with us. They asked a number of questions and expressed the concerns that we wanted to convey to them: that there really are not any ways to resolve our budget shortfall without additional funds; that neither the courts nor the Commission would be able to solve this problem without more funds. Both Senator Morris and Representative Morgan expressed the view that the E-Board had better conserve that portion of the Emergency Fund reserved for indigent defense.
- 078 Chair Ellis The \$7 million?
- 079 P. Ozanne Yes. But if we are not able to demonstrate by available data at the June E-Board meeting that we need all of the \$7 million for caseload growth, then the Emergency Board, as I understand from Robin, has the option at the end of November to allocate the remainder of the \$7 million to address part of our budget shortfall resulting from the failure of Measure 30, which is currently \$9.9 million. So that is also a welcome development. In terms of alerting the Committee to our concerns and our limited options, and in conveying our need for additional funding, I think we successfully communicated our message and accomplished that task at the E-Board last Thursday.
- 097 Chair Ellis Are you able to give us a sense where we are this biennium to date with our budget? In other words, are expenses running more or less than we anticipated? I know there is seasonality. I know there are other issues,

but just given the percentage of time that has passed in the biennium, how are we doing?

- 103 P. Ozanne I think this is on Kathryn's mind as our budget officer at all times, so I will ask Kathryn to answer that question.
- 107 K. Aylward It is a little bit difficult to look at in terms of how far through the biennium we are. We have a lot of expenses that are loaded into the first July of a biennium because we have double payments of contracts in that month. But current projections are that, if we get the \$7 million, we might be about a \$1 million ahead of what we need. So instead of the \$9.9 million, we might be able to get by with about \$8.8 or \$8.9 million, given our current projections.
- 114 Chair Ellis The \$1 million you are referring to is spread over the 24 months of the biennium?
- 115 K. Aylward That is correct.
- 119 Chair Ellis Well at least it is not running in the wrong direction.
- 120 K. Aylward That is true. And I liked hearing the State Economist's office at the state budget kick-off say that its forecasts were like driving a car from the back seat while looking backwards. It takes awhile before you realize the road is curved. So I think at this point it is looking like we can shave \$1 million off of what we might have needed. But I think I want to reserve final judgment until later in the biennium when we see how many aggravated murders we have, for example. The aggravated murder rate is higher than we have seen in recent years and those cases are big ticket items.
- 130 P. Ozanne Thank you Kathryn.
- I also wanted to update you on one of the developments at the Legal Services Division. As you know Pete and Becky have been doing some heavy lifting in terms of installing a case management system and performance evaluations. As a result, LSD is really managing the backlog. I would like Becky to briefly update you on where the office is in terms of performance evaluations for its attorneys and staff.
- 136 B. Duncan I was last before you in February, letting you know that we were going to implement a performance evaluation process in our office, and that the first step would be having all our employees complete a self-evaluation and then meet with Pete and I. At the end of March, we distributed our self-evaluation forms, which you saw in February. Those were returned by all of our staff last week. At the end of this month, we will be meeting with every person on staff and talking about what the office can do to help them achieve their work goals and be the most efficient they can be in performing their work. In addition, when we met with our attorneys in January to work with them to reduce our backlog, one of the things we gave them was additional case management information. They were happy to receive this information and even requested more detailed information about how they compared to other attorneys in the office. So when we distributed the evaluation forms in March, we gave them statistics about their filings in the Court of Appeals and the Supreme Court and charts regarding their

backlogs. Most of our attorneys' case backlogs have gone down. We have that information and we have been tracking it since September. We have also been tracking the age of cases on their backlogs. Again, there is a downward trend for almost all of our attorneys. So we provided that information to the attorneys in order for them to have an understanding of what their efforts over the last six months have meant since we have been working with them. The reduced backlogs for the individual attorneys really make a difference. The number of cases for which we are waiting to file briefs is what we count in the backlog. So, if they reduce that number, there are fewer clients who are waiting to have their briefs filed. That is when the clients are most active and most demanding of the attorneys' time. We just want to get to the filing point sooner. It actually makes our attorneys more able to get to all of their work sooner because they are carrying fewer pre-briefing clients. We have also given our attorneys information about the number of arguments they have had and the number of opinions the court has issued in their particular cases. Since January, we have started tracking that information. This is in response to our desire and our attorneys' concern that we track not only the number of filings but the time they spend on arguments. They involve considerable preparation time. We want to make sure that the attorneys who are arguing a lot of cases receive credit for this work in their assessments. We are also tracking opinions because we think that that is an indicator of how our office is doing. So we have started to keep a running tally on those opinions since January. All of that statistical information or data tracking was given to our attorneys. In addition, we went through their caseloads to get an idea of what they have to complete in the next six months in order to stay on top of our backlog reduction and case age reduction filing goals. One of the things we will be doing when we meet with them at the end of this month is making sure that everyone understands these expectations, that they feel they are able to meet them for the next six months, and that they have the opportunity to alert us to any problems they might have in meeting those expectations. We can then work with them by balancing cases out if there are imbalances. In any of the caseloads there can be particularly long transcripts or difficult issues. In some cases, we might presume they won't take as much time, but then they can balloon. We are letting our attorneys know that we are very serious about reducing the backlog because it is best for our clients and it is actually going to be best for the attorneys' quality of life if we create manageable, sustainable caseloads for them. I think they know we are sincere about that and that we are paying attention to all of their caseloads and will be working with them to keep their caseloads manageable. So that is what we have been doing with the performance evaluations. We will be implementing the full process in October when it is not just self-evaluations but supervisors and the co-workers complete evaluations as well.

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| 210 | Chair Ellis | How do the caseload figures that you are developing compare to the ABA Standards?  |
| 213 | B. Duncan   | What our attorneys will complete in a year?  |
| 214 | Chair Ellis | Right.   |
| 215 | B. Duncan   | My understanding is that the ABA standard is 25 cases per year and ours are higher. I think we are closer to 35 cases a year. That is one of |

the things we are developing. With the case evaluation system, we want to keep an eye on whether our expectations are realistic. We are looking at transcript length and how many issues are in an average case to see what is realistic for our attorneys and to avoid a burnout problem in the office. But the numbers that we have right now are higher than the ABA standard by up to 10 cases per year.

- 227 P. Ozanne Pete Gartlan has also surveyed some of the offices that we would like to compare ourselves with, some of the top appellate offices in the country, and we tend to exceed their caseloads as well.
- 233 Chair Ellis Are you experiencing loss of good lawyers because they feel overloaded?
- 234 B. Duncan I would not say so. I don't think this process has caused anybody to leave the office.
- 235 Chair Ellis Over time do you think –
- 236 B. Duncan Over time we had several senior attorneys leave last spring or early fall for a variety of reasons. I think our work has an inherent burnout problem so we know it is always a risk in this type of work. One of things Pete and I have been talking about is rotating attorneys through different positions. Right now in our office you start doing misdemeanors and felonies and you get more serious cases and maybe you will end up with a death penalty case. But we think there might be some value in rotating the senior people back down to misdemeanor caseloads because that can provide some relief with the burden of heavy cases. We had a senior caseload setup where people were doing large transcript cases—lots and lots of several thousand page transcripts. I think we have learned that it is too much to ask an attorney to keep doing these major cases.
- 252 Janet Stevens phones in at 9:25 a.m.
- 253 B. Duncan So we don't do that anymore and we assign a variety of cases to all of our attorneys.
- 269 Chair Ellis I think it makes you a better lawyer. There is a risk of monotony and you kind of resell the same material. Any other questions for Becky? Janet are you on?
- 276 J. Stevens I am. Good morning.
- 277 P. Ozanne The next to the last item in the agency report is the usual one—the move. I think we are making progress. We have continued to engage the Property Management Division of DAS to be our agent even though we aren't compelled to do so as part of the Judicial Branch. But we want to cooperate with the Executive Branch and use their expertise and get their approval. I have had direct conversations with the landlord. I think we have made progress in conveying the market reality to the landlord. I think he is now much more amenable to negotiating reasonable lease terms. He did mention that we would be the anchor tenant and that it is important to keep us happy. Kathryn has been helping me and, thanks to her help, we now have an offer. Kathryn updated me this morning. It looks like we can move into

space on the main floor of 1320 Capitol with a minimum of tenant improvements, which our landlord is not in a position to offer us. For those of you familiar with the building, the space is in the back of the main floor where the Campbell family's Victory Group resided. I think it is a pretty good space. Kathryn and others at CBS have looked at it and are satisfied that the space can meet our needs. So I think we may soon close a deal.

- 324 Chair Ellis Good.
- 325 P. Ozanne The last item is just to orient you to all the paper that is in front of you. I already mentioned our March 22 letter and report to the Emergency Board. The first handout is an action item that Ann will present. It is entitled "Public Defense Services Commission Meeting; Action Item 3" dated April 12, 2004. The next item relates to Kathryn Aylward's presentation, which is Item No. 4 on our agenda and Attachment 3 to the agenda. Then you have a packet of newspaper articles in your materials. One is a collection of articles from the Seattle Times, which featured deplorable conditions of public defense in the State of Washington. Another article Barnes sent to me entitled "Public Defenders Carry Heavy Burden" is a summary of the same information about Washington's system. Judge Ed Jones sent us the next item, a CNN article on the death penalty and its costs. Finally, Barnes sent the court's opinion in Ronald Weaver v. Joan Palmeteer, Federal District of Oregon, Civil No. 99-1045, by Magistrate Judge Stewart. Barnes, did you have any comments about this case?
- 383 Chair Ellis I think it presents a remarkable story demonstrating the potential problems you can get into with an appointment list and an under-compensated defense system. In this particular case, obviously what happened is the individual who was found guilty was incarcerated and served quite a number of years and then successfully prevailed in a federal habeas case because of the inadequacy of counsel at the trial stage. When you read the opinion you can just feel the economics of the way the system operated back in the early 80's. I think those who are concerned about the costs we incur to provide better quality trial level services than is reflected in this opinion need to understand both the human costs and the economic costs of the system that produced an experience like this one. It was a very dramatic set back and I believe that there has been a decision in the case not to re-prosecute. We need to keep in mind the importance of all the improvements that have occurred since this case, and that will help us avoid any repeat of this story.
- 434 P. Ozanne That concludes our OPDS monthly report.
- 435 Chair Ellis Thank you. Ann welcome back.

**Agenda Item 3 Application/Contribution Program (ACP): Adoption of Guideline Contribution Amounts for Marion County**

- 440 A. Christian Good morning Mr. Chair and members of the Commission. I am here in the role of the consultant who is assisting the Commission and the Judicial Department in rolling out the Application/Contribution Program.

457

A. Christian

We are implementing the Application/Contribution Program in all 36 counties by July 1 in all criminal cases. That is the good news. We had an appearance before the April E-Board last week with the Judicial Department and the Commission with regard to the progress of Application/Contribution. There was good news and bad news. The good news was that we believe the implementation is going very well. The bad news was that the projected revenue the legislature assumed would be available with the statewide rollout is less than anticipated. I would say that, seemingly against all odds, the appearance before the E-Board went exceptionally well. The report that was issued was accepted and the Emergency Board approved the requested three additional limited duration positions for the Judicial Department. Those positions are necessary in Deschutes, Douglas and Marion Counties in order to generate some additional revenue.

So to the action item: Marion County in particular is scheduled to implement the Application/Contribution Program in May. In reviewing the current state guidelines that are used in the 17 counties which have implemented Application/Contribution, Steve Gorham, the Executive Director of MCAD, brought to my attention some changes that should be adopted (end of tape)

**TAPE 2, SIDE A**

040

A. Christian

with regard to guidelines that are used in Marion County. To give you some background, verification staff who are located in the courts have guidelines governing recommendations they make to the court should the court in a particular case order a defendant to pay a contribution—an up-front payment toward the expected costs of court-appointed counsel. The last page of the action item handout displays the current statewide guidelines for contribution amounts. These guidelines have been successfully used in the 17 counties that currently have the Application/Contribution Program. I want to thank Steve Gorham for spending part of a Sunday yesterday to double check some changes that both Steve and I would recommend the Commission adopt with regard to the contribution guidelines that will be used in Marion County. In implementing contribution amounts, we did not want to use average amounts because we wanted to avoid the court's already strapped resources having to potentially provide refunds to an individual. So, if I am a defendant and I am ordered to pay a contribution amount in a DUII case of, say, \$500, which would be the average cost, we don't want at the end of the case counsel to say, "I have \$350 worth of time in," and the court then having to issue a refund. The other complication that the Judicial Department and I have been trying to avoid is Application/Contribution's negative impact on recoupment—the amount of money that is ordered at the end of the case. That is important because the money that goes into recoupment finances other public safety entities. It is the criminal fine and assessment account and that could have some adverse political consequences. So, in the guideline maximum contribution amount schedule, what we request in the action item is that the Commission approve six changes to the statewide guideline amounts. Five of them are a decrease. One of them is an increase and the first one on that schedule is No. 9 for Class C felonies. The statewide guideline is \$350 and we would recommend that you approve \$300 for Marion County. The second is No. 13, felony DWS and Failure to Appear. The statewide guideline is \$175

and we would recommend \$150. Category 14 is unclassified felonies. Those tend to be prison cases like supplying contraband within an institution. There are very few of those cases outside of the counties with state institutions and MCAD has information suggesting that the guideline amount statewide is low. We would recommend that the Commission adopt \$450, rather than \$250, for that type of case. No. 17, misdemeanor DUII, the statewide guideline is \$350 and we would recommend \$150. The final change would be No. 19 for other misdemeanors. The statewide guideline is \$225 and, based upon Marion County's data, we would recommend adoption of \$125.

- 094 Chair Ellis Any questions?
- 095 J. Potter Ann, you probably told me this before and I am just blocking. Which comes first in precedence in terms of payment requirements on the defendant? Is it the Application/Contribution Program or is it end-of-case recoupment costs?
- 098 A. Christian Priority goes to Application/Contribution amounts. Highest priority always goes to restitution, to victims and compensatory fines. The second highest priority is child support and third highest would be Application/Contribution, followed by recoupment and other fines.
- 106 Chair Ellis Any other questions? If not, I would entertain a motion to approve Action Item No. 3. handout 1.  
**MOTION:** J Potter so moved; J. Brown 2<sup>nd</sup>  
**VOTE 4-0**, hearing no objection, the motion **CARRIES**

The next item is Kathryn's on Approval of Legislative Concept for the Transfer of the ACP Account.

**Agenda Item No. 4 Approval of Legislative Concept for the Transfer of the ACP Account**

- 117 K. Aylward As Peter mentioned, it is the item marked Attachment 3 at the top. Prior to July 1, 2003, all of the funds collected by the Application/Contribution Program were deposited into a separate sub-account of the indigent defense account. When the statutes changed and the account became the Public Defense Services account and the sub-account therein also came with us. So before July 1 it was like having a joint checking account. Judicial could collect the funds and deposit them directly into that sub-account. They could pay for the verification staff, whose salaries were being covered by that account, by simply having the employee's salary come out of that index number. Likewise, our office has two or three employees who are paid out of that account and we could do it the same way. With the separation, the Judicial Department is collecting the monies and they have to send us a check to deposit into what we now have as our sub-account. At the same time, they have to send us a bill for the staff that are being paid out of that account. So we just end up doing a lot of administrative work. It seems like it would be easier, since the Judicial Department collects the money, that they actually be the keeper of the sub-account so they can pay the money in and they can pay their own staff out of that account. And then PDSC would invoice the Judicial Department for the two or three employees that we have who are paid out of that account. So this is the request for a legislative suggestion form for next session and it says in here that both OJD and PDSC think this is a good

idea. So I am here to ask you if you do think it is a good idea. We had to meet a deadline so we got that in. But I think a lot of people's first reaction is "Well, aren't we giving away a pot of money." But it was clear from budget notes in the last session that how that money gets used is by having verification staff in the Judicial Department paid out of that account. As collections increase, more judicial staff will be paid out of that account. So we will basically just be keeping up as the revenue goes up. Judicial expenditures will shift to that account. I don't think we are giving anything up, and I think administratively it would be a lot easier for both Judicial and PDSC.

- 154 Chair Ellis You are saying both agencies are in favor of this proposal?
- 155 K. Aylward If you decide you are in favor of it. What I am saying is this suggestion form says both are in favor.
- 157 Chair Ellis Our staff is in favor and Judicial is in favor?
- 158 K. Aylward That is correct.
- 159 Chair Ellis Any questions?
- 160 J. Potter We don't see any change in the verifiers in any upcoming fiscal year? That is, verifiers moving over to OPDS from judicial?
- 161 Chief Justice Carson I am uninformed, John. I don't know. Verifiers have always been a puzzling piece of our Judicial Department. Our main fight is to make sure they stay in verification because they tend to get used elsewhere in some counties. That is old history and I don't think it happens now. So I don't know the answer.
- 168 Chair Ellis Any other questions.  
**MOTION:** J. Potter so moved; J. Brown 2<sup>nd</sup>.  
**VOTE:** 4-0, hearing no objection the motion **CARRIES.**

**Agenda Item No. 5 Adoption of Service Delivery Plans for Region 4**

- 172 Chair Ellis Now Peter, we come to the service delivery plans for Region 4. Why don't we take them in order, but let's start with Lane County. We met in Lane County in February. And then at our March meeting in Corvallis, we had an initial discussion relating to Lane County. The outcome of that was a request by the Commission to staff to put together both a model consortium approach and a model court-appointment list with improvements. So why don't you get us started here.
- 184 P. Ozanne Attachment 2 to the agenda, which is a memorandum from me to the Commission dated April 6, 2004, is our effort at proposing a model consortium and a model court-appointment list for Lane County. I think the memo is self-explanatory, but let me review it briefly. I was the author of the memo, though it was reviewed by OPDS's management team. A draft also went to our Contractor's Advisory Group. We also based the memo on previous discussions of the Commission, starting with the October 23 Retreat through the last meeting. I also included relevant excerpts from the beginning of our

Region 4 reports and excerpts from Kathryn's previous memo in response to the Commission's request to evaluate the pros and cons of a consortium and an appointment list. On page six is the proposed model consortium. Starting on page nine through the end of the memo, is the model court-appointment list. I have included in footnotes and appendices comments from the contractor advisory group. Appendix A is a document that Jim Hennings produced in response to my draft. Appendix B contains Steve Gorham's written comments regarding the unique features of MCAD based on his experience administering MCAD. Appendix C includes Jim Hennings' comments regarding proposed goals for a court-appointment list. That is the summary of my April 6th memorandum.

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Chair Ellis

Shaun McCrea was not able to get here due to a scheduling conflict. She did send me a letter of which there is only one copy. It is about a page and a half. Maybe the best thing is if I just read it so everybody has Shaun's input.

Shaun states: "I regret that a case-related matter keeps me from attending today's meeting. Here are my hastily assembled thoughts concerning adoption of a service delivery plan for Lane County: 1) The OPDS report was excellent. The models presented concerning a consortium versus a modified court-appointed list are both attractive and the reasons underlying each persuasive. 2) I am swayed that a modified court-appointed list is more appropriate at this time than a full consortium model for the following reasons: (a) modifying the court-appointed list is a less drastic change at a time when the indigent defense system, indeed the entire criminal justice system, is in crisis for budgetary concerns. One concern I have is whether the number of prosecutions in Lane County will go up or go down. Based on the statements of DA Doug Harclerod in Saturday's Register Guard (article attached), the number of prosecutions will likely go down because of the short fall in the district attorney's budget. Fewer prosecutions mean fewer court appointments to the public defender and/or private attorneys. The court-appointed list seems a more flexible method to respond to such effects. (b) the court-appointed list seems more supportive of the public defender office and, thus, indigent services as a whole. Lane County Public Defense Services will likely be the Commission's lead contractor in Lane County. The Lane County District Attorney is facing substantial budget cuts (again references the article) which may significantly affect case load. If the district attorney prosecutes fewer cases there will be fewer cases to defend. In that event, it seems necessary that the public defender be given cases first with remaining cases going to the court-appointed attorney list. The institution of the public defender should be preserved because the lawyers there are experienced, career defenders. Lane County PD provides leadership concerning criminal defense issues and procedures and provides stability to the criminal defense community. By contrast, attorneys on the court-appointed list generally do not make their entire living defending court-appointed cases. Preference to court-appointed attorneys to receive the first appointments risks furloughing public defenders and destroying an office which has built an excellent reputation over a long period of time. So long as court-appointed attorneys understand there may be fluctuations in the number of cases they receive, the preference for public defender assignments would be fair. Court appointed attorneys can more easily absorb the

ups and downs of the number of cases being assigned than the public defender. This preference model has been proposed and utilized in the federal system when there are budget constraints. Criminal Justice Act attorneys face delays in payments of case vouchers when money runs out to avoid federal defender offices having to furlough assistant federal defenders. CJA lawyers are generally supportive of this model. (c) there is less expense involved compared to the significant cost of the administration of the consortium, page 4 of the OPDS report. (d) the court-appointed list is more flexible than a consortium model because attorneys can be added and deleted more easily as new attorneys express interest in joining and established attorneys leave the list to turn to other areas of the law and (e) the court-appointed list has worked in the past and will work well if there is appropriate administration and oversight.

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Chair Ellis

This is an article from the Register Guard last Friday. It is headlined "District Attorney Outlines Cuts in Services." "Doug Harcleroad tells staff the impact of the \$1 million shortfall." "If nothing changes before Lane County adopts its budget in June, hundreds of felony and thousands of misdemeanor crimes will go unprosecuted and thousands of domestic violence victims will no longer get help to obtain restraining orders. District Attorney Doug Harcleroad said Thursday. 'It's round three in a 10-round fight.' Harcleroad said, 'We'll be taking this message on the road to let people know this is coming if nothing else happens. Hopefully people will be able to influence the budget committee to rearrange the priorities.' Harcleroad said the loss of \$1 million in his budget is 'by far the worst' budget cutting he's had to do since taking office in 1985. But he acknowledges there is no easy answer to the budget crunch. 'There is no surplus answer,' he said. In a presentation to his staff on Thursday, Harcleroad outlined the potential cuts. Six of the 25 criminal prosecutors will be laid off resulting in fewer cases being prosecuted. Six-hundred-fifty felony thefts under \$1,500 will not be prosecuted to save \$300,000. One thousand felony drug crimes will not be prosecuted to save \$275,000. Two thousand nonviolent misdemeanors such as trespass, vehicle break-ins, disorderly conduct and driving while suspended will not be prosecuted to save \$271,000. Between 1,800 and 2,400 battered women will not get help from the district attorney's victim services offices to get restraining orders against their abusers to save \$44,000. The 24-hour crisis team that helps 300 victims of serious crimes will be discontinued to save \$44,000. Three hundred victims of juvenile crime will lose the help of a victim advocate to save \$38,000. At least 100 domestic violence cases will be reduced in seriousness or not prosecuted to save \$28,000. The drug court will close. Thousands of probation violation cases will not be filed. The district attorney's budget process begins in earnest with a presentation to the budget committee on April 29."

Maybe we ought to put both Shaun's letter and this article in the record. I suggest we start with the issue that we talked some about at our last meeting: as between the appointment list approach and the consortium approach, where do people come out? Then I think we ought to go through both the model consortium and the modified list approach and react to some of the issues that appear in Peter's memo. With that, I would throw it open to Commissioners who wish to express their views.

- 411 Chief Justice Carson Mr. Chair, I would like to hear from Steve Gorham, if he is willing to offer his comments on the transition in Marion County. This is *deja vu* all over again for me. We took the first step—the judges moved to a modified court-appointment program—and that didn’t work. And then MCAD came in, as I recall. Steve, would you mind sharing briefly the experience we had here in Marion County, because that is the issue for me?
- 422 Steve Gorham I see a very similar thing going on in Lane County, except that you have a public defender now in Lane County that is going to be, I assume, the major contractor. What you are looking at are problems with the overflow of cases.
- 430 Chair Ellis Which is very different than Marion County.
- 431 Steve Gorham Which is very different than Marion County. (end of tape)

**TAPE 1; SIDE B**

- 008 Steve Gorham But I think, even with the panel problem, what you really need is an administrator to do the overflow in Lane County. And you are not going to get that, at least in my opinion, with a panel. I very strongly believe that you need a consortium. A lot of the reasons why I believe that are set forth in what Peter has attached to his memo as Appendix B. What you are going to have are problems on the court-appointed list. I wanted to make a comment about Mr. Harclerod’s quotes from the paper. I think we hear these quotes in every county until the budget actually happens. We have heard it in Marion County, that there were going to be cuts in the jail, going to be cuts in the DA’s office. Yet even today, the paper seems to indicate that there is going to be more money. So I think that is his shot at a political response in Lane County and I just have doubts that that caseload is going to go down. I think, frankly, that is one of the pushes in the letter that you read from Shaun McCrea—that a court-appointment list can deal with fluctuations in a caseload better than a consortium. And I guess I disagree with that. I think a consortium can. In Marion County, because of our structure now, we were able to deal with the cuts last year better than most other counties because the attorneys in the consortium know, if there isn’t a case, then they are not going to do work. If there is a case, then they are going to and they try to plan accordingly. So the same thing is going to be true, whether you have a list or a consortium. Part of what Chief Justice Carson was saying is I don’t see the battles that exist now in Lane County are going to change if you have a court-appointed list. I think they will just be there and that is why you really need a consortium. With an administrator, maybe not as strong as the public defender’s administrator, I think gives you an added person there to sit at the table and, of course, help run the system.
- 050 Chair Ellis I have a reaction to Shaun’s letter. It is so focused on the very short-term potential concern. I guess my feeling is we ought to talk about a much longer term sense as to what is best in Lane County, and not something that came out in the paper Friday and that we’re reacting to the following Monday. Somebody may conclude that one proposal is

better than the other, but I think our timeframe ought to be a longer range than I think her letter was saying. Part of my thinking is that we aren't going to get many moments like the one we have right now. This is a window where everybody knows that change needs to occur and whatever we do will probably stay in effect for quite a period of time. I think whatever we do, if it is less than we could do, then that is where it will stay for quite a period of time. I don't mean to disagree with everything that Shaun says. I just think our timeframe ought to be a longer range one. Other comments people want to make at this point?

- 072 Steve Gorham I'll throw out a couple so that I won't have to come up again. I think a consortium is what is needed down there. I think your comments are right. If you have to make a change now, you might as well make the long range changes now. Certainly I believe, for both Lane County and the state, a consortium is best in the long-term. I see a difference between a unit case-based consortium, or what I call the case counters, versus the hourly fee-based consortium. If you are going to do an RFP, I assume you probably will leave that issue open to see what they would prefer.
- 086 Chair Ellis I am very interested in your thoughts on that. Yours is an hourly-based consortium.
- 087 Steve Gorham Ours is an hourly-based consortium.
- 088 Chair Ellis I think there is one other in the state?
- 089 Steve Gorham Yamhill County, which is a clone of us.
- 090 Chair Ellis Then all the other consortia are unit-based, correct? I'll give Steve the first shot and then Kathryn, you look like you have some thoughts. But I am interested in two things. What the pros and cons are and, secondly, is this something we should be trying to decide today or something that should play itself out.
- 096 Steve Gorham I, of course, am pro for an hourly-based consortium. I think the only negative, and Kathryn can tell me we are wrong about this, is, in doing an hourly-based contract, you don't know exactly how much money you are going to be putting out. It is a little uncertain with a hourly-based consortium but I think, in saying that, the overall amounts are relatively certain and the case costs are controlled just as well under an hourly-based system, at least the way we do it. Certainly, the criticism – I'll guess I'll throw out two criticisms – one, you see what can happen with an hourly-based system if the caseloads aren't controlled. I think that is what Washington State's experience in The Seattle Times shows us, versus an hourly-based system where the incentive is to spend as much time as is necessary. Maybe the incentive is to spend too much time and that is where you get the cost control to make sure it is only the time necessary to reasonably and necessary do a case. No one can say that there is no financial incentive to go to trial when you have hourly-based systems versus the criticism that you will get in a case count system in which people get a dump truck. I hope you all know what that term is associated with—attorneys will “dump truck” their clients to spend less time on a particular case. You might say, “Well, then you are going to get people who will go to trial when they shouldn't go to trial.” Our experience of that is it is just not accurate.

In Marion County, we have run our trial rates against the other counties trial rates and they are essentially the same. So you don't have the incentive, especially if you limit the number of people in the consortium so that they are relatively busy, to be taking cases to trial. Then, of course, if you have an administrator that will review the bills, they will very quickly fall in line. In Marion County and Yamhill County, it is our experience that they can do it economically.

- 134            Chair Ellis            Kathryn, what are your thoughts?
- 135            K. Aylward            I think I have a philosophical objection to being paid hourly because I believe that we want to reward efficiency and experience. If you are being paid on a unit basis then, because you are more experienced and you need less time to prepare for that case, you can actually make a sufficient amount of money. So that the sort of people who do this work, you are getting a higher caliber of person and you are managing to reward them more because they are more experienced. When you are locked into an hour-based system, then what will happen is that those more experienced attorneys will have less and less incentive to continue to do this work. It is still \$40, but if I am really good at it maybe I can get myself to \$50 or \$60 or \$70 an hour because I am efficient and because I set up an efficient office. So it is mostly that. I think, in terms of this possibility to "dump truck," I think you do have the balance of the ethical obligations of an attorney. If you get good people, they will do a good job; especially if they are being paid a reasonable amount to do it. Maybe this is not a serious consideration, but I do know that the more detail you ask for from someone the more likely you are to have to substantiate that. So if we are talking about any kind oversight or auditing, if we are getting a caseload report that says, "Attorney X spent 10.2 hours," then someone, even our own office, might want to come and say, "Show me how you spent that; prove to me that you did it." I know that, in the past, when we were subject to Judicial Department's Auditing Division, it was an easy target because, when someone provides this much specific detail, then you can say, "Show me your timesheets; is this reasonable?" I just don't think it is necessary to set ourselves up for that. If you have a unit-based case, you've got the appointment and then you are auditing performance rather than the actual hours worked. I just think it is a better system for our office and the attorneys.
- 168            P. Ozanne            You asked the question earlier if we should decide this now or not. I would request that the Commission make a choice so that OPDS isn't given the discretion to decide, in the course of an RFP or in the course of the selection process, this whether a contract should be hourly-based or unit-based. I think we are trying to defer to local conditions in a county as much as possible when we address service delivery plans. But I don't see this issue as uniquely local in any way. The Commission may well want to direct us to use an hourly-based scheme in this instance. I would like guidance from the Commission regarding a choice about whether it should be unit-based or hourly-based. Maybe you would want to do a pilot project with one or the other. In some ways, MCAD has been the pilot project for the hourly-based choice. But I would like that guidance from the Commission, either today or some other time.

- 188 J. Brown Obviously, my only experience with billing is on the generating side of bills. But I guess from my perspective, when I think about legal fees, I think everyone uses the term “reasonable” in there somewhere. I suspect that, without asking any Oregon State Bar member in the room to commit himself or herself on the matter, when someone says, “An hour was a reasonable amount of time to have expended on the project,” I suspect that many of our colleagues would not necessarily say that was precisely 60 minutes, but rather that was a reasonable period to have expended on the particular task. Very experienced lawyers might view the 60 minutes as having been required for the task, which was actually accomplished in 45 minutes, and not really struggle very much about putting an hour on the timesheet. Now that is a delicate area, but I guess what it leads me to is who is doing the evaluation? Is it from a lawyer’s prospective, or is it from an administrative prospective? Because attaching the values to units also requires some kind of judgment. I am not uncomfortable with the idea of an experienced lawyer batting out a motion, having done it 50 times in the past, discerning very quickly based on that experience what the precise issue is, knowing what the most recent cases are, getting that done in an efficient way and charging for it as if the mid-range attorney had required two hours. That doesn’t really bother me in terms of the value. I don’t know if that adds anything.
- 230 Steve Gorham My answer to that is you want the administrator to be an attorney to help answer that question. I think it is a combination of both looking at the hours and looking at the experience and looking at the reasonable and necessary part of it. Someone might put down .4, if you will, which is 20 minutes, for every telephone call they make, or .2, or some sort of range. If you look, and I have in the past, at time in relation to this kind of thing there is some justification for putting .4 for every phone call. But if you have a zillion .4’s, obviously, the total amount may be unreasonable.
- 249 Chair Ellis How do you get from .4 to 20 minutes?
- 250 Steve Gorham I think .4 is actually 24 minutes to be totally accurate. I think you have to look at the kind of the things you were talking about, Commissioner Brown, but you also look at the total. Within a short period of time, attorneys who are doing time billings, certainly under the court-appointed system, ended up billing in the same way. Each attorney ends up having their idiosyncrasies. And, with a group even the size of ours, it is relatively easy to figure out what those are and, through the use of the administrator, get the work done efficiently and in a reasonable way. I think certainly it is not a bad thing to ask your attorneys who are using computers, who send out a discovery letter, while it may take one lawyer a half hour to produce that discovery letter, certainly after they have been doing it a while with a computer it is going to end up being more like 10 or 15 minutes at the most from beginning to end. So I guess our experience is that you have the ability to control the costs, which is one of the things that you want to do. One of the things I found, and I am not a case counter so I only have experience by talking to case counters, you have a lot of game playing when you talk about case counting. Is this a case, is this not a case and how it is counted. Whereas the system that we have established, you basically get not a case cost, if you will, but you get a defendant’s cycle cost. Every defendant who goes through in essence gets one bill

because we try our best, now we are not 100% successful, but we try our best to have one attorney for each defendant.

- 302 Chair Ellis You pay the same hourly rate for everyone?
- 303 Steve Gorham No, we have different hourly rates for the different type of work that we do, if that is what the question is.
- 305 Chair Ellis Any effort to pay more for the more experienced, more competent lawyer?
- 306 Steve Gorham No, we have not done that. I would think that that would be an extremely hard thing to administrator in a consortium, even though it makes sense to do that. Maybe our incentive for our hourly rate is what attorneys are willing to do for the type of work that we are asking them to do. For example, it is very hard to get attorneys to do post-conviction, so our hourly rate for post-conviction is higher than our regular hourly rate. And yet I still think we do it efficiently.
- 318 Chair Ellis If the hourly method is intended to echo the private market, what you just said makes that echo inaccurate. The private market hourly rate is varied substantially by experience and perceived competence.
- 325 Steve Gorham If you interpret what I said to say that we are echoing the market, I don't really think we are echoing the market.
- 326 Chair Ellis I am agreeing with you. I think it is a way of trying to distribute funds, but trying to say it is the same rationale as the private market hourly rate, I have trouble with that.
- 335 Steve Gorham You are absolutely right.
- 336 Chair Ellis I think it is true that all of the Lane PD and Metro PD cases are done on a unit basis. Why would consortium be different?
- 341 Steve Gorham I guess my experience is, with a consortium or court-appointed list, it seems it is a way to efficiently do the work and yet pay for the amount of work that is done.
- 348 Chair Ellis Isn't part of the problem, I'll help answer my own question, whether there is enough base, enough units to let averaging work its way out? I can see an argument that the consortium—it was suggested here 15 participants, that may or may not be the right number, spend about 50% of their time on public defense work—may mean that any one individual only has 15 cases a year, and so the averaging that is implicit in the larger defender offices may not be possible over that small of a base. So a lot of this to me depends on how the unit dollars that we pay the consortium get distributed within the consortium. And that again calls upon an administrator who is savvy enough to make the cases balance out fairly with the participants.
- 371 K. Aylward I think the difference between whether they are hourly-paid or unit-based probably has a lot to do with how and why the consortium was formed in the first place. In some counties, you will have three to six attorneys who get together and say, "Let's put in a bid together," and they will function like a unit. They will want to be in on this project

together and they will be putting the bid in together. They will end up with unit prices because they want something fair and consistent and predictable to administer among their members. The ones that are hourly-paid are more often ones where there was a large private bar, and a consortium was formed and the members probably didn't want much to change. They wanted the same thing to happen as before. "I know if I work X number of hours I get this much money," so they have ended up being that way. Often they are not what we think as an ideal consortium, and I don't mean you're not. But I mean they tend to be a list of people pulled together that are not necessarily participating in the consortium for the same reasons as when you have a small group.

- 393 Chair Ellis I also thought that one of the attractions from the provider point of view of consortia is the regularity of the payments that you get to cover overhead fairly consistently. On an hourly system, how is that handled?
- 400 Steve Gorham Well, I think it is handled by relatively similar methods. Maybe the answer is you have less numbers in the consortium, or the people in the consortium themselves feel comfortable with some doing a lot more work.
- 408 Chair Ellis Are you sent a steady amount and then increments above it, or trailing last month's hours to get this month's rent? How does it play out?
- 413 Steve Gorham Well, again, I think it depends on the particular individual in the consortium. In our consortium, since we are the exclusive contractor, we know that the cases are going to be there. Now we don't know the total number of cases. But we know there are least some cases, except maybe next year in April or May, so that people look to see what historically they have gotten and what they are going to get in the future. (tape ends)

**TAPE 2; SIDE B**

- 004 Steve Gorham If you notice, one of the things I disagreed with was having a 50% limit on doing indigent defense. I don't think that is a good idea.
- 007 Chair Ellis I don't think it is intended to be a set limit. It was intended, I think, to be a best estimate—as a factor in deciding the size of consortium that we thought was right. And these numbers are up for discussion.
- 011 Steve Gorham I know that, and I think that you can have 80%, 90% even a 100% participant in a consortium. Our consortium has a range of people in it and, as people get more and more experienced, some of them don't want to do as much court-appointed work. So their percentage may be going down and yet you have the ability to call on them. The more experienced attorney can do the heavy hitting cases if you will, the aggravated murder, the murders, that kind of thing.
- 020 Chair Ellis I had some questions on the model. It wasn't clear to me what the role of the administrator was, relative to the role of the board. If you look at paragraph five on page seven, it seems to have the administrator having the authority to select, employ, retain and discipline attorneys, which are pretty powerful words. Then I was asking myself, where does that leave the board? I guess the board picks the administrator in this model

and, as long as they are satisfied with how the administrator is using those powers, it is alright.

- 030 P. Ozanne What I had in mind was the same model as the Commission vis-à-vis my position. The administrator would serve at the pleasure of the board. The board would delegate much of its authority. The board would be a policy guidance or policy making group and the administrator might want to invite the board to participate in some management decisions, particularly regarding the selection of attorneys, but this authority would be delegated to the administrator. It would operate much the way I understand we are operating.
- 041 Chair Ellis I'm not sure where I come out on that. I thought the word "deploy" is obviously just right for the administrator. But I was actually surprised that the decision on who would be a member would be made by the administrator as opposed to the board.
- 045 P. Ozanne Well, that is certainly open to discussion. I see your point. It depends on how active a board you imagined. I would certainly want to see the board to at least develop objective standards for membership, above and beyond our basic qualification standards. I would not be opposed to having a board involved in the selection of the attorneys, if the board were willing to do that.
- 052 Steve Gorham I think you can mix and match all of these as well, especially when you are talking about a small group or an independent board. For example, the board can pick the members. The board can be used as an appeal board. The administrator can have the disciplinary powers and that can be appealed to the board. So all of these powers can be mixed and matched in a relatively easy way to meet whatever the local needs are.
- 061 Chair Ellis Then up in paragraph (3) on the same page, the model board members would not be individuals engaged in public defense law practice. I wondered about that because, again thinking of Lane County, you would be eliminating from service on the consortium board anyone from Lane PD. Maybe that is right, maybe that is not right. I just want to understand what we are doing here.
- 071 J. Potter I think that is just saying that a substantial portion of the board's members won't be. So either 20% or 40% wouldn't be affiliated with the consortium or engaged in public defense.
- 075 P. Ozanne Yes, that is what I intended.
- 076 Chair Ellis So you wouldn't have someone from the defenders office able to serve on the consortium board?
- 077 J. Potter No you would be able to.
- 078 Chair Ellis Oh I see how it would play out. You would say 80% but not 20%.
- 079 J. Potter Or the example given at 40 percent—two members of the five member board.

081 P. Ozanne Barnes, I see your point, which is unaffiliated with the consortium and not engaged in public defense law practice. The way I have drafted it would seem to me to exclude members of the public defenders office.

086 J. Potter Couldn't your sentence say "a substantial portion of the board's members should not be unaffiliated."

088 P. Ozanne Yes, it could. What I had in mind was the majority would be affiliated with the consortium but you could include in the majority a public defender attorney.

091 Chair Ellis Talk a little about this number of 50% because there is no magic to it. It is just a number we are starting with. The profile of who we are looking for is someone who does enough defense work to be at the level of competence and skills that we would want, but not so dependent on public defense work that the fluctuation we have experienced in the past and probably will in the future has less impact, along the lines of what Shaun was saying her letter. Is 50% the right target?

099 P. Ozanne Actually, I took that number out in the final draft of my memo because I didn't want to focus on any magic number. I certainly don't know what that is. One of the issues is how realistic is it to expect lawyers to have a separate law practice from public defense work, in order to flex with changes in our caseloads.

110 Chair Ellis It really comes down to what size consortium we are suggesting to Lane County.

111 P. Ozanne That certainly is the more important issue.

112 Chair Ellis I could see us coming out with a blended system where you have Lane PD, you have a consortium of whatever the appropriate number is, and you have the modified appointment list to pick up cases during periods of very high caseloads when you do need to dip further into the talent pool. I think the question really becomes what size consortium makes it attractive to participants, but gives us some ability to reduce caseloads without feeling like we have shot Bambi.

124 P. Ozanne I think the issue about whether it is realistic to expect people to have a separate private practice with retained work may mean we have to recognize that we may be shooting Bambi. In other words, though hopefully we won't face another crisis like we did in the last biennium, when cases and dollars drop precipitously, I think the assumption that a consortium would be able to flex and feel less pain, I'm not sure that is true empirically. Consortium lawyers in some parts of the state are doing public defense work exclusively. We still may have to tell them that they are going to feel the pain. We may be deluding ourselves to believe that there isn't pain involved in these cuts, just as there would be with a public defenders office.

137 Chair Ellis I'm not deluded into thinking there isn't pain, but everything is relevant. At least my position is that a lot of lawyers with a substantial part of their practice in public defense, there is a whole range of additional work they are free to take, do take, can take that gives them more cushion. I just can't believe that isn't true.

146 P. Ozanne Perhaps that is true. I hear, particularly in the larger urban areas, that that is very difficult to do. Certainly in smaller communities –

148 Chair Ellis The lawyers we met in Eugene, the several that testified, there was quite a range and it is certainly a list now of 30 to 35 people. An awful lot of them aren't doing public defense. There just isn't that much caseload.

156 Jim Hennings I would like to suggest you step back and take another view. The issue that came up in Eugene it seems to me was one of governance. It was one of local supervision, the local setting of quality. That has to do with what it is you want. But your discussion this morning seems to be heavily focused on how you want it done. You are throwing away, I think, the very advantage of contracting. The contracting organization can make these kinds of decisions; for example, the 50 percent. You don't have to worry about the 50%. All you have to do is say we want a system that can flex up and down and that draws quality people. That is what you want. You are suffering from the same problem I have in managing my office, which is to get down at a lower detail than I think you have to get. This is where Peter and I have some disagreement. I think the quality of attorneys in Oregon is such you can have exactly what we have now. Somehow we muddle through and we provide good services. Or you become efficient and more effective by going with an organization, but leave it to that organization to make a decision. Peter and I got cross ways a little bit because he thought I was saying this means no direction. I would say, "Yes, there ought to be some direction." I will give you an example. The board of Metropolitan Public Defender has specific requirements as to who gets appointed and who the appointing authority is. That is the governance of the operation but you don't come in and say okay –

184 Chair Ellis Let's make that clear to everybody. You are talking about who appoints the board members?

185 Jim Hennings Who appoints the board members. In fact, in thinking about it, it may be rather than Peter's formulation that 20% should be non-members of the consortium, maybe the better approach is that the Chief Justice or OPDS appoints one of the board members, or the local county commission.

192 Chair Ellis Lane County Bar?

193 Jim Hennings Or the Lane County Bar or the Lane County Commission. One of the beauties of MPD is that the political authority that pays for the district attorney appoints one of the members of MPD's board, so there is a cross-over there. Anyway, you can't go into 36 counties with the kind of detail you are trying to get into about how they will deliver the services. You can say what services you want and you can say what they have to pay attention to. I just think you are going deeper than you have to go. I don't think you have to decide whether 50% is a good rule or not. Leave that to the board, if you go with a board.

204 Chair Ellis Let me counter that, given what I think we have heard. If we did a very open-ended RFP in Lane County, and we get one that is 30 people, I think it is unlikely that it is going to have the characteristics that I think

we are looking for. So it does seem to me that we ought to try to guide the process at least at that level because –

- 216 Jim Hennings If your decision is there will be a single consortium and it will have a board made up in a certain fashion and it will look at certain characteristics, one of the things you want them to look at and report back on is how are they going to guarantee the flexing, how are they going to guarantee attracting appropriate people. I think you would get the answer without you having to do that work. There is one other benefit in doing that. The actual supervision has to be done on the ground locally. If those are the people, along with the administrator, who put the plan together, they are likely to make it work.
- 228 Chair Ellis My concern is, if you do a completely open-ended RFP and what you get back is called a consortium, but there is no administrator –
- 230 Jim Hennings You can call for an administrator –
- 231 Chair Ellis I am not going to be happy about that.
- 232 Jim Hennings I would be unhappy too. Your governance that I hear you proposing is a board, an interested involved board, and the selection of an administrator who has hiring and firing authority, training authority working with the system. Those are all things that are perfectly appropriate as a matter of governance. You can say this is what has to be included, but the 50% limit doesn't have to be part of it.
- 241 Chair Ellis The 50% limit is just a way of trying to get to the size of the group we think is right.
- 246 Jim Hennings Isn't that part of the problem? It's the size of the group that you think is appropriate. Maybe the better answer is the size that the board and the administrator think is important, that they have to work with. They still have to meet the standards of having to flex up and down and to draw quality people in.
- 252 Chair Ellis I am concerned there is such a brotherhood at work in Lane County. They all want to protect each other that we are going to get a diluted response. Everybody that wants to be in is in, and all of a sudden it is like a list, but it is a private list.
- 258 Jim Hennings And that is why it has to be a board with authority and appropriately independent people on that board. Obviously, I think the best answer is a consortium because, if you go with an independent list, there is a great deal of work that somebody has to do. The court in managing that list, up front there is a real problem in coming up with standards that are really meaningful, as opposed to saying that you hire the people who are appropriate into a consortium. That is a really different situation.
- 270 Chair Ellis Any comments from Commissioners on where people are?
- 272 J. Brown I'm going to go back for just a second if I may. I was hearing Peter say a bit ago that you were asking for specific direction between the hourly and unit criteria.

278 P. Ozanne I think it may have precedential effect.

279 J. Brown I'm feeling at sea on that issue. So, Kathryn, a question occurs to me. In my experience, I am mindful particularly that the prosecution function is not exclusively burdened by accounting on cost-benefits, if that is a sensible way of presenting it. I have observed some instances in which particular points of law seem to be the motive of the prosecution. "We want to clarify this issue or we want to take this one to the max because this particular defendant has been bugging the cops for years and this is the time." But this effort is out of proportion to what one could expect in terms of benefits. How does the unit-based evaluation react to that kind of situation? Is there a mechanism for accommodating that?

299 K. Aylward We arrive at the rates through negotiation. Whether we have a stronger negotiating position or not, the point is that a contractor agrees to those values for those case types. They say, "Yes, we can do that much work at those rates," and they know that if they get that volume of cases that the average will work itself out. Sometimes you get easy ones, sometimes you get hard ones. We do have a provision in the contract that says that, if you get something that is out of the norm that really was too much to be included in the average, you can ask for additional credit on that case by documenting it. There is no counter-provision that says, if you get one that is really easy, you have to give us a credit back. I think they are covered by unusual circumstances and, as I said at the last meeting, and I thought about it afterwards, the Chair asked me what percentage of those requests do we approve, I said 85 or 90%, but the fact is contractors rarely ask. They know that they are looking at an average, and a case has to be very far outside the range before they ask. And then we do say yes most of the time.

320 J. Brown I'm just trying to sort out my thoughts on all of this. One of the things that I think is important for this Commission on a long-term basis is, where there are opportunities to contribute to the recognition of the dynamics of the prosecution and defense function, I would like to continue to illustrate or illuminate that dynamic. Again, we have a totally public funded function with an array of discretion in that function.

336 P. Ozanne It seems to me, Commissioner Brown, that under any system a necessary condition is close management. If you chose the hourly rate approach it seems to me there has to be a "necessary and reasonable" standard, which establishes a standard of what a case is worth. That is what clients ask before that start to pay for a private lawyer. What's the going rate for a divorce or a DUII? There may be variations but, unless it is tightly managed given our limited state budget, we are going to be in trouble. This issue seems to me to involve a kind of marginal risk analysis. With hourly rates, the risk relates to our state budget if there is a tendency to run hours up that can't be managed. Lawyers who operate under a billable system are frequently accused of running up their bills in the absence of some of a going rate, a standard or a cap for particular cases. Under the unit-based system, the marginal risk involves the client. The lawyer's temptation under this system is to triage certain cases in order to devote sufficient time on other cases. Managing these risks is fundamental under either system. We are generally operating under a unit-based system right now. When I said

we need the Commission's guidance, I'm not sure it has to be done today. But, going forward, it seems to me it is the kind of issue on which the Commission to provide policy guidance.

366 Chair Ellis One subject that we haven't addressed today is the issue of whether law firms can be consortium members. I will say I am personally pretty persuaded by the staff report that law firms as consortium members create a lot of problems, particularly accountability. I just think our ability to truly know who the individual is that is going to get the case and be the public defender for a client diminishes. And I think the ability of the consortium administrator to perform the role that we are envisioning becomes very hard. So I agree with the position that firms as firms should not be consortium members. You can have more than one person from a law firm be a consortium member, and they can work that out in the office.

391 P. Ozanne That was the concern that we heard expressed by our Contractors Advisory Group. They also wondered if we meant that people who happened to be in law firms would be disqualified from being in a consortium, and that was an ambiguity in my first draft. I haven't heard any objections yet that the rationale of not having law firms as members poses a problem. But there are situations where law firms are consortium members and, to the extent this is true, we may need to adapt any general policy to those local circumstances.

405 Andrew Kohlmetz I'm here with Scott Raivio and members of the Portland Defense Consortium. All of our members are small law firms. We contract with five small law firms and our experience in the past year has been, from both our perspective and from the Commission's perspective, a positive one. As a small business owner, myself, Mr. Raivio and Mr. Gregory have an extreme interest in maintaining the competence of ourselves and our colleagues. This has a direct impact on our professional reputations with the local bar, amongst ourselves and amongst the other firms in our consortium. (tape ends)

**TAPE 3; SIDE A**

002 Andrew Kohlmetz Our board is empowered to take action if necessary. That action, it has been my experience, almost always begins with the local judiciary. If there is a problem with one of our lawyers, one of the local judges will contact a colleague. They now know in the Portland-Metro area that they can contact any of the directors and Mr. Liebowitz, who is our administrator. Certainly, as the Commission approaches Multnomah County, we can more accurately address the Commission's current concerns in terms of making law firms member of consortia. But I think in terms of exercising control, quality assurance and quality management, by allowing firms in the consortium, I actually think it provides more internal control than utilization of individual attorneys. It also provides a greater degree of this so-called flex in times of crisis. A firm is going to be more able to handle reduction in public defense cases than an individual contractor or an individual sole practitioner might. My practice is probably 75% public defense work right now. I know my colleagues probably approach 90 to 95%. Firms are more easily able to absorb fluctuations, both in a reduced caseload and an

increased caseload, as we experienced with the bulge. We had the opportunity, although we chose not to do so, of anticipating hiring another attorney to assist us in those bulge cases. It wasn't necessary but we had the flexibility to do that.

- 024 Chair Ellis How are assignments made? Are they made by the consortium administrator to the firm and then the firm delegates?
- 029 Andrew Kohlmetz Not all of the firms take as many cases. There is a percentage and the administrator, Mr. Liebowitz, passes out the cases according to a percentage formula. For homicide cases, it rotates differently. Each office rotates one after the other. If that particular office is not able to handle it at that juncture, Mr. Liebowitz will contact another office. Within each firm, cases are assigned within the firm. Myself and Mr. Raivio, for example, in our firm handle the Ballot Measure 11, the homicide, the more complex cases. Mr. Gregory our partner handles –
- 037 Chair Ellis Are these firms where all the lawyers are partners of the firm?
- 038 Andrew Kohlmetz No. For example, Walker and Warren have an associate. Fishback and Engle have an associate, all of whom at least locally are exceptionally competent. I think, as the Commission approaches negotiations in Multnomah County, you will be able to confirm that. At least within the newly formed Portland Defense Consortium, the competency of the attorneys is very, very high. And I think that is a function of members being small firms which can contract directly with the consortium. In that small firm environment, where they do have at least an opportunity to supplement their income with outside work, the small firm gives the attorneys the flexibility to absorb both increases and decreases in the caseload. And because they are small firms in what is a relatively small legal community in Portland, my interest as a small business owner is, if one of my colleagues or a future associate is not performing, I have to take steps immediately. Otherwise I am out of business. So I think the Commission will also find, if it were to entertain small firms as members of a consortium, just by virtue of the internal controls necessary for me to maintain a business, you will find a higher degree of control, efficiency and I think competency. That has just been our experience in Portland.
- 060 Chair Ellis Any questions?
- 061 Scott Raivio Your comment seemed to be saying that with firms as members there might be confusion with the clients as to who their attorney is. Our system is that all the cases in our firm go to my name. The courts are very clear that an attorney has to be on the initial appointment. We do enough criminal work that we have a line from the jail dedicated right to our office and that is posted for clients who are in jail. They often call me and assume I am their lawyer. Within one phone call, I can simply ask them what sort of case do you have and when they tell me I can say Mr. Gregory is going to be your lawyer because it is a drug case. This is Mr. Gregory's assistant, here are the extensions, this is when Mr. Gregory can contact you. So at the most, there is a day's worth of ambiguity with the client as to who their attorney might be.

We put this system in place for a year now and it seems to be working pretty well.

080 Chair Ellis Thank you.

081 Bob Homan I'm from the Lane County Public Defender. I just had a couple of comments. It disturbs me that no one from our local bar is here to talk about what they would like. I feel like I am the last person that should be a spokesperson for the bar association or for the practitioners.

084 Chair Ellis A lot of them did come to our meeting in Eugene.

085 Bob Homan Absolutely. So I'm sure you are aware of their feelings. I just want the Commission to know that I think that Lane County appears to be different from Multnomah County or Marion County in the way they have traditionally handled cases. I think most of the private attorneys that handle criminal cases in Lane County are sole practitioners. So there are some distinctions there and I assume the Commission knows that.

091 Chair Ellis That has certainly been our impression.

092 Bob Homan I just wanted to make those few comments because I am disturbed that they are not here today if the Commission is making decisions on how to contract for conflict cases in Lane County.

098 J. Potter Can I speak to the big issue here? We have two models that Peter has done a good job I think of putting together. We can tweak the models, and I certainly have some suggestions on tweaking either model. But it seems to be that the issue before us is bigger than Lane County. If we choose a model that says "consortium for Lane County" we probably will never choose a model court-appointment list. I say that because I don't think there is a better opportunity for a court-appointment list than in Lane County than any place else under the current situation with a public defender who is handling 70% of the cases and an already existing court-appointed system. I have not been convinced, after hearing all of the testimony and hearing the judges, that there is a significant problem in Lane County that needs changing, other than assertions that there are three or four or maybe five lawyers on the court-appointment list, of which there are 39, who the judges believe shouldn't be on the list. If that is the case, then that is a different kind of problem that may require a different kind of solution. If a court-appointment model is something we want to keep in our midst as something we want to look at, I would suggest that Lane County is the best place to set up the model. We don't have one in any other county in the state and we won't have unless, in my judgment, we decide to set one up in Lane County. The model that has been outlined by staff here, with one or two comments I would make to the model, I think is a substantially good model and it is our opportunity to create one. At the moment, I am coming down on the side of using a modified court-appointment list in Lane County based primarily on the model that is outlined by the staff report.

130 Chair Ellis I am very troubled by the current situation in Lane County and I did not come away with a good feeling about it. I thought there was big controversy over whether anybody could even find the list. There was

absolutely no administrative control over the list. The ability to have the level of competence and expertise is just not very high at all. Maybe you could come out with an effective list if the number of participants was sharply limited. But when you do that, which I think we should do to get this level of expertise and competence, then I find it very hard to say a list with the kind of loose structure which is implicit with the list is a better way to go than a reduced number of lawyers providing the service in a consortium with a real administrative structure.

152 J. Potter I am certainly not arguing for the current system. I am arguing for a system that is being suggested by staff, which has an advisory panel and some structure attached to it. I am also suggesting, and I mentioned this at the last meeting, that Lane County is different in a sense from some of the other counties. There is a major law school that turns out a lot of people who stay in Lane County. And one of things that the Bar in many of its reports on public defense is trying to do is keep the private bar actively involved in providing public defense services. This is a very good way of doing that in Lane County. You are right, there were disagreements as to who was on the list and coming up with the list. But we do have the list now. Those administrative problems can be addressed and I think would be addressed with this model. But I guess what I am saying is, in part of a larger picture, if we don't do it here we won't do it anywhere. And if that is the case, then that is a major policy statement. We are saying we are not going to have court-appointment list in the state.

171 Chair Ellis I don't see that as the outcome. There are other counties, Tillamook is one, where it is all court-appointed now. Secondly, there could be a point in time when the caseload demand is greater than what works comfortably for the Lane PD and whatever consortium we can come up with. So there may be a fall-back requirement. I think we run a real danger if we come out of this with a court-appointment list with a supervisory group. We are going to miss the moment and we are never going to have a really good chance again to structure what just seems to me, from all the criteria that we have talked about, an organization—the consortium—that has a much better chance of success. Now if we put out an RFP, and I understand what Jim Hennings said that maybe we don't micromanage everything, we have talked about what we think might be good. But that really depends on whether there are lawyers there willing to step up and form a group and come forward. If that doesn't happen, we may have to rethink this. But I would be really sorry if we go past this point with the kind of comments that we got from the two judges that we met with and from all the things that we talked about in Corvallis, I would be really disappointed if we come out with an outcome that really is status quo with a slightly different name, and I think that is where we are headed.

201 J. Potter Well, I don't think it is status quo with a slightly different name. I think it is a substantial change in the way we would manage the court-appointment list. I'm not convinced that this is moment that couldn't be recaptured at any other moment down the road. Having a system in place that if we were to develop this secondary model on court-appointments and two or four years go by, and there is no substantial change and the judges still have the same complaints about the quality of services, we haven't lost anything other than two or four years

possibly. So we haven't changed a system that didn't need to be changed.

- 212 Chair Ellis The system does need to be changed. We did not hear in Lane County a very pretty picture. The only reason Lane County doesn't feel too bad is you are only talking about 20% of the caseload. This was a system that was in disarray, in my opinion. I'm not hearing that, if you had this supervisory group, you are going to have anyone with the kind of administrative authority that a consortium administrator would have. I think it could very easily lapse into a rolodex rotation with no real accountability, no real line of direction. I just think it would be too bad.
- 230 J. Potter The difference is, I don't think that Lane County is in disarray. I never got that it was in disarray. What I got was that there were four or five lawyers on the list who shouldn't be on the list, who everybody agreed weren't providing good service. But from no place else did we hear that the majority of the bar was providing bad service. In fact, it appeared that there were lots of very good lawyers providing service, and more economically than any other system.
- 238 Chair Ellis Those same lawyers are going to be the core of a consortium. We are not going to displace lawyers who are providing a lot of the services there. But the structure that we would be looking for is one that I think has a whole lot better potential of providing accountability, assignments within, and a degree of quality control and discipline that I just don't think we are going to get with a list. Any other reactions here?
- 251 Bob Homan I tend to agree with Commissioner Potter. I practice in Lane County and I don't think that there are a lot of bad lawyers in the private bar who do criminal defense work. I think that there are a few that the court thinks shouldn't be doing at least high level cases. One suggestion, I think Ross Shepard mentioned this and I just remind the Commission of it, is that we in Lane County have an active criminal defense section of the Lane County Bar that could be engaged to have some oversight, to make recommendations on a list, or to administer that list a little more effectively than it is done right now. The members of the Public Defender's Office and a lot of the people that do criminal defense are active in that organization and that might be of some assistance to the Commission if you were thinking of some middle ground. That's all I have to add.
- 273 Chair Ellis Any comments from Peter and Kathryn?
- 275 P. Ozanne Other than the challenge of actually finding people who are interested in responding to a RFP, I don't have any comments or considerations to add. I think it has been a very good discussion of the pros and cons of the two models.
- 283 Chief Justice Carson One of my thoughts has to do with process. Janet, still there Janet?
- 284 J. Steven I am.
- 285 Chief Justice

- Carson Bless you. The way it is shaping up, it looks like it's going to be a divided vote. And I just wonder how far we ought to go without Jon Yunker and Chip. We have heard from Shaun by her letter, but we are missing Chip and Jon. So I don't have a fixed notion and I wonder if it's going to make a difference.
- 295 J. Brown To the extent that there is any utility in it trying to resist unsuccessfully the temptation to recall what Yogi Berra said, "When you come to a fork in the road, you should take it." But this does seem like a fork in the road. And just to get some sense of a reaction in terms of how I have perceived what this Commission is about, taking into account the history of the function, I think the consortium model most conforms in my mind most effectively to what the Commission ought to be trying to do. That is where I am.
- 314 Chair Ellis I suppose what could come out of this is if we voted today are two outcomes. If there is motion to direct staff to issue a RFP in Lane County, soliciting formation of a consortium with the general characteristics that have been outlined, then obviously any response to that may or may not pick up everything we are recommending. If we go that route, I suppose there is the potential that maybe the Lane criminal defense bar won't do it. Maybe we would never see a group emerge that we were satisfied with. Or they do respond, and then the Commission has to vote on the contract. I see how that process works. If we go the other route and consortium is voted down, then I take it what you would envision, John, is a three-person advisory board. Who are they and who are they responsible to? Tell me, how does that get set up? What is it we have just decided to do?
- 345 J. Potter I would want to entertain a discussion on that. We haven't been through every aspect of it, but we should talk about that. One of the things that was in the three-person panel that Peter had suggested, he would be or his designee would be a member of that three-person advisory panel for the first year. One of my questions that I had written down is what happens after the first year because that would be the direct link to this Commission. You would have Peter or designee on that panel. I am a little uncomfortable with it as a policy matter, if it were to extend beyond the first year. On the other hand, it should be locally managed and controlled, I think. At the same time, I understand what you are driving at and it is a valid point: what is the connection between that advisory group and us? I would want to hear some discussion on that.
- 369 Chair Ellis You know we provide trial level services by county and the appointed system implicitly suggests that we are tracking with 39 or 35 people. Administratively, that is a lot of complication from our end. And I'd need more confidence in this three-person advisory group.
- 377 J. Potter I think I do too. I would like to hear what Peter's reaction was when he was thinking about that. But also, before he responds to that, if you have a court-appointed system, we are not in the court-appointed business. I mean, we don't have that authority and that is the other variable here. We are not contracting with 39 people. We are paying 39 people who have been appointed, at least right now, through a system in which the court makes the appointments. We are trying to control the list a bit, but we don't have the direct connection between

making the appointments and paying the person as you would under the public defender system. And until that happens, the court-appointment system is always going to be a little bit hinkey. But there still hasn't been a case made to me that that hinkiness is a bad deal; that we are getting bad service, other than those three or four lawyers who happen to be in the system. Lane County, even with no administration and no oversight and confusion in the courts, and not knowing who is on the list, is still providing good representation overall. So a little bit of tweaking, and a little bit of oversight and a little bit of management, and a little bit of us watching, it would seem like we can raise that bar substantially.

- 412 Chair Ellis What is your response to the accountability issue? I have trouble seeing your vision. Is it just a rotation appointment system, so that there is no attempt to match cases both in their seriousness and their type of case to someone with experience and expertise?
- 425 J. Potter The court-appointed list as it is now set up has seriousness levels. There is some mechanism already in existence. I'm not sure what it is. The court wasn't quite sure what it is. But we can establish that more firmly. (tape ends)

**TAPE 4; SIDE A**

- 004 J. Potter Whether or not you are qualified to do a misdemeanor or Measure 11, major felony, death penalty, civil commitment, there are all these categories the court already has on their list.
- 007 Chair Ellis We were told, really without qualification, that the appointments are whoever is next on the list. That is absolutely what we were told. Part of why I advocate for a consortium is that you have an administrator who is able to direct the cases in a way that makes some sense. I just don't hear an alternative coming up. You are not going to have this three-person panel meeting more than once every couple of months. They may be able to appraise the quality issues, but that is about all I see them able to do.
- 016 J. Potter I think that is a valid point. What I heard is the same thing that you heard, and it was worse than that in the sense that some of them were actually made from the bench if you were in the room, and that I think is a bad policy. We need the cooperation from the judges not to have that happen.
- 020 Chair Ellis But the two judges we met with could not have been stronger in their statements to us that what they really wished we would do was form a consortium. And I am having a really hard time understanding why we are not responding to that.
- 023 J. Potter I am suggesting that, with some more discussion, we might be able to find a way in which you don't need to go consortium and limit the pool the way we are planning on doing it, but keep it more open and have a little bit of oversight and management, so the judges won't feel that they are in a position where they just have to appoint next on the list. Maybe this panel can help do that, saying not just who's next on the list, but according to various categories of lawyers that qualify for the

various kinds of cases. You pick based on next on the list for that category of case.

- 032 Chair Ellis Would it not be true that if we go where you are suggesting, you necessarily are buying into an hourly system with no differentiation on ability.
- 037 J. Potter I would have to think about that some more. But at the moment, you are right, it would be an hourly-based system and regardless whether it is a misdemeanor case or a Measure 11 case you would get paid the same hourly rate. To change that system would require a fair amount of thought on our part.
- 041 K. Aylward Mr. Chair, actually, we do get requests from Lane County attorneys quite frequently for an exception to the \$40 an hour rate on Measure 11 cases. And most of the time those are justified and approved. I think what is actually happening now is that a lot of the attorneys are getting \$50 an hour for Measure 11 cases and \$40 an hour for non-Measure 11 cases. We have to deal with our private bar list systems statewide anyway because the policy needs to change. In my view, I would throw the list away statewide and start all over. Everyone resubmits a qualification standard and, through a panel that reviews them in Lane County, they would go through and say “yes, no, yes, no.” and the list would be the brightest and the best of who you have. We could do Lane County first and separately as a pilot project. We know we have to do it statewide, but we could do Lane County first. We could say not only are we choosing the best, but we are now going to officially pay you \$50 in every Measure 11 case because it is going to be an exclusive list which is difficult to get on to. You could set by policy the different rates for different case types, and you could make it highly competitive and desirable to be on that list. Once you get the list down to the few select people you want, then the message is clear: these are the people we want. These are the people that the local bar and the PD’s office and the judges all agree are the attorneys we want doing the work. Now if you formed a consortium, you would probably have less administration and you would spend less time recording hours. And you might actually be able to make more per hour because of the efficiency and your experience. So in my view, I would do both. I agree with John that maybe we have the sense that we haven’t appeared to have done something. But I think if we are pretty drastic with that list and not just the three or four, but maybe 10—maybe actually some of the people that are adequate, but not the best, remove those too. We will be seen to have done something. We will have done something immediately to fix a problem. We have been issuing RFP’s probably every two years in Lane County. There would be another one, naturally, when the PD’s contract expires. If we ever get a consortium bid that looks good, with a good administrator and a board of directors, then we can award a contract. I don’t think it has to be such a big all or none thing at this point. We put an RFP out in the fall and we got four or five bids. We looked at them and said no thank you. I would be worried that we would continue to get bids unless our RFP is going to say we want a bid with these 15 attorneys. We are not going to get the people we want. But we can do that by looking at the list and, with the advice of a panel, and with PDSC having the ultimate selection, I think we still need that. There are some attorneys that might be great, but if we know a reason they shouldn’t be taking the cases, falling down

drunk in court, we don't have time to talk to a panel. We do need to pick and choose how we spend our money. But that way, we have fixed the problem immediately. We have the great people and then, if they want to go the next step, it is good for them and good for us.

090 P. Ozanne One of the issues is the point that John has raised. It is three-member supervisory panel. Since we wouldn't be talking about the normal contractual relationship with an appointment list, my thought was that the panel would be appointed by the Commission. There could be designated slots like the public defender or his designee, my position or its designee and a member nominated by the Lane County Bar Association. But the connection or the control, would be by the Commission's power to select that group. I think John suggested the problem of drafting me or someone else on our overloaded staff for more than a year. But the reason I proposed my participation, as Bob Homan pointed out today is: where are the people today who make up the 35 to 39 supposedly interested attorneys on the current list? Where are at least one or two of them who might offer potential leadership? As one of the judges said, where is the leadership for an appointment list? Who is going to come forward to be on this panel? I think that any process we pick isn't going to be automatic or self-regulated.

We may be able to, as Kathryn says, develop a court-appointment process for those few appointed cases remaining after contractors are assigned cases, as well as some quality or performance standards above and beyond the ones we currently use. We heard in Lane County that there are a handful of attorneys on the current list who are probably incompetent. But I know that the Commission is also interested in raising the quality standards above the level of mediocrity. Without some regulatory component, either through the features of a consortium or through a three-member oversight panel selected and controlled by the Commission, I doubt if much improvement in quality is going to happen.

The question remains: who are we going to select for a panel? My proposal was that I would serve for a year. But again, where are the other people who are interested in safeguards for quality? Sure, the interested people are all busy trial lawyers and they may have had conflicts today, but I haven't gotten a letter or a comment from anyone such as, "I'm going to step forward and lead this group." So I don't know how the panel or appointment list would work, since it's not going to be self-executing. Now we may have the same problem with a consortium. I don't know if you were suggesting in your earlier comments, Barnes, whether OPDS would float an RFP, see what happens and come back to the Commission with a proposal or a recommendation regarding the choice between an appointment list and a consortium.

134 Chair Ellis It may be where we have to go because I think you are, and maybe John is, raising the specter of what if we gave an RFP and nobody came. My own instinct has been we don't want to just be passive about it. I think we want to try and encourage people to put things together.

140 P. Ozanne I agree. That is what I was going to add. I would expect that you would direct me to perform an active role in recruiting leadership. So I think the Chief is right. Maybe there is a question of process here

today. Before we launch off to Lane County to determine the level of interest in or potential leadership of a consortium or–

146           Chair Ellis           Here is an issue that is plaguing me as I listen to this. I think there may be a feeling among the good lawyers in Lane County that, “If we just do this modified list, why I’ll have more control over my own destiny,” and the truth is just the opposite. If I were a lawyer in Lane County who wanted to do this work and compared my ability to influence my own destiny under the consortium model versus the appointment list model, I would have the following thoughts. Under the consortium model, assuming I am competent and energized, I am either on a board or have access to a board. I’m in with the group that is identifiable and I can have a lot of input on the quality, the policies, the selection of the administrator and all of that. Now compare that to this modified list, where this panel of three may have something to do with who is eligible. But that is about all the authority they are going to have. There is no administrator; there is no core to it, and pretty soon what? If I am dissatisfied with what cases I am getting, who do I talk to? If I am dissatisfied with the quality I see going on elsewhere in the courtroom by others, who do I talk to? If I have got special needs because there is a case that is extraordinarily time-consuming, who do I talk to? I would think the good lawyers in Lane County would be very nervous and skeptical about something as amorphous as what I think the appointment list would be.

Let me try to bring us to at least a point where we can do something. I think it is unclear whether we are going to get the bid we want if we go for consortium. I’d very much like to see us try but, I think we need at the same time to develop a plan for what we do if we don’t get the bid we want. So can we do both things? One is put together the RFP for a consortium, and I think you have pretty good direction as to the elements. And also put together what we think is our best shot at an improved appointment list program, which would be the default plan if we don’t get a response on the RFP that we’re happy with. Obviously, John and Shaun, when the RFP responses come back, since you really think it is not as good as what the default option of a list would be, you would be voting against that contract. Would that approach work?

199           J. Potter           I think that is a very good approach.

200           J. Stevens        If you do that and you don’t get the RFP, what message does that send to all the people who are now stuck with what is clearly our second choice?

205           Chair Ellis        I’m not quite sure how to answer that because we may not like the RFP due to who the participants are or due to the structure. I don’t think we expressed anywhere in this a value judgment on particular individuals.

208           J. Stevens        I agree. We haven’t. But I am afraid if you do an RFP and you don’t like what you get then there is going to be a huge fallout.

211           Chair Ellis        I’m not sure of that. Obviously, we would have expressed the value judgment as to a preferred structure. If the 30 plus lawyers in Lane County who are involved just don’t want to move in that direction, I guess we have gotten our local input. I don’t think it is a statement that all of them are not qualified lawyers because, obviously, we are sitting

here saying we are confident there is at least a core of really qualified lawyers.

221 J. Stevens I don't think you have said they are not qualified lawyers. I think what you have said is, "Whatever it is you are going to do now, we are not going to like it, no matter what it is."

224 Chair Ellis If we don't get an RFP response?

225 J. Stevens Yes.

225 Chair Ellis Well, I think we will have said that we don't like it as well as what we were hoping to get. But I'm guardedly optimistic that we will get what we are hoping to get.

230 P. Ozanne I guess I am not, Mr. Chair. I'd like to have a little more discussion about this. I think you are going to have a split vote on this issue, which will be sending a rather ambiguous, if not ambivalent, message. I anticipate that OPDS's staff will then be sent to Lane County while, at the same time, we are undertaking our investigation of the delivery system in Portland, which requires a lot of work ahead of the Commission's meetings on the subject. If I understood your proposal correctly, we would float the RFP in Lane County, see what we get, decide if the responses met our needs, and then maybe default to a structured court-appointment list if the responses didn't. Is that pretty much what you are saying?

239 Chair Ellis That is correct.

240 P. Ozanne There are two elements to this that worry me. One, is that, given the sentiment in Lane County, I think there will be a lot of people who will just wait us out and not really get behind the idea of a consortium. If you want me to go out and recruit an energetic individual, either inside or outside of the county, who we would expect to enlist 15 other high quality lawyers, I think your proposal would create a pretty formidable task for both of us. To interest anyone in leading a consortium, which is not going to be without controversy in any event, I don't think he or she is going to get a real strong reception from prospective members—"Yeah, I want to sign up!"—because chances are, they are going to get what they want anyway by default, which is a court-appointment list. So pleased tell me what I am missing here because I am happy to do whatever the Commission wants. But it strikes me that, without a pretty forceful message from the Commission, the recruitment of somebody with leadership talent is going to be very difficult, because there appears to be no leadership right now.

256 Chair Ellis It is no secret where I would prefer to see us go. I would rather see us with a unanimous Commission strongly favoring a consortium. I'm not getting it.

258 P. Ozanne I appreciate the situation the Commission is in right now. But I wonder whether we just, either now or when there is more membership for a vote, live with a split vote and move on. Maybe I'm phrasing it more as a question. Is it going to be preordained that we're not going to get responses to an RFP without an unambiguous decision by the Commission?

269 Chair Ellis What if we did this. We can do it either as a straw vote or a vote in terms of a motion favoring the preparation of an RFP for consortium in Lane County. I suspect that this will pass, but by divided vote. And then go forward with that. But I think you have to have the fallback as something that we are also looking at.

279 Chief Justice Carson I would recommend, Mr. Chair, that you not vote until you have a full Commission. First of all, I will back up and say, the years have taught me that Lane County is different. And I would expect a unanimous vote from everybody in the room that Lane County is different. I try to keep that in mind because it is not Marion County like somebody mentioned. It is not Multnomah County, it is not Marion County, it is Lane County. So I would pay particular attention to their needs and their wants down there, as I should and do with the other 35 counties as well. My point is that I don't know if it is quite the defining moment that others have spoken about. But it is an important decision, and we have two of our members who happen to reside in Lane County indicating that they would like an intermediate step. It is that intermediate step where, if I were to have a vote, I would vote for the consortium because I have grave doubts that we will be able to make the interim step. Now, my point is, I think you are sending the director out on a horrible errand. People can hold their breath for a long time, if they know they are only holding their breath. That is, if we don't get an RFP coming back that we like, the default position will prevail, and I will say that this will be the status quo. John doesn't think it will happen, and I don't think Shaun does. Ross thinks the problems can be repaired. We tried this in Marion County and the interim step just simply didn't work. The judges had the hammer, and it just failed in my view until we went to the consortium. I would just like to leave out jumping across the river in two jumps. We are going to get wet. So, if I were to vote, I would vote for the consortium. I don't have a vote and it is kind of lucky now, I guess, that I don't. But I am worried that if we set up the idea of a consortium and we don't get one, we will go to the modified court-appointment list. That, I think, predictably puts a lot of pressure on the Lane County lawyers. The ones who submit an RFP will be deemed to be ratting out the other 39 because they submitted an alternative to the list and jumped ship.

323 Chair Ellis You make Iraq look simple.

323 Chief Justice Carson Yeah, that is based on experience.

324 J. Brown Same kind of concepts though.

325 Chief Justice Carson Yeah, just see how far you can stretch. Obviously, whatever is best for the Commission, you will decide, I'm confident. But I think right now, the best possible outcome would be a split vote, with two of our strong members not joining the Chair, or not joining me if I were voting. I would like to see where the other two members are. We haven't heard from Janet, and I don't mean to put her on the spot. But I would be interested in her view.

333 Chair Ellis What is your view, Janet?

334 Janet Stevens I am far less in favor of just jumping into a consortium. I am having trouble hearing the arguments completely, but both Shaun's letter and John's views rang true with me. I would have a hard time voting for a consortium right now.

342 Chair Ellis Jim, how about you?

343 J. Brown I favor the consortium model. I think the Chief makes a very important point. It is a significant decision and having Chip and Jon involved could be very important. What is significant to me is looking, again, at the history of the Commission's function. I thought the old Indigent Defense Board was motivated by a sense that we wanted to get the judiciary out of this process to the extent we could. Long term, the consortium is closest to that model and the court-appointment list is not. But I think winning hearts and minds in Lane County and recent history has taught us that we need an exit strategy—

368 Steve Gorham Mr. Chair, I have two things if I can and I hope not to be repeating. But one of the problems I see with the court-appointment list, even as modified, is cost control. Someone has to do it, if you have a court-appointed list. I think Kathryn's office has to do it and I don't know that they have the person power to do it. They have the people to do it, but they are doing other things. Thus, you are basically taking what could be a local administrator to do it, which I think is the best person to do it obviously, and making somebody in Kathryn's office do it. But that is a reallocation of the resources, which I don't think is a very good one right now. But someone has to do it. Otherwise, it is basically not done and that is what you would have in Lane County now. With regard to the three-person panel, I think you are finding what the problems are with volunteers right now. You don't want to make a decision here without everybody being involved who should be involved. Yet they are not here, for perhaps lots of good reasons, but they are not here. That is what is going to happen with this panel. Maybe because Peter may be on it for a year he will be there, but who are those other two people? Say, one of them ends up being the public defender. I don't know if that is even possible because of potential conflicts. Maybe the federal defender model works without conflicts, but that is what you are looking at. You need a person designated who is really, really interested to make it succeed. Unless Peter is there all the time, maybe it is not going to succeed.

411 Chair Ellis What I am hearing from the informal balloting of the four voting Commissioners attending this meeting is that we are divided. (tape ends)

**TAPE 3; SIDE B**

001 Chair Ellis Maybe one way to deal with this is, between now and the June meeting, staff puts together what the RFP would be and we will vote in June, hopefully with more folks in attendance. We've got some time between now and then for people to talk to each other and see if we don't move more toward a consensus. I think we do need to know more about what this modified list approach would be. I'm very insecure about it. I hear the words about a group of three. I'm not

getting any sense that they would be more than a mesh screen for quality and costs and I do see it as an invitation to drift along, which maybe what Lane County really wants. We have got two Commissioners from Lane County. They know their county.

- 017 P. Ozanne Mr. Chair, not to make matters more complicated, I wonder though if we wait until our June meeting in Bend, whether we are going to have much more luck getting all seven Commission members there. I am wondering whether we should have a special meeting telephonically on this issue. The issue certainly has been thoroughly debated and thoroughly briefed.
- 024 Chair Ellis How do you do the opening meetings part, if it is telephonic? Do you have one open line somewhere?
- 025 Chief Justice Carson Mr. Chair, what I would do is have a regular meeting, and then make sure that all our members can participate by telephone, if they can't get there physically. There are agencies that have a telephone conference public meeting and I have had the same question. But I think if you had a meeting and then Janet and Jon and Chip and Shaun participate by telephone—
- 032 Chair Ellis I think what we are really hearing is keep the May meeting on.
- 034 P. Ozanne Well, come to think of it, the Chief has provided the answer to my question. Maybe we can do that in June in Bend.
- 036 Chair Ellis Does that give us enough time to get the RFP out?
- 037 P. Ozanne If I understood you correctly, I thought we were just drafting an RFP for the Commission's consideration in June, weren't we?
- 038 Chair Ellis Right. And I think we can't put these things off forever. There will be a vote, with hopefully the full Commission voting on whether to issue the RFP. But I think it does more than that. I'm obviously disappointed that we do not have a consensus on the Commission. Because what I am worried about is, yes, we have an RFP that goes out, but it doesn't have the energy, the support and the enthusiasm, and the sense of really making the defense community respond to it. And then we could end up with a non-response or an unsatisfactory response. I think our chances of actually effecting the changes we would like to see in Lane County are going to be hurt.
- 050 P. Ozanne So, if I understand correctly, we will hold our next meeting in June, including telephonic connections with whomever can't make it, and by June, we will have our proposed RFP in an appropriate form for consideration by the Commission. But we wouldn't have issued it yet to the defense community in Lane County; we're just circulating it to the Commissioners.
- 055 Chair Ellis If it gets majority vote, it would very probably go out. But I think the real problem is, and I think everybody has to do what they think is right, if our two Lane County Commissioners aren't behind it, it is a big handicap to us. Because I know what will happen. The potential leadership in Lane County will be talking to the Commissioners from

Lane County and, if it is just not supported, there is a very good chance it will not succeed.

- 061 J. Potter I can't speak for Shaun, but certainly for myself, if this Commission votes to send it out even with a divided vote, I will aggressively be on the side of the vote and make sure in Lane County to the best of my ability to make it work. And I would anticipate the same thing would happen if the vote went the other way and we said, "Let's do a modified court-appointed system" and that was a divided vote. We would all band together to figure out a way to make that work. So my guess is Shaun would agree.
- 072 Chief Justice Carson Mr. Chair, that provokes a thought of an assignment for John and Shaun, and maybe Janet: to fine tune the proposed model. I am absolutely positive that the court-appointment list will not work. If it moves forward, we change the name and they have the same problems they had before—and maybe I am over-emphasizing my experience in Marion County, but having lived through it once I don't care to do it again—how can it be made tighter and achieve the intended goals? Maybe it can. Few people understand it better than you or Shaun do. See if you can tighten up the alternative to make it work because, frankly, in my view, it will not work as it is designed here. I'm attempting not to offend the staff who put it together. They did the best they could. What the judges told me, as we were all sitting together, is that the present system does not work and they want out of it. That certainly would be my position.
- 088 Jim Hennings This may be harassing, but why do you need an RFP process? Aren't you really talking about how you involve the private bar in the non-contract, the non full-time attorneys? That is really what you are talking about. If you set it up for an RFP, you are saying, "Please come give us something." If you say we are trying to regulate and organize how the private bar will be involved, then that becomes an easier situation because you can tell Peter to go to Eugene and set up a consortium. That will make a proposal and, in fact, you could even say, if the issue is we want to make sure these very qualified people who are on the list right now are in this new consortium, you could even say and you must consider first, before you hire anyone else in the consortium, you have to consider everybody that is on the list right now. I think you are making it more complicated by pushing toward the market with competing proposals.
- 102 Chair Ellis But somebody has to form the nonprofit corporation. Somebody has to be on the original board of the nonprofit corporation. Somebody has to say these are the lawyers who are part of the group that is making the bid. There are other variables here. You could have two consortia of seven or eight each. That is fine, we can deal with that.
- 107 Jim Hennings I don't think you want that because you have problems of allocation and you simply don't have enough cases. But remember, when MPD was formed, there was a group of incorporators who then hired me and did all of those other things and got the original corporation. All I am saying is maybe that is the process that you want to go through. You call for a board of incorporators and you may even get some response on that because you are not telling someone to go out and get a whole

bunch of people together and say you are the consortium. What you are calling for is somebody to create a governmental process that can then handle the private bar involvement in Eugene.

- 119 J. Stevens Barnes, I understand what Jim is saying. I guess I would have to say that if a consortium is what we end up going for, I think it has to be driven by people in Lane County
- 126 Chair Ellis I thought going the RPF route, with what stimulation we can do to get people to come together and form something, addressed that. You are right, and I guess I have a feeling that, if we do too much of this, it will never happen because you really need someone, either at the board level like MPD or someone in Lane County, to start forming up or it just isn't going to happen. I thought what we were doing was trying to give as much guidance as we could about the kind of things that have been learned around the state from experience as to what would make a successful consortium. At the end of the day, if nobody responds, I guess they have made their choice. Is this approach okay?
- 143 J. Potter Yes, I guess if I understand that we are having the meeting in June.
- 144 Chair Ellis Right.
- 145 Chief Justice Carson June 17<sup>th</sup>.
- 148 Chair Ellis Anything more that you need to get between here and there?
- 149 P. Ozanne No, Mr. Chair.
- 150 Chair Ellis Now Benton, Lincoln and Linn Counties, why don't we—we haven't had a break.
- 153 P. Ozanne That's true, we haven't. It's the lunch hour. I think we can defer Lincoln and Linn Counties for consideration until June because they really call for a long-term process and do not present acute problems. With regard to Benton County, I would like some guidance. What I was seeking in our report to the Commission was the authority to go to Benton County and work with the consortium to develop a work plan and report back. If you want to talk about that after the break, it only involves Benton County.
- 161 Chair Ellis Let's take five minutes.
- 167 Chair Ellis Calls meeting back to order at 12:10.
- Peter you want to comment on Benton County.
- 168 P. Ozanne Yes, I don't think the issues have changed since we identified them in our report. They are accountability, responsiveness and internal controls. Although we have a very responsive consortium administrator, we saw an immediate quality control issue from her presentation on juvenile law at our Corvallis meeting. That resulted in Ingrid going immediately to the consortium with our concerns about whether the consortium members understood the applicable juvenile law and the obligations of defense attorneys in termination of parental

rights cases. So we have already taken action as a result of our meeting in Corvallis in trying to assist the consortium by providing them with information about their legal obligations to their clients. What I would still like to do, as we suggested in our report, is have the Commission direct OPDS to meet with the consortium and hold a private one-on-one conversation about the quality of services provided by the consortium and the members' capacity to turn things around. Most importantly, we need to determine if the consortium's members have delegated sufficient authority to the administrator to really manage that consortium and to install processes and safeguards to insure quality and accountability. I'm not yet convinced of that. I think the goal would be to develop a work plan to achieve certain goals in terms of internal management, quality assurance, training, responsiveness to complaints. The directive that I would seek from the Commission is to report back no later than the Commission's August meeting, with the prospect at that time that we would have a work plan with a set of goals and objectives and a timeframe for the consortium to achieve those goals. I should have conferred more with Kathryn before the meeting because there is an issue of the contract cycle in Benton County.

- 209 K. Aylward They are operating on an extension that runs through June 30. Generally, what we do is we have contracts that would run one year or two years and then sometimes we will have a short extension for the purpose of renegotiations. Or, we will have extensions anywhere from three to 18 months in order to get a contractor on a cycle. So we have the flexibility. I'm sure if you wanted to have an amendment that extended them however long you wanted, they would agree to that. But something has to be done by July 1 one way or the other, or their contract expires.
- 218 P. Ozanne I would propose something reasonable in the way of an extension. In my view, I would want the Commission to, in effect, put the consortium on probation with terms and conditions and the ability to violate them and move on to another consortium.
- 223 Chair Ellis Isn't one of the things that we could talk about with them is that they have no outside board members?
- 225 P. Ozanne Yes.
- 226 Chair Ellis We often talked about outside board members, whether appointed by the bar association, the court or some other external appointing authority, in order to get someone whose focus is more about the public interest than the consortium interests alone. That change would offer some potential of assisting in the areas that we are concerned about.
- 234 P. Ozanne Very much so. That would be one of the things we would be talking about, and I would suggest it be two independent board members. It is awfully lonely going into an organization like that as a lone independent board member.
- 240 Chair Ellis I can see that we want to encourage them to do this as a way of developing a process over time that will address both quality and professionalism.

244 P. Ozanne Perhaps to give you guidance, which you in turn would give me guidance, I would suggest that we offer the model consortium developed for Lane County to the Benton County consortium as a model that reflects the kinds of goals, values and objectives that we would want them to pursue in their work plan. We would then report back to the Commission in August about the prospects of accomplishing such a work plan.

251 Chair Ellis I can see changing the composition of their board as the first step. The second step is getting the board to give a lot more authority to the administrator than I think she now has. That is where I think we are wanting to see that go.

255 P. Ozanne That is good input. I would agree with that.

258 Chair Ellis Do you feel you need a motion of some kind.

259 P. Ozanne I would think so.

260 J. Potter If the motion is to model your direction in Benton County after the model consortium for Lane County, is that correct?

261 Chair Ellis Yes.

261 J. Potter I would certainly make that motion.  
**MOTION:** J. Potter; so moved; J. Brown 2nd

262 P. Ozanne And to direct me to meet with the consortium and develop a work plan and report back in August or September.

264 Chair Ellis Alright, all those in favor?  
**VOTE 4-0;** hearing no objections the motion **CARRIES.**

270 Chair Ellis Anything else that you think we ought to be covering today?

271 P. Ozanne Well, I think we have probably put in enough time and energy today. With Lincoln County, we will be asking them to develop a proposal for dealing with the entry of new lawyers into public defense practice in the county. In Linn County, we propose a letter from you or me to the judges and the district attorney, offering OPDS's help in developing a new Early Disposition Program that includes the participation of our contractors there. But we can formally propose these actions for your approval at the next Commission meeting in Bend. So I think we are done for today as far as I'm concerned.

278 Chair Ellis Any other business? If not, I would entertain a motion to adjourn.  
**MOTION:** J. Brown; so moved;

281 P. Ozanne Excuse me, Mr. Chair. To be sure we are in agreement here, we have more E-Board activities, including another letter and another report, in June.

286 K. Aylward Right. For the June E-Board letter, it is probably due May 25. And there won't be another Commission meeting before then. So I am

wondering if that subcommittee of Commissioner Yunker and Commissioner Potter could continue for these purposes.

292

Chair Ellis

They still have that authority. There is a motion to adjourn **VOTE 4-0**; hearing no objection the motion **CARRIES**.

The meeting was adjourned at 12:20 p.m.

**Appellate Panel  
Pilot Project  
Non-Capital Direct Criminal Appeals  
(6/10/04)**

The Office of Public Defense Services (OPDS) is accepting applications for its Appellate Panel for direct criminal appeals *in non-capital cases*. The Appellate Panel will consist of select experienced appellate practitioners who are interested and qualified to represent clients on direct appeal in the state appellate courts.

The panel members are not state employees, and panel membership alone does not establish a contractual relationship with OPDS. Rather, panel members receive compensation on a case-by-case basis according to an administrative valuation system based on the complexity of the cases as reflected by the type of case and the length of transcript.

The following general principles govern the Appellate Panel.

- I. **Eligibility.** At a minimum, an Appellate Panel member must:
  - a) be an active member in good standing with the Oregon State Bar;
  - b) satisfy the appropriate Qualification Standards for Court-Appointed Counsel in appellate cases (see, section 3.1(H) and (I));
  - c) possess superior research, analytical and writing skills; and
  - d) have demonstrable appellate experience.

**NOTE:** OPDS may accept a limited number of applicants with limited or no appellate practice experience but who agree to be closely supervised by OPDS management or staff.

- II. **Selection Process and Panel Review.**

- A. **Selection.** As part of the selection process, OPDS will review applications, contact references, and contact various components of the criminal justice system, including the Oregon State Bar, individual Bar members, and the Oregon Appellate Courts.

- OPDS will select qualified candidates on an ongoing basis. An applicant who does not gain admission to the panel may reapply after 6 months.

- B. **Panel Review.** OPDS will review the panel membership at least every other year. Should OPDS develop a concern at any time about the quality of representation provided by a member, it will conduct an inquiry and provide the panel member with an opportunity to address its concern before OPDS takes appropriate action.

**III. Case Valuation.**

**A. Court of Appeals Briefing through the Petition for Review.** The case valuation tables below are based primarily on case type and transcript length.

The **transcript length** serves as the basis for projecting the anticipated number of attorney hours for each case. The case valuation tables are premised on a number of assumptions derived from common experience.

Balfour cases, dismissals, and standard challenges to Measure 11 are valued separately from a typical “merit” brief.

**Table 1: Merit Brief**

<b>Transcript Pages</b>	<b>Misdemeanor</b>	<b>Non-Measure 11 Felony</b>	<b>Measure 11 Felony</b>
<b>0-120</b>	\$950	\$1,050	\$1,150
<b>121-400</b>	\$1,300	\$1,450	\$1,600
<b>401-800</b>	\$2,500	\$2,750	\$3,050
<b>801-1200</b>	\$3,900	\$4,300	\$4,800
<b>1201-2200</b>	\$5,500	\$6,200	\$6,900
<b>2201-3200</b>	\$7, 500	\$8,450	\$9,350

**Table 2: Balfour Brief, Dismissal, Form Measure 11 Brief**

<b>Pages</b>	<b>Misdemeanor</b>	<b>Non-Measure 11 Felony</b>	<b>Measure 11 Felony</b>
<b>0-120</b>	\$350	\$400	\$450
<b>121-400</b>	\$750	\$850	\$900
<b>401-800</b>	\$1,300	\$1,450	\$1,600
<b>801-1200</b>	\$2,000	\$2,250	\$2,500
<b>1201-2200</b>	\$3,000	\$3,400	\$3,700
<b>2201-3200</b>	\$4,350	\$4,900	\$5,400

**NOTE:** The case valuation tables are based on averages. A panel member may petition OPDS for additional payment in the exceptional case, such

as a case that presents a novel issue or multiple exceedingly complex issues.

**B. Withdrawals.** Payment will be assessed on a case-by-case basis depending on the stage of appeal and attorney input.

**C. Supreme Court Review Allowed.** Should the Supreme Court allow review, the panel attorney will prepare and file the brief on the merits and argue the case, though OPDS retains the option to recall the case in exceptional circumstances.

The panel attorney must bill OPDS separately and will be paid at an hourly rate of \$55 per hour (up to 100 hours) for briefing and argument in all cases before the Supreme Court.

**NOTE:** As with Court of Appeals cases, a panel member may petition OPDS for additional payment in the exceptional Supreme Court case.

**IV. Case Oversight.** The panel attorney must serve OPDS with a hard copy of the completed brief or, where appropriate, the dismissal motion and order.

The panel attorney must send a letter to the client that identifies and explains (1) the potentially significant issues that were facially presented in the record but not raised in the brief and (2) those issues that were of express concern to the client but not included in the brief.

**V. Payment.** Payment will be made according to the Public Defense Payment Policies and Procedures.

**VI. Application Process.** Applicants must complete and submit the attached application form with cover letter, writing sample and references to:

Peter Gartlan  
Chief Defender  
Office of Public Defense Services  
1320 Capitol Street NE, Ste. 200  
Salem, OR 97303-6469

**APPLICATION FOR OREGON APPELLATE PANEL**  
**Non-Capital Direct Criminal Appeals**

A. Name: \_\_\_\_\_

Address: \_\_\_\_\_

County: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Note: Transcripts and file material can be obtained at OPDS in Salem, or you can make arrangements with OPDS for delivery.

B. State Bar No. \_\_\_\_\_

Law School: \_\_\_\_\_

Date of Graduation: \_\_\_\_\_ Class Rank: \_\_\_\_\_

Special honors and activities in law school: \_\_\_\_\_

C. Please indicate the approximate number of appellate briefs you have written and filed: \_\_\_\_\_.

List the four most recent appeals you have handled:

	<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
4.	_____	_____	_____	_____	_____

Please list the three most significant appellate cases you have handled:

<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

Have you written briefs or arguments in death penalty cases? \_\_\_\_\_. If yes, please list:

<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

D. List any appellate seminars or other relevant training programs you have attended in the past year:

<u>Date</u>	<u>Subject Matter</u>	<u>Sponsor</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Indicate any foreign language proficiency:

\_\_\_\_\_  
\_\_\_\_\_

F. List areas of special legal expertise or interest:

\_\_\_\_\_  
\_\_\_\_\_

**G. Basis on which you would prefer to be assigned cases (i.e., once a month, every other month, etc.):**

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**H. List three references:**

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**I. Are there any Bar complaints pending against you? \_\_\_\_\_. If yes, please describe.**

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**Has the Bar ever found you in violation of a Disciplinary Rule? \_\_\_\_\_. If yes, please describe and cite to opinion.**

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

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**J. Have you applied to this panel before? \_\_\_\_\_ If yes, date: \_\_\_\_\_**

**K. This application must be delivered or mailed with an original signature (fax or e-mail is not acceptable).**

**This application must be accompanied by a writing sample consisting of two briefs that you have written. (Submit other writing samples if no briefs are available.)**

**Submit application and writing samples to:**

Peter Gartlan  
Chief Defender  
1320 Capitol St. NE, Suite 200  
Office of Public Defense Services  
Salem, OR 97303-6469

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I HEREBY CERTIFY that all of the above information is true. I understand that by submitting this application I agree to abide by the appropriate Public Defense Payment Policies and Procedures that are consistent with the administrative case valuation model. If selected for the Appellate Panel and assigned cases, I will serve a copy of the brief and other significant filings on OPDS.

**SIGNED:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

# Capital Appellate Panel Pilot Project

Direct and Post Conviction Capital Cases  
(5/19/04)

The Office of Public Defense Services (OPDS) is accepting applications for its Capital Appellate Panel. The Capital Appellate Panel will consist of select experienced appellate practitioners who are interested and qualified to represent capital clients in the Oregon appellate courts and the United States Supreme Court.

The panel members are not state employees, and panel membership alone does not establish a contractual relationship with OPDS. Rather, panel members receive compensation from OPDS on a case-by-case basis.

The following general principles govern the Capital Appellate Panel.

- I. **Eligibility.** At a minimum, a Capital Appellate Panel member must:
  - a) be an active member in good standing with the Oregon State Bar, the Ninth Circuit and the United States Supreme Court;
  - b) satisfy the Qualification Standards for Court-Appointed Counsel in capital appeals (see, section 3.1(4) (E) and (I));
  - c) possess superior research, analytical and writing skills; and
  - d) have experience with capital appeals or similar lengthy and complex criminal appeals.

- II. **Selection Process.** As part of the selection process, OPDS management will review applications, contact references, and contact various components of the criminal justice system, including the Oregon State Bar, individual Bar members, and the Oregon Appellate Courts.

OPDS will select the most qualified candidates on an ongoing basis. An applicant who does not gain admission to the panel may reapply after 12 months.

**Panel Review.** OPDS will conduct a periodic review of capital panel members at least every other year.

However, should OPDS at any time develop a concern about the quality of representation provided by a panel attorney, it will conduct an inquiry and provide the panel member with an opportunity to address OPDS's concern before taking appropriate action.

- III. **Payment.** Payment will be made according to the Public Defense Payment Policies and Procedures.

Interim billings may be submitted for approval on a monthly basis.

**IV. Case Oversight.** The panel attorney is expected to complete the briefing in a timely manner and serve OPDS with a hard copy of the completed brief.

The panel attorney must send a letter to the client that identifies and explains (1) the potentially significant issues that were facially presented in the record but not raised in the brief and (2) those issues that were of express concern to the client but not included in the brief.

**V. Application Process.** Applicants must complete and submit the attached application form with cover letter, writing sample and references to:

Peter Gartlan  
Chief Defender  
Office of Public Defense Services  
1320 Capitol Street NE, Ste. 200  
Salem, OR 97303-6469

Tel: (503) 378-3349

**APPLICATION FOR CAPITAL APPELLATE PANEL**  
**Direct and Post Conviction Appeals**

A. Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
County: \_\_\_\_\_  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Note: Transcripts and file material can be obtained at OPDS in Salem, or you can make arrangements with OPDS for delivery.

B. State Bar No. \_\_\_\_\_  
Law School: \_\_\_\_\_  
Date of Graduation: \_\_\_\_\_ Class Rank: \_\_\_\_\_  
Special honors and activities in law school: \_\_\_\_\_  
\_\_\_\_\_

C. Have you written briefs or arguments in death penalty direct appeals or post conviction cases? \_\_\_\_\_. If yes, list the most recent cases:

<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

List the three most recent appeals of any type that you have handled:

<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

Please list the three most significant non-capital appellate cases you have handled:

<u>Name</u>	<u>Case No.</u>	<u>Date Brief Filed</u>	<u>Result</u>	<u>Citation</u>
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

D. List capital case training programs you have attended in the past year:

<u>Date</u>	<u>Title</u>	<u>Sponsor</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. List three references:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

F. Are there any Bar complaints pending against you? \_\_\_\_\_. If yes, please describe.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Has the Bar ever found you in violation of a Disciplinary Rule? \_\_\_\_\_. If yes, please describe and cite to opinion.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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**G. This application must be delivered or mailed with an original signature (fax or e-mail is not acceptable).**

**This application must be accompanied by a writing sample consisting of two briefs that you have written. (Submit other writing samples if no briefs are available.)**

**Submit application and writing samples to:**

Peter Gartlan  
Chief Defender  
Office of Public Defense Services  
1320 Capitol St. NE, Ste 200  
Salem, OR 97303-6469

\*\*\*\*\*

I HEREBY CERTIFY that all of the above information is true. I understand that by submitting this application I agree to abide by the Public Defense Payment Policies and Procedures. If selected for the Capital Appellate Panel and assigned a capital case, I will serve a copy of the brief and other significant filings on OPDS.

**SIGNATURE:** \_\_\_\_\_ **DATE:** \_\_\_\_\_

## **Addition of Section 1.7**

### **1.7 Substitution of Appointed Counsel**

#### **1.7.1 Need for Consultation with the OPDS**

A court may substitute one appointed counsel for another only when:

- (a) in the exercise of its discretion, the court determines that appointed counsel who is seeking to withdraw cannot ethically continue to represent the client and, except as described in Section 1.7.2, the court consults with the OPDS regarding counsel to whom the case will be assigned, or
- (b) in other circumstances, when the interests of justice so require, and after consultation with the OPDS regarding the need for substitution of counsel and counsel to whom the case will be assigned.

#### **1.7.2 Reassignment within Public Defender Office, Law Firm or Consortium**

The court need not consult with the OPDS regarding counsel to whom the case will be assigned if appointed counsel and counsel to whom the case will be assigned are part of the same public defender office, law firm, or consortium under contract with the PDSC.

#### **1.7.3 Limits on Matters Which May be Discussed Regarding Need for Substitution**

In consultation with the court regarding the need for substitution, the OPDS may only:

- (a) obtain information regarding the reasons for substitution;
- (b) obtain information which may affect public defense planning in future cases;
- (c) provide information to the court regarding the cost of substitution; and
- (d) discuss options available to the court in terms of counsel to whom the case might be assigned and cost factors related to each option.

#### **1.7.4 Consultation Regarding Substitutions for Case Types**

Consultation between the court and the OPDS may include discussion of the procedure for handling substitutions in a category of case types as well as the procedure in an individual case.

SUMMARY OF REVISIONS  
PUBLIC DEFENSE PAYMENT POLICIES AND PROCEDURES  
June 2004 PDSC Meeting - If approved, to be effective 7/1/04

**Section 2.5 - Timely Submission of Payment Requests** under 2.5.1 - Trial Level Cases.  
*Proposed new portions underlined.*

For all cases in which services are completed, appointed counsel must submit payment requests to the OPDS within 60 days of the date the court enters in the register of actions:

- a) an order allowing or requiring counsel to withdraw; or
- b) final judgment.

Counsel may bill for time dealing with post-judgment matters, such as correcting an error in a judgment, if those matters are concluded within 60 days after the judgment is entered in the court's register of actions. Counsel's time and expenses for consultation with assigned counsel on appeal or postconviction relief may be billed beyond the 60-day limit provided in this section.

When services to the client are suspended, counsel must submit payment requests to the OPDS not sooner than 30 days and not later than 120 days from the date:

- a) the client enters into a program or agreement which delays final adjudication; or
- b) the client fails to appear or the court issues a warrant; or
- c) the court determines the client is unable to aid and assist.

**2.6 - Interim Billings.** *Proposed language to permit submission of interim bills on aggravated murder and murder cases without requesting approval of the OPDS.*

*Current language:* As a general policy, the OPDS will not pay interim requests for attorney fees and expenses unless the OPDS has authorized interim billing. An interim request is any request submitted before appointed counsel has completed all services in a trial-level case and for appellate cases, an interim request is a request submitted prior to filing the original brief. Interim payments will be made only in:

- a) capital murder and murder cases;
- b) cases other than capital murder and murder cases when the OPDS grants an exception; or
- c) when sentencing is delayed more than 60 days after a finding of guilt or entry of plea.

*Proposed language - addition of two subsections to replace the above:*

**2.6.1 Aggravated Murder and Murder Cases**

Assigned counsel may submit interim billings for aggravated murder and murder cases, both at the trial and appellate level, on an interim basis. Fee statements should not be submitted more often than monthly.

## 2.6.2 All Other Case Types

As a general policy, the OPDS will not pay interim requests for attorney fees and expenses unless the OPDS has authorized interim billing. An interim request is any request submitted before appointed counsel has completed all services in a trial-level case; for appellate cases, an interim request is a request submitted prior to filing the original brief. An exception to this policy will be made when sentencing is delayed more than 60 days after a finding of guilt or entry of plea.

**3.2.2 - Routine Expenses for Assigned Counsel.** *Proposed revision would increase the limit for certain out-of-pocket expenses for aggravated murder and murder cases. Underlined portions added.*

- c) Medical, School, Birth, DMV and Other Similar Records: When the cost of an individual record does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. Original receipt or invoice required.
- d) 911 Recordings and Emergency Communication Recordings and Logs: When the cost of an item does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. Original receipt or invoice required.

### 3.2.3.1 - Preauthorization Required for Non-Routine Expenses/Process to Request Reconsideration of Denials (Partial or Total).

*Proposed revision would allow deviation from the guideline amount for transcript preparation for cases not on appeal. Also, revision re-adopts out-of-state expert witness policy that sunsets July 15, 2004. Underlined portions added.*

The OPDS will reimburse or pay directly to the provider non-routine expenses only if the expense was preauthorized and is:

- a) within the guideline amounts listed in the schedule, or
- b) in excess of scheduled guideline amounts when:
  - 1) appointed counsel shows compelling circumstances that justify deviating from guideline amounts; and
  - 2) the expense is other than for transcription services for cases on appeal.

The OPDS will authorize the use of an out-of-state expert witness only if a qualified in-state expert witness is not available or is more expensive than an out-of-state expert witness.

**3.3 - Procedures to Request Payment** under 3.3.1 - Case Expenses, In General. *Proposed revision would not prohibit certain non-attorney providers from billing the OPDS directly for their services.*

*Current language:* The OPDS allows non-attorney providers to bill directly for preauthorized non-routine expenses such as for transcript services, investigation, expert witnesses, medical and psychiatric evaluations. The OPDS does *not* allow direct billing from non-attorney providers for advances or for services that would normally be included in overhead but that were preauthorized by the OPDS as non-routine expenses; e.g., secretarial, word-processing, law clerk. These latter expenses must be billed by assigned counsel.

*Proposed language with proposed deletion bracketed:* The OPDS allows non-attorney providers to bill directly for preauthorized non-routine expenses such as for transcript services, investigation, expert witnesses, medical and psychiatric evaluations. The OPDS does *not* allow direct billing from non-attorney providers for advances [or for services that would normally be included in overhead but that were preauthorized by the OPDS as non-routine expenses; e.g., secretarial, word-processing, law clerk. These latter expenses must be billed by assigned counsel].

### **Section 3.4 - Guideline Amounts for Non-Routine Expenses.** *Various revisions proposed.*

**3.4.4 - Investigation/Mitigation.** *Proposed revisions would require original receipts or invoices for reimbursement of certain investigator out-of-pocket expenses in several sections under this heading. Underlined portions added.*

- d) Medical, school, birth, and other similar records when the cost of an individual record does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. Original receipt or invoice required.
- e) 911 recordings and emergency communication recordings and logs when the cost of an individual item does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. Original receipt or invoice required.
- f) Film, film developing, photos, audio and video tapes, compact discs, exhibit material and other similar expenses when the cost of an individual item or group of items from one provider does not exceed \$150 for aggravated murder and murder cases or \$75 for all other case types. Original receipt or invoice required.
- i) Fax transmittal at the rate for regular long-distance telephone calls. For faxes received, provider may request reimbursement at the same rate as for in-house copies.

**3.4.5 - Paraprofessionals.** *Proposed revision would remove language regarding a cap as only a specific number of hours are preauthorized. Requests for paraprofessional hours are handled the same as any other non-routine expense request. Would also remove the requirement that appointed counsel provide proof to the OPDS of payment to paraprofessional when requesting reimbursement. Proposed addition underlined. Proposed deletions bracketed.*

When the OPDS makes the findings required in Section 3.2.1, it will reimburse counsel for the services of paraprofessional services as non-routine expenses at the rate shown in the schedule, but only for legal research and writing, investigation, and client interviewing. Paraprofessionals include law clerks, legal assistants, paralegals, and trial assistants.

[When preauthorizing the expense, the OPDS will set an initial cap on paraprofessional hours, not to exceed 100 hours even in the most serious cases. Counsel may request an increase in the number of hours authorized as for co-counsel's hours. See Section 1.5.2.

Counsel may] R[requests for payment [only as a case expense listed separately from attorney fees and] must include [submit] the following supporting documents:

- a) time records listing the service dates, time expended in tenths of hours, and tasks performed on the case by the paraprofessional on each date listed; *and*
- b) counsel's statement and the paraprofessional's statement certifying that [1]) the time records are accurate., *and*

- 2) counsel paid the paraprofessional the amount counsel now requests as reimbursement.]

**3.4.11- Client Clothing.** *Proposed new section. Current language does not specifically address client clothing.*

The OPDS may authorize the purchase of clothing for a client if the client needs appropriate attire for court appearances. Counsel agrees to contact contractors who maintain “clothing rooms” to determine whether suitable clothing is available prior to submitting a request to the OPDS. (Contact OPDS for a current list of contractor’s with “clothing rooms”.) If counsel receives preauthorization to purchase clothing for a client, that clothing shall be provided to a “clothing room” upon completion of the case. Receipts for clothing purchased are required for reimbursement. Dry cleaning or commercial laundering of purchased or borrowed clothing, prior to return or donation to a “clothing room”, is considered a routine expense and may be reimbursed when supported by a receipt.

**Section 4 - Billing Dispute Resolution:** *Proposed revision so that adjustments of \$5.00 or less do not require notification to provider. Proposed portion underlined.*

*Current language:* When the OPDS approves less than the amount requested by a provider, the OPDS will send to the provider a Notice of Adjustment to Fee Statement (Exhibit 6).

*Proposed language:* When the OPDS approves less than the amount requested by a provider, the OPDS will send to the provider a Notice of Adjustment to Fee Statement (Exhibit 6) if the amount of the adjustment is more than \$5.00.

*Proposed language to define the process for filing an appeal with the court of an OPDS disallowance. Proposed new portion underlined.*

If the OPDS denies in whole or in part the request for reconsideration, counsel may appeal the denial to the presiding judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case. A notice to the court requesting an appeal of the disallowance, which may be in the form of a letter, must be postmarked within 21 days of the date of the reconsideration letter from the OPDS to the provider. The court will notify the provider and the OPDS in writing when a decision has been made. The decision of the judge is final.

**Exhibits to the PDPPP** - Request authorization to revise as needed.

# LINKS TO OREGON BENCHMARKS, 2005-07

Please read the instructions for this form before completing. Instructions can be found in Appendix C of the 2005-07 Budget Instructions and online at [www.oregon.gov/DAS/OPB](http://www.oregon.gov/DAS/OPB).

Agency Name: <b>PUBLIC DEFENSE SERVICES COMMISSION</b>	Version #: 1	Date Submitted:
Contact Person: Peter A. Ozanne	Phone: (503) 378-3349 x 228	
Alternate Contact: Kathryn Aylward	Phone: (503) 986-5903 x	
<b>Agency Mission:</b> Ensure The Delivery Of Quality Public Defense Services In Oregon In The Most Cost-Efficient Manner Possible.		
<b>Related Oregon Benchmarks (OBMs) or High-Level Outcomes (HLOs):</b>		

Agency Name: Public Defense Services Commission			Agency No.: 404				Budget Form # 107BF04a		
Col-1	Col-2	Col-3	Col-4	Col-5	Col-6	Col-7	Col-8	Col-9	Col-10
Agency Goal	OBM# HLO#	Key Performance Measure (KPM)	PM No.	2002 Value	2007 Target	Est. Cost (optional)	Lead Unit or Division	Status of KPM	Request No.
Goal 1: Reduce delay in processing appeals	mission	Number of cases in backlog (over 210 days awaiting briefing)	1	179	100		Legal Services Division	Added Since: 2004	
Goal 2: Assure cost-effective service delivery	mission	% of fee statements reduced due to incorrect billing	2	NA	3%		Contract and Business Services	Added Since: 2004	
Goal 2	mission	% of fee statements processed within 10 business days	3	NA	95%		Contract and Business Services	Added Since: 2004	
Goal 2	mission	% of expense requests authorized within 5 business days	4	NA	90%		Contract and Business Services	Added Since: 2004	
Goal 2	mission	# of complaints regarding payment of expenses determined to be founded	5	NA	<10		Contract and Business Services	Added Since: 2004	
Goal 3: Assure availability of legal representation to those financially eligible	mission	% of new contractual agreements signed before expiration of previous contract	6	NA	90%		Contract and Business Services	Added Since: 2004	
Goal 3	mission	% of contracts meeting caseload quota	7	NA	90%		Contract and Business Services	Added Since: 2004	

Links to Oregon Benchmarks, continued

Agency Name: Public Defense Services Commission			Agency No.: 404				Budget Form # 107BF04a		
Col-1	Col-2	Col-3	Col-4	Col-5	Col-6	Col-7	Col-8	Col-9	Col-10
Agency Goal	OBM# HLO#	Key Performance Measure (KPM)	PM No.	2002 Value	2007 Target	Est. Cost (optional)	Lead Unit or Division	Status of KPM	Request No.
Goal 4: Improve the quality of representation	mission	# of contractors who have undergone peer review	8	NA	10		Contract and Business Services	Added Since: 2004	
Goal 4	mission	# of complaints regarding attorney performance determined to be founded	9	NA	<10		Contract and Business Services	Added Since: 2004	
								Status: Since:	
								Status: Since:	
								Status: Since:	
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PUBLIC DEFENSE SERVICES COMMISSION  
REQUEST FOR PROPOSALS  
FOR  
PUBLIC DEFENSE LEGAL SERVICES CONTRACTS  
FOR REPRESENTATION IN ADULT CRIMINAL AND CIVIL  
COMMITMENT CASES IN LANE COUNTY  
BEGINNING  
JANUARY 1, 2005

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**PART IV - MODEL CONTRACT**

## **PART I -- GENERAL INFORMATION**

### **1.1 Request For Proposals (RFP) Description**

The Public Defense Services Commission (PDSC) is seeking contract proposals to provide legal services to persons determined by the state courts to be financially eligible and entitled to court-appointed counsel at state expense on adult criminal and civil commitment cases in Lane County. The contracts awarded may have one-year, two-year, or four-year terms beginning January 1, 2005, as determined by PDSC. The basic services required are legal representation and support services necessary to provide effective legal representation that meets established professional standards of practice.

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

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

### **1.2 Authority**

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

a state court or magistrate has the authority to appoint counsel to represent the financially eligible person, and

the PDSC is required to pay compensation for that representation.

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

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

subject to PDSC's express approval under ORS 151.216(1)(d), and

considered contracts with independent contractors for personal services.

### **1.3 Specifications for Contract Proposals**

PDSC is accepting proposals for adult criminal and civil commitment case representation from consortia that would meet the following criteria:

1.     Size: 8-15 individual attorneys, who specialize in criminal law but who do not rely exclusively on court-appointments.
2.     Organizational structure: An incorporated entity with formal by-laws and a set of written operating policies and procedures.

3. Board of Directors: A board of directors with independent members.
4. Administrator: A formal administrator with clearly defined authority to manage the day-to-day operations of the consortium and to hold the consortium's attorneys accountable for lapses in performance and inappropriate behavior.
5. Membership: Standards for admission and continued membership.
6. Training: Internal training and mentoring programs.
7. Quality assurance: Procedures for ongoing quality assurance including a process to handle complaints.
8. Admission and support of entry-level attorneys: Standards and processes to ensure the admission and retention in the consortium of attorneys recently admitted to the bar.

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

**1.4 Funding Source**

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

**1.5 Schedule of Events**

Release of RFP	July 2, 2004
Proposal Submission <u>Deadline</u> (Receipt by 4:30 p.m. <u>OR</u> Postmark)	September 3, 2004
Proposal Evaluation and Negotiation Period	September 7, 2004 - October 29, 2004
Contract Awards	On or before November 1, 2004
Contract Effective Date	January 1, 2005

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

**1.6 General Proposal Review Procedures**

The application forms, instructions, and information necessary to prepare and submit proposals are found in Part II of this RFP. PDSC will evaluate proposals based on the contents of the applications, their review by the affected court(s), and any other information

available to PDSC. Applicants must submit a completed application using the forms and format provided. Applications **MUST** be received by PDSC and the appropriate presiding judge(s) by 4:30 p.m. OR be postmarked on the submission deadline date. Applications faxed to the PDSC will be accepted only when the applicant has received prior consent to submit via fax. The following events will then occur.

A. Inadequate Proposals

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

B. Facially Adequate Proposals

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

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

C. Negotiations

PDSC must ensure that each contract is compatible with:

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

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

D. Contract Awards

If PDSC and an applicant reach agreement on a contract award, the parties will circulate a "Preliminary Agreement" memorandum, followed by the contract documents. Award of any contract will be final only when the applicant and the PDSC have properly completed and executed the contract documents.

## E. Model Contract

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

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

## 1.7 Proposal Evaluation Criteria

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

### CRITERIA:

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

contract, legislative mandates, or other directives that affect the entire statewide contracting patterns or terms.

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

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

## **1.8 Proposal Records**

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

Written inquiries on preparing applications may be directed to:

Kathryn Aylward, Director  
Contact and Business Services Division  
Public Defense Services Commission  
324 Capitol St NE  
Salem, Oregon 97301-4099

## **PART II -- PROPOSAL APPLICATION INSTRUCTIONS AND REQUIREMENTS**

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

### **2.1 Submitting Proposals**

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

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

#### **A. Number of Copies**

Applicants must submit one original and two copies of each proposal, distributed as follows:

##### **1) PDSC--Original and One Copy**

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

Kathryn Aylward, Director  
Contact and Business Services Division  
Public Defense Services Commission  
324 Capitol St NE  
Salem, Oregon 97301-4099

2) Presiding Judge

Applicants must submit one copy of each proposal to the presiding judge.

B. Deadline

Proposals MUST BE:

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

**The submission deadline for proposals is September 3, 2004.**

Hand-delivery of proposals must be made to the appropriate presiding judge AND the Contract and Business Services Division of the Public Defense Services Commission, 324 Capitol St NE, Salem, Oregon.

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

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

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

**2.2 Application Format**

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

An electronic copy of this RFP is available at [www.ojd.state.or.us/aboutus/pds](http://www.ojd.state.or.us/aboutus/pds) or may be obtained by calling (503) 986-5907.

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

### **2.3 Acceptance of RFP and Model Contract Terms**

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

### **2.4 Multiple Proposals**

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

### **2.5 Modification of Proposals**

#### **A. When Permitted**

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

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

#### **B. Delivery**

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

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

#### **C. Included in Proposal File**

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

## **2.6 Mistakes in Submitted Proposals**

### **A. When Corrections Permitted**

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

### **B. Procedure When PDSC or Applicant Discovers Mistake**

If PDSC or the applicant discovers a mistake before the proposal deadline, the applicant may amend the error using the procedures for proposal modification in Section 2.5 above. PDSC will proceed as follows when PDSC discovers or is notified of mistakes in proposals after the submission deadline but before contract awards are made:

#### **1) Minor Inaccuracies**

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

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

#### **2) Mistakes Where Intended Correct Proposal is Evident**

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

#### **3) Mistakes Where Intended Correct Proposal is Not Evident**

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

### **C. Included in Proposal File**

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

## **2.7 Withdrawal of Proposals**

### **A. Request to Withdraw**

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

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

Proposal Withdrawal  
from  
(Applicant Name and Address)

B. Included in Proposal File

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

**2.8 Evaluation of Proposals**

PDSC will begin to evaluate proposals upon receipt, subject to the procedures and criteria described in Part I, Sections 1.5, 1.6 and 1.7. PDSC intends to make contract awards on or before November 1, 2004.

**2.9 Categories of Cases Available for Contract**

Subject to the case type limitations set out in Section 1.3, a proposal for public defense legal services may include coverage of all, some, or any of the following categories of cases for which financially eligible persons have a right to appointed counsel in state court at state expense:

- Noncapital Murder
- Felony
- Misdemeanor
- Probation Violation
- Civil Commitment
- Extradition
- Contempt

Applicants should refer to Part IV, "Appendix F" to the Model Contract for specific definitions of the categories.

**2.10 Number of Cases**

A. Available Caseload

To obtain the number of contract cases and/or work load likely for a particular court, county, or case type, the applicant should contact the Contract and Business Services Division of the Public Defense Services Commission at (503) 986-5907.

B. Fixed Valued Caseload or Hourly Based Work Loads

PDSC will contract for a fixed number of cases at set values or on an hourly basis.

### C. Proposed Caseload

The applicant should propose no more than the number of cases for which the applicant can provide effective and efficient representation and adequate staff support resources. Based upon national and other states' guidelines and PDSC's experience, the following caseloads are suggested for each full-time attorney without paralegal, legal assistant, or investigator services:

- 200 felonies per attorney per year, or
- 400 misdemeanors per attorney per year, or
- 300 mental commitment cases per attorney per year.

Attorneys employed less than full-time in contract work should handle a proportional caseload.

Applicants should rely on their experience in handling cases to evaluate local factors and proposed support staff (e.g., investigators, legal assistants) that allow meeting or exceeding these limits or that require stricter limits. Applicants must explain the effect of local factors on the ability to provide adequate representation.

## 2.11 Cost of Services

### A. Expenses Included in Contract Price

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

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

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

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

### B. Reasonable Expenses

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

### C. Factors to Consider

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

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

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

## **2.12 Proposal Application Format (Part III of RFP)**

The application format consists of:

- A. Application Summary;
- B. Certification Form; and
- C. Proposal Outline divided in the following sections:
  - 1) Service Delivery Plan
  - 2) Proposed List of Contract Attorneys
  - 3) Proposed List of Contract Non-Attorney Staff
  - 4) Certificate of Attorney Qualification
  - 5) Criminal Law Experience Questionnaire (to be completed by attorneys who have not provided public defense services pursuant to a contract).

**THE FOLLOWING PAGES APPL. 1 THROUGH APPL. 14 ARE THE RFP APPLICATION AND PROPOSAL OUTLINE.**

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

PART III

PROPOSAL APPLICATION SUMMARY AND PROPOSAL OUTLINE

**(TO BE COMPLETED AND SUBMITTED TO PDSC)**

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

**3.1 APPLICATION SUMMARY**

APPLICANT INFORMATION

Formal Name of Applicant \_\_\_\_\_

Contact Person for Proposal \_\_\_\_\_

Address \_\_\_\_\_

Telephone Number \_\_\_\_\_ Fax Number \_\_\_\_\_

Fed. I.D. No. \_\_\_\_\_

COST SUMMARY

	<u>Cost of Contract Proposal</u>	<u>Average Cost Per Case</u>
First Year	\$ _____	\$ _____
Second Year	\$ _____	\$ _____
TOTAL (2 years)	\$ _____	\$ _____

(Add additional lines if proposal is for additional years (up to a four-year term).)

**CASELOAD INFORMATION**

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

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B. Complete the section below:

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

(Add additional years in necessary.)

**A. METHODOLOGY, EXPLANATIONS AND ESTIMATES**

- 1) Service Cost Basis. For the types of cases, extent of coverage, and services proposed, explain how costs were projected and the premises underlying the projection.
- 2) Case Costs.  
 Explain:
  - a) how the various case types were weighted;
  - b) how the cost varies by case type; and
  - c) how staff investigator, paralegal, and/or interpreter costs were factored in.
- 3) Other Information. Include any other relevant information that PDSC should consider in evaluating proposal costs.

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

Number of Attorneys \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Secretarial/Receptionist Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Paralegals/Legal Assistants \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Administrative Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Investigators \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Interpreters \_\_\_\_\_ / FTE\_\_\_\_\_

Number of Other Staff \_\_\_\_\_ / FTE\_\_\_\_\_

Identify "Other Staff" type: \_\_\_\_\_

**3.2 CERTIFICATION FORM**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Typed or Printed Name of Authorized Representative

\_\_\_\_\_  
Title or Representative Capacity

\_\_\_\_\_  
Applicant Name

### **3.3 PROPOSAL OUTLINE**

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

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

#### **A. SERVICE DELIVERY PLAN**

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

1. Consortium Structure. Describe the legal entity the consortium has (or would) form; provide any proposed by-laws or sub-contracts; describe the composition of the Board of Directors and list any proposed directors.
2. Consortium Administration. Define the role of the administrator, including percentage of time spent on administration, the authority and responsibility of the administrator, and compensation plan; describe administrative procedures for compensation of attorney members including provisions for internal substitutions; describe standards and process for admission and continued membership; describe procedures for ongoing quality assurance including a process to handle complaints.
3. Contractor Staff Services. Describe legal, support, and other services to be provided under the contract. Include any express limitations on the range of services.

IN ADDITION to providing the information requested above, (1) each attorney included within applicant's proposal must complete a "Certificate of Attorney Qualification" form, to be included with applicant's proposal (see page "Appl. 13"); and (2) each attorney included within applicant's proposal who has not previously provided public defense services pursuant to a contract with PDSC must complete the "Criminal/Juvenile Law Experience Questionnaire," to be included with applicant's proposal (see page "Appl. 14").

4. Case Services. Describe the caseload and case types to be covered. Include any limitations in coverage by case type. Include any differing values per type of case that applicant proposes.
5. Service Delivery. Describe how applicant will provide timely, effective, and efficient case-related services. Include:
  - a) how the court would assign cases to applicant;
  - b) whether applicant attorneys would be present at first appearances;
  - c) how applicant would assign cases to attorneys;
  - d) how applicant would provide for interviews with both in-custody and out-of-custody clients in accordance with the model contract;

- e) how applicant would process cases from assignment through reporting to PDSC;
- f) how applicant would work with the court to coordinate services with other contractors and with the court; and
- g) how applicant would investigate and provide information, if any, on sentencing alternatives to the court.

6. Facilities. Describe applicant's office(s). Include information on:

- a) office sharing arrangements;
- b) conference room(s);
- c) library (size and contents);
- d) handicapped access (if none, describe alternative arrangements for meeting handicapped clients or witnesses) (if applicant is a consortium, describe the handicapped access or alternative arrangements for each consortium member's office); and
- e) number of separate law firms/sole practitioners included.

Does each of applicant's attorneys have his/her own office?  Yes  No.

Are any offices housed in a residence?  Yes  No.

Does applicant or any of its members own or have an interest (direct or indirect) in the office building(s)?  Yes  No.

If yes, please explain: \_\_\_\_\_  
 \_\_\_\_\_

7. Equipment. Describe equipment or information systems applicant has or will obtain to improve the provision of services under the proposal. If applicant uses or will use a computer system, please specify hardware and software to be used.

8. Professional Education and Supervision Plan. Describe plans for professional development and supervision of all attorneys, direct support, and administrative staff. Include:

- a) training;
- b) CLE;
- c) educational methods to maintain current awareness of new developments in criminal and public defense-related case law and procedures; and
- d) supervision and development of less experienced attorneys.

9. Readiness Status. Describe what applicant needs to do to be ready and able to begin services on the proposed contract effective date. If more time is needed, explain why and when applicant will be available. Include information on positions that need to be filled and

equipment or facilities that need to be procured. If positions need to be filled, describe recruitment procedures and affirmative action plans.

10. Other Information. Include any other information you believe is important or relevant to PDSC's review of the service delivery plan.
11. Contract Terms. Include any requests to modify model contract terms or definitions. Explain the purpose of and need for modification and how it will affect the service delivery plan and cost. Again, PDSC has sole discretion to allow modification of any contract term.

**B. PROPOSED LIST OF CONTRACT ATTORNEYS**

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

Firm or Office	Name	Bar #	FTE Contract Work
----------------	------	-------	-------------------------

Total FTEs: \_\_\_\_\_

**C. PROPOSED LIST OF CONTRACT NON-ATTORNEY STAFF**

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

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

Total FTEs: \_\_\_\_\_

**D. CERTIFICATE OF ATTORNEY QUALIFICATION**

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

NAME \_\_\_\_\_ BAR NUMBER \_\_\_\_\_

ADDRESS \_\_\_\_\_

Years of Experience: Practice of Law \_\_\_\_\_ Criminal \_\_\_\_\_ Juvenile \_\_\_\_\_

I certify that I have reviewed the Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense, and that I meet the requirements of those standards.

**I. TRIAL LEVEL**

**A. Capital Murder**

Lead Counsel \_\_\_\_\_

Co-counsel \_\_\_\_\_

**B. Murder**

Lead Counsel \_\_\_\_\_

Co-counsel \_\_\_\_\_

**C. Major Felony** \_\_\_\_\_

**D. Lesser Felony** \_\_\_\_\_

**E. Misdemeanor** \_\_\_\_\_

**F. Juvenile**

Delinquency \_\_\_\_\_

Dependency \_\_\_\_\_

Termination \_\_\_\_\_

**G. Civil Commitment** \_\_\_\_\_

**H. Postconviction Relief**

Capital Murder \_\_\_\_\_

Murder \_\_\_\_\_

Other Criminal \_\_\_\_\_

**I. Habeas Corpus** \_\_\_\_\_

**II. APPELLATE LEVEL**

**A. Capital Murder**

Lead Counsel \_\_\_\_\_

Co-counsel \_\_\_\_\_

**B. Murder**

Lead Counsel \_\_\_\_\_

Co-counsel \_\_\_\_\_

**C. Other Criminal** \_\_\_\_\_

**D. Juvenile**

Delinquency \_\_\_\_\_

Dependency \_\_\_\_\_

Termination \_\_\_\_\_

**E. Civil Commitment** \_\_\_\_\_

**F. Postconviction Relief**

Capital Murder \_\_\_\_\_

Murder \_\_\_\_\_

Other Criminal \_\_\_\_\_

**G. Habeas Corpus** \_\_\_\_\_

\_\_\_\_ Letters of reference or \_\_\_\_ evidence of equivalency qualification under Standard 3.1 are attached.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**E. CRIMINAL LAW EXPERIENCE QUESTIONNAIRE**

Directions: This questionnaire has been developed to supplement the bid information and to identify more specifically each attorney's experience in criminal law. One questionnaire must be completed by each attorney proposing to perform work under the contract, if the attorney has not performed contract work in the past. If this questionnaire does not address important aspects of an attorney's experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. What percentage of your present practice involves handling criminal cases?
4. What percentage of your present practice involves handling public defense cases?
5. Briefly describe the nature and extent of your work experience in the criminal law areas. (Include case types and lengths of time you have practiced criminal law.)
  
6. Before which courts and judges have you regularly appeared in criminal case proceedings and when? (List name of judge, court, location, and during which year(s) appearances were made.)
  
7. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with criminal law matters?
  
8. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling criminal law cases.

I certify that the above information is true and complete.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE