

**Members**

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



**Ex-Officio Member**

Chief Justice Wallace P. Carson, Jr.

**Executive Director**

Peter A. Ozanne

**PUBLIC DEFENSE SERVICES COMMISSION MEETING**

**Wednesday, September 14, 2005 Meeting**  
11:00 a.m. to 4:00 p.m.

Klamath County Courthouse  
316 Main Street  
Klamath Falls, Oregon 97601

**AGENDA**

- |   |   |
|---|---|
| 1. <b>Action Item:</b> Approval of the Minutes of PDSC's August 11, 2005 Meeting<br><i>(Attachment 1)</i>   | Barnes Ellis                                      |
| 2. Review of Klamath County's Public Defense Delivery System  | Barnes Ellis                                      |
| <ul style="list-style-type: none"> <li>■ Judicial Perspectives</li> <li>■ The District Attorneys' Perspective</li> <li>■ PDSC's Contractor Perspective</li> <li>■ Other's Perspectives</li> <li>■ Review of OPDS's Report to PDSC and Discussion of a Service Delivery Plan for Klamath County<br/><i>(Attachment 2)</i><sup>1</sup></li> </ul> |   |
| 3. <b>Action Item:</b> Approval of the Qualification Standards for Court-Appointed Counsel<br><i>(Attachment 3)</i>   | Peter Ozanne<br>Kathryn Aylward<br>Ingrid Swenson |
| 4. OPDS's Monthly Status Report   | OPDS's Management Team                            |
| 5. New Business   | Barnes Ellis                                      |

**Please note:** *Lunch will be provided over the noon hour for Commission members and others who ordered lunches in advance.*

<sup>1</sup> Attachment 2 will be sent later under separate cover

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MINUTES

August 11, 2005 Meeting  
Senator Meeting Room  
Courthouse Square Building  
555 Court Street NE  
Salem OR

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Michael Greenfield  
Chip Lazenby  
John Potter  
Jim Brown  
Wallace P. Carson

STAFF PRESENT: Peter Ozanne  
Kathryn Aylward  
Peter Gartlan  
Ingrid Swenson  
Shelley Dillion  
Laura Weeks  
Caroline Meyer  
Laura Anson

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[Tape 1, Side A]

**Agenda Item No. 1 Approval of the Minutes of PDSC's July 28, 2005 Meeting**

01 Chair Ellis called the meeting to order at 9:00. First item are the minutes of the July 28 meeting. Are there any additions or corrections?

**MOTION;** John Potter moved to approve the minutes of the July 28; 2005 meeting; Shaun McCrea seconded the motion; hearing no objection the motion carried: **VOTE 5-0**

**Agenda Item No. 4 Approval of PDSC's Guidelines for Early Disposition Programs**

08-050 Peter Ozanne presented PDSC's Proposed Guidelines for Early Disposition Programs. At the direction of the Commission, Peter presented the Guidelines to the Chief Justice's Criminal Justice Advisory Committee, which found them acceptable, having no suggestions for additions or corrections to the Guidelines.

**MOTION:** John Potter moved to approve the Early Disposition Guidelines; Jim Brown seconded the motion; hearing no objection the motion carried. **VOTE 5-0**

**Agenda Item No. 2 Consideration of the Service Delivery Plan for Marion County Continued**

067- 127 Peter Ozanne summarized the Second Draft of OPDS's Report to the Commission on Marion County.

127- [Tape 1; Side B]  
173

The Chair welcomed Circuit Court Judge Joe Guimond. Judge Guimond presented his perspectives on Marion County's public defense system. After reviewing some of the history of indigent defense and the court-appointment process in the county, Judge Guimond observed: "I think what we have here with MCAD is an extremely effective delivery service with one area that needs to be improved, and it has already been touched on. It is quality control." While noting that "six or seven lawyers who are members of MCAD are, quite frankly, six or seven of the best lawyers in Marion County," he indicated that MCAD lawyers with relatively little experience needed more training and mentoring and that the Board needed to be more aggressive in removing underperforming members. Judge Guimond also expressed his view that, though it would be difficult to find outside Board members for MCAD, the consortium did need to formally recruit new attorney members. Finally, he expressed disagreement with the notion that Marion County should have a public defender office, primarily because the most skilled and experienced lawyers would not be willing to join the office or continue to provide public defense services in the county. In response to questions from the Commission, Judge Guimond indicated that a "blended" system that included a PD office and MCAD would alleviate some of his concerns about the establishment of a PD office in Marion County and that MCAD's "attorney of the day" case assignment system is "not the best system," but is designed primarily for the convenience of MCAD's lawyers due to the Circuit Court's two locations and docketing system, and "the alternative is almost chaos." He also agreed that there are serious problems with the court's ability to communicate with some of MCAD's lawyers. In response to MCAD's recent survey of judges, Judge Guimond concluded that five of MCAD's lawyers could, with training and mentoring, provide acceptable service and two of them could not. He also believes that it is possible to evaluate the performance of lawyers and that MCAD needs to develop a more aggressive and systematic approach to evaluating its lawyers.

[Chip Lazenby arrived at 9:55.]

195-301

The Chair welcomed Circuit Court Judge Alvin Norblad. Judge Norblad indicated that, as the one judge in the county who handles all of the termination of parental rights cases, he is "very, very pleased with the work that [the juvenile consortium lawyers] do" and thinks "they do an outstanding job." Regarding the criminal justice system, he stated that "I like the system the way it is and I'm not convinced I would be so supportive of a public defender. I am not excited about dealing with another bureaucrat." However, Judge Norblad also believes that MCAD needs more quality controls: "a committee, a group that watches these attorneys [and] how they work and, when the attorney is not doing an adequate job, immediately removes them." He would "probably set up an authority that had the duty to set down standards and guidelines" with judges, outside defense attorneys and private attorneys who would review how people are doing and check to make sure that the lawyers are talking to their clients, going to the jail when they ought to be going and looking at the cases and saying "This is not one that should plead guilty. This is one that should be tried."

301- [Tape 2: Side A]  
516

The Chair welcomed Deputy District Attorney Courtland Geyer, who appeared on behalf of District Attorney Walt Beglau. While acknowledging a number of positive aspects of the public defense system in Marion County, including a positive working relationship between MCAD and the District Attorney's Office as evidenced by the county's successful Early Disposition and Drug Court Programs, Mr. Geyer expressed concerns about the proficiency and case management and the skill and judgment of some of MCAD's attorneys. "There are examples that we have seen both of attorneys that maybe are too fresh or too green handling cases that are beyond their experience where they have not developed the skill to handle those cases. Other times they may have substantial experience and may even have incredible trial skills, but there is another part to the most effective trial attorneys. They do a disservice to

their clients if they are lacking in good judgment. There are examples of . . . knowing when to recognize that a case is triable and having the skills to take that and pursue a result positive for the client and . . . knowing when to emphasize the bad news to that client and have the skills to bring that realization to the client that a trial in this case is not in his interest.” He agreed with Judge Guimond’s assessment of the number of MCAD lawyers in need of training and mentoring or removal from the consortium and indicated that MCAD’s case assignment system “does not take into account the relative skill level or specialization of the attorney. There is no way to account for that factor in the ‘attorney of the day’ design,” nor does that design “account for the fluctuating volume [of cases].” Mr. Geyer agreed that there could be better communication between his office and MCAD attorneys regarding in-custody cases, hearings and charges. He also reported that “[o]ne of our lawyers has had a conversation with an MCAD lawyer who has said exactly ‘it is not in my financial interest to try to convince defendant X not to go to trial’” and that this very skilled trial lawyer rarely negotiates changes of plea for his clients. While Mr. Geyer believes that about the right number of cases go to trial in the county, they often go to trial for the wrong reasons due to the lack of skill or judgment of some MCAD lawyers. There also seems to be few consequences of those lawyers’ underperformance. Mr. Geyer also expressed a personal opinion in response to a question by the Chief Justice that when “we had in our county a team of five judges that handled virtually all of the criminal cases, the exception being what we called a complex case, [and] . . . there was one place to go and one time only for status conferences, . . . that system worked incredibly well for us and I think worked very well for the defense bar because it was a known day and time every week where you would go for these appearances. Since going to the individual calendaring system, coverage has been more difficult because of the fact that it is basically on any given day, any given place, any given time type of situation. It is just mathematically far more difficult to provide coverage for it. I think that that construct of the individual calendaring system is understandably preferred by the judges because they can manage and control their own docket. On the criminal calendaring docket one of those five judges would not know what they were doing on any given week. So whether it is limiting and narrowing the days and scattering of appearances on the individual calendaring system, or if it were a return to the criminal calendaring system that we used to have – whatever could be done to reduce this scatter effect – I think would be helpful.”

[Break at 11:09 to 11:20 a.m.]

[Tape 2; Side B]

124- [Tape 3; Side A]  
390

The Chair invited Dick Cowan and Steve Gorham to continue their presentations from the last Commission meeting and address the substance of the Second Draft of OPDS’s report to the Commission on Marion County. Mr. Cowan expressed his view that “MCAD provides quality legal services to the indigent defense in Marion County” and noted that “the second draft of the OPDS service plan for Marion County speaks well of MCAD in our overall client representation.” But he was “shocked by some of what you were told at the last PDSC meeting, [though] the upside of that is that it served as a wake-up call for us to continue striving to improve the provision and management of indigent defense services in Marion County and along with the perception.” Mr. Cowan observed that “[w]hile it is true that we have recently been defensive in certain areas, we are not resistant to the prospect of change. Nor are we resistant to the Commission’s oversight. If we have not said this to you strongly enough we welcome and encourage the Commission’s help in improving MCAD in any way. We need your help to accomplish our goal of providing the best possible indigent defense services here in Marion County.” He also noted that “[s]ome of MCAD’s written policies and procedures, like PDSC’s policies and procedures, need to be physically updated . . . and integrated to make sure they reflect current policy and procedure. That is an ongoing process within every organization. MCAD is committed to accomplishing this by the Commission’s September retreat.” Mr. Cowan stated that “[n]either MCAD nor its Executive Director takes

the position that the quality of an attorney's performance is impossible to determine. In spite of how it may have appeared and the words that got exchanged at our last meeting, it isn't impossible, it is a necessity, and we will get it done. . . . What is difficult for MCAD to determine is how to manage the professional who underperforms once these standards have initially been met." Mr. Cowan declared that "the MCAD Board in the last year has given the Executive Director both more direct authority and direction to handle quality complaints in a more expeditious and direct manner." Based on the feedback at the last Commission meeting, MCAD started the process to identify underperforming members. The first step in the process has been a survey of the Marion County Judiciary to get their input on which members are performing adequately and which are not. The next step will be developing and implementing an efficient system to improve the performance of those underperforming folks who can be helped along and eliminating those who can't be. Mr. Cowan summarized other changes that MCAD's Board is considering.

Mr. Gorham indicated that the 31 MCAD attorneys who are doing the bulk of the work are "doing 80 percent or 90 percent MCAD work," and that "our board does believe that an outside board member should come on board and we would welcome your help in deciding, if necessary, who that person is." He felt that only "a minor portion of the people that do indigent defense work" create communication problems for the court. "Out of 31 you may be talking about five." Next month, MCAD will require each attorney to have some kind of "interactive system" such as a voice mail system.

In response to questions from the Chair, Mr. Gorham discussed his role as "both a coordinator and a manager." He does not believe that MCAD needs a "restructuring but a different balance if you will in MCAD so it is clear that I have the authority to do some of the things that need to be done."

The Chair asked Mr. Gorham to respond to the topics beginning on page 28 of the report. Mr. Gorham asked for the opportunity to provide the information either in writing over the next month or both in writing and testimony. Commissioner Potter encouraged Mr. Gorham to assist the Commission by presenting three or four different models for providing public defense in Marion County so that the pros and cons of each could be assessed prior to the Commission making a decision. Commissioner Lazenby echoed Commissioner Potter's remarks.

**Agenda Item No. 3**

**Acceptance of the Final Report to PDSC on Conflicts of Interest and Attorney Substitutions**

409- [Tape 3; Side B]  
235

The Chair welcomed Ann Christian and Paul Levy to present their report and recommendations to the Commission on conflicts of interest and attorney substitution and answer questions from Commission members, recognizing that the report was previously presented to PDSC at its June 2005 meeting.

**MOTION:** Shaun McCrea moved to accept the report; Chip Lazenby seconded the motion; hearing no objection, the motion passed: **VOTE 4-0.**

**Agenda Item No. 5**

**OPDS Monthly Report**

280-486

Kathryn Aylward estimated the startup cost of establishing a public defender office comprised of six attorneys, two legal assistants and a full-time investigator at \$70,000-\$100,000. Ongoing costs, based on Mr. Gorham's figures, would be about \$67,000 a year more than the cost of having MCAD cover that caseload.

Commissioner Brown asked to have more information about the trainer position that had been suggested for MCAD and the level of expense associated with that position.

Mr. Gorham agreed that he could have all of the additional information prepared by mid-September and the Chair asked that time be reserved during the retreat to discuss Marion County.

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Chair Ellis entertained a motion to adjourn.

**MOTION:** Shaun McCrea moved to adjourn the meeting; Chip Lazenby seconded the motion; hearing no objection, the motion passed. **VOTE 5-0**

[The Meeting was adjourned at 1:10 p.m.]

# Attachment 3

**QUALIFICATION STANDARDS  
FOR COURT-APPOINTED COUNSEL TO REPRESENT  
FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

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EXHIBIT C PRINCIPLES AND STANDARDS FOR COUNSEL IN CRIMINAL, DELINQUENCY,  
DEPENDENCY AND CIVIL COMMITMENT CASES (Chapters 1-4 of OSB Task Force  
Report adopted by the Board of Governors September 25, 1996, remainder of report  
(generally, appendices and annotations) not reproduced)

**QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL  
TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE**

The Public Defense Services Commission (PDSC) adopts the following standards pursuant to ORS 151.216(1)(f)(F), effective September 1, 2005.

**STANDARD I: OBJECTIVE**

The objective in promulgating qualification standards for counsel appointed by the state courts to represent financially eligible persons at state expense is to ensure that competent and adequate legal representation is afforded to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

**STANDARD II: ATTORNEY CASELOADS**

Attorneys appointed to represent financially eligible persons at state expense must provide each client the time and effort necessary to ensure competent and adequate representation. Neither defender organizations nor assigned counsel should accept workloads that, by reason of their excessive size or complexity, interfere with rendering competent and adequate representation or lead to the breach of professional obligations.

**STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS**

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
  - A. Meet the qualifications specified in Standard IV for the applicable case type; or
  - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to the appointing authority's satisfaction that the attorney will provide competent and adequate representation;
3. Have adequate facilities such as sufficient support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and

5. Have reviewed and are familiar with the current edition of the Oregon State Bar's Indigent Defense Task Force Report, "Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." (Exhibit C to this policy statement.)

#### **STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE**

##### **1. Misdemeanor Cases and Misdemeanor Probation Violation Proceedings in Trial Courts**

An attorney or certified law student is qualified for appointment to misdemeanor cases and misdemeanor probation violation proceedings if he or she:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal and Evidence Codes of Oregon; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies one or more of the following:
  - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or a private attorney office in criminal cases; has undertaken such representation for at least six months; and can present a letter from the student's immediate supervisor certifying the student's knowledge of applicable criminal procedure and sentencing alternatives; or
  - b. Has observed five complete trials of criminal cases that were tried and submitted to a jury; or
  - c. Has served as counsel or co-counsel in at least two criminal cases that have been tried and submitted to a jury; or
  - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at all court appearances and all client interviews in each case; or
  - e. Has served as a judicial clerk for no less than six months' time for a court that regularly hears criminal cases; or
- C. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

##### **2. Lesser Felony Cases; Felony Probation Violation Proceedings; Contempt Proceedings in Trial Courts**

Lesser felony cases include all Class C felonies other than drug cases.

An attorney is qualified for appointment to lesser felony cases, felony probation violation proceedings, and contempt proceedings if he or she:

- A. Meets the qualifications specified in Standard IV, section 1;

- B. Has continued to meet the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel and has handled a significant portion of the trial in two criminal cases that have been submitted to a jury;
- D. In at least one felony trial submitted to a jury, has associated on a pro bono or paid basis as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards; and
- E. On request, can present an additional showing of expertise and competence in the area of criminal trial practice by submitting at least three letters of reference from other criminal trial lawyers or judges the attorney has appeared before on criminal cases. The letters must explain why the attorney has special experience and competence to handle felony cases involving potential incarceration of up to five years; or
- F. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

### 3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies, all drug felonies, and all homicides other than murder and capital murder cases.

An attorney is qualified for appointment to major felony cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has continued to meet the qualifications in Standard IV, section 2 for nine months and has had nine months of lesser felony trial experience in a public defender or a district attorney office or in private practice; and
- C. On request, can present evidence of additional expertise and competence in the area of criminal trial practice by submitting at least five letters of reference from other criminal trial lawyers or judges that the attorney has appeared before on criminal cases. The letters must explain why the attorney has special experience and competence to handle felony cases involving potential incarceration of 20 years; or
- D. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

### 4. Murder Cases in Trial Courts

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in murder cases, not including capital murder, if he or she:
  - a. Meets the qualifications specified in Standard IV, section 3;
  - b. Has continued to meet the qualifications in Standard IV, section 3 for three years;

- c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and vigorous representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
  - d. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict; and
  - e. On request, can demonstrate the above by:
    - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
    - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from at least two of the following three groups:
      - i. Judges before whom the attorney has appeared;
      - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; and
      - iii. District attorneys or deputies against whom or with whom the attorney has tried cases; or
  - f. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

## **5. Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in capital murder cases if he or she:
  - a. Meets the qualifications specified in Standard IV, section 4;
  - b. Has tried major felony cases for at least five years;
  - c. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which should include at least one homicide case that was tried to a jury and went to a final verdict. Lead counsel in capital cases must have acted as counsel or co-counsel in at least one murder case that was tried to a jury and went to a final verdict;

- d. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
  - (1) relevant state, federal, and international law;
  - (2) pleading and motion practice;
  - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
  - (4) jury selection;
  - (5) trial preparation and presentation, including the use of experts;
  - (6) ethical considerations particular to capital defense representation;
  - (7) preservation of the record and of issues for appellate and other post-conviction review;
  - (8) counsel's relationship with the client and his or her family;
  - (9) post-conviction litigation in state and federal courts;
  - (10) the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science;
  - (11) the unique issues relating to the defense of those charged with committing capital offenses when under the age of 18.
- e. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
- f. Has demonstrated to persons with direct knowledge of his or her practice:
  - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
  - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
  - (3) skill in the management and conduct of complex negotiations and litigation;
  - (4) skill in legal research, analysis, and the drafting of litigation documents;
  - (5) skill in oral advocacy;

- (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
  - (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
  - (8) skill in the investigation, preparation, and presentation of mitigating evidence; and
  - (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements, and
- g. On request, can demonstrate the above by:
- (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
  - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from at least two of the following three groups:
    - i. Judges before whom the attorney has appeared;
    - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
    - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, d, e, f, and g or must possess significant equivalent experience under Standard III, section 2.B.
- C. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
  - b. must have either:
    - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or

- (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

D. *Limited Caseload.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

**6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts**

An attorney is qualified for appointment in civil commitment proceedings under ORS Chapters 426 and 427 if he or she:

- A. Meets the qualifications specified in Standard IV, section 2;
- B. Has experience handling psychiatric or psychological evidence and psychiatric or psychological experts;
- C. Has knowledge of available alternatives to institutional commitment; and
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded; or
- E. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

**7. Juvenile Cases in Trial Courts, Including Delinquency, Remand Hearings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights**

An attorney is qualified for appointment to juvenile cases, under ORS Chapter 419, if he or she:

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; has observed at least one contested juvenile court case; is generally familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:
  - a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.
  - b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
  - c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
  - d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
  - e. Oregon State Bar, Juvenile Law, (current version).
  - f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.

- g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
  - h. Pub. L. 105-17 Individuals with Disabilities Education Act.
  - i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1975, as amended, 20 USC §794 (1982).
- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standards IV, sections 1-4;
  - C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
  - D. For abuse and neglect cases and dependency cases, meets the qualifications specified in Standard IV, section 2;
  - E. For remand cases, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively;
  - F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues; or
  - G. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

For purposes of this section, a court trial in a delinquency case is equivalent to a jury trial under Standard IV, sections 1-3.

## **8. Appeals Other Than in Murder and Capital Murder Cases**

An attorney is qualified for appointment in appeals other than in murder and capital murder cases if he or she:

- A. Has reviewed and is familiar with:
  - a. ORS 138.005 - 138.504 in the case of appeals of criminal cases;
  - b. Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
  - c. ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
  - d. In the case of appeals of juvenile cases, Oregon State Bar, Juvenile Law, (current edition);
  - e. The Oregon Rules of Appellate Procedure; and
  - f. Oregon State Bar, Appeal and Review (current edition); and

- B. Meets at least one of the following criteria:
  - a. Has experience as appellate counsel, either in practice or under the Oregon State Bar's Law Student Appearance Rule commensurate with the seriousness of the underlying case;
  - b. Has served as co-counsel in at least one appellate case under the supervision of an attorney eligible for appointment to appellate cases under this standard;
  - c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
  - d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
  - e. By any other evidence that shows experience, education, and skill in appellate advocacy; or
- C. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

**9. Appeals in Murder and Capital Murder Cases**

An attorney is qualified for appointment in appeals in murder and capital murder cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the necessary proficiency and commitment that exemplify the quality of representation appropriate to:
  - a. Capital murder cases if the appeal is in a capital case; or
  - b. Other murder cases, if the appeal is in a noncapital murder case;
- D. Has demonstrated proficiency in appellate advocacy in felony defense;
- E. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- F. For co-counsel in capital murder appeals and for lead or co-counsel in other murder cases, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- G. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority may determine that an attorney with extensive criminal trial or appellate experience,

or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
- b. must have either:
  - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

#### **10. Postconviction Proceedings Other Than in Murder and Capital Murder Cases**

An attorney is qualified for appointment in postconviction proceedings in cases other than murder and capital murder if he or she:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the postconviction proceeding; or
- B. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

#### **11. Postconviction Proceedings in Murder and Capital Murder Cases**

An attorney is qualified for appointment in postconviction proceedings in murder and capital cases if he or she:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. For appointment as lead counsel, has prior experience as postconviction counsel in at least three major felony cases; and
- C. For capital cases, meets the qualifications specified in Standard IV, section 9 for co-counsel in capital appeals. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 9.
- D. *Alternate Procedures for Meeting Minimum Qualifications.* The appointing authority also may appoint as lead and co-counsel an attorney with extensive criminal trial, appellate, or postconviction experience or extensive civil litigation or appellate experience, or both, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:
  - a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and

- b. must have either:
  - (1) specialized postgraduate training in the defense of persons accused of capital crimes, or
  - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

## **12. Habeas Corpus Proceedings**

An attorney is qualified for appointment in habeas corpus proceedings if he or she:

- A. Meets the qualifications specified in Standard IV, section 2; or
- B. In lieu of the above qualifications, possesses significant equivalent experience under Standard III, section 2.B.

## **STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS**

### **1. Certificate and Supplemental Questionnaire**

Effective January 1, 2006, in order to receive an appointment to represent a financially eligible person at state expense, an attorney must have submitted a certificate of qualification together with a completed supplemental questionnaire and have been approved for inclusion on an appointment list. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards.

### **2. Submission Date**

- A. *Contract Attorneys.* Unless expressly agreed otherwise by contract with PDSC, contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the contract start date and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. *Assigned Counsel (for all Noncontract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

### **3. Supporting Documentation**

An attorney must submit supporting documentation in addition to the certificate and questionnaire:

- A. At the request of OPDS; or
- B. When the attorney seeks to qualify for appointments based on equivalent experience.

#### **4. Appointment Lists**

- A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications will be approved for inclusion on appointment lists. OPDS's goal is to select attorneys who are more than minimally qualified, where possible, given the volume of cases, the number of attorneys submitting certifications, and the needs of the court. At the completion of the review, OPDS will inform the attorney regarding its decision as to the case types for which the attorney has been approved for appointment.
- B. *Provision of Lists to the Courts.* OPDS will prepare an applicable list of attorneys for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- C. *Updating Lists.* OPDS will update lists monthly with a supplemental list of any changes.

#### **5. Suspension From Appointment List**

If PDSC or the court learns of facts that call into question an attorney's ability to provide adequate assistance of counsel even though the attorney meets the minimum qualification criteria, PDSC and the court each shall have authority to suspend the attorney from the appointment list for any or all case types until PDSC is satisfied that the attorney is able to provide adequate assistance of counsel. If a court learns of such facts or allegations, the court must inform PDSC as soon as possible of all allegations and facts and of any action that the court takes. PDSC will notify the court when PDSC suspends an attorney from the court's appointment list.

**CERTIFICATE OF ATTORNEY QUALIFICATION**

## SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
7. What percentage of your present practice involves handling public defense cases?
8. Briefly describe the nature and extent of your work experience in the criminal and juvenile law areas. (Include case types and lengths of time you have practiced criminal law.)
9. Before which courts and judges have you regularly appeared in criminal case proceedings and when? (List name of judge, court, location, and during which year(s) appearances were made.)
10. Before which courts and judges have you regularly appeared in juvenile case proceedings and when? (List name of judge, court, location, and during which year(s) appearances were made.)

11. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with criminal and juvenile law matters?
  
  
  
  
  
  
  
  
  
  
12. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling criminal and juvenile law cases.
  
  
  
  
  
  
  
  
  
  
13. List two cases by county and case number that have been tried and submitted to a jury in which you served as counsel or co-counsel within the last two years.
  
  
  
  
  
  
  
  
  
  
14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.
  
  
  
  
  
  
  
  
  
  
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.
  
  
  
  
  
  
  
  
  
  
16. 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.

I certify that the above information is true and complete.

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE