

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 Paul J. DeMuniz

Executive Director

Peter A. Ozanne

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, September 14, 2006 Meeting*

11:00 a.m. to 4:00 p.m.

Clatsop County Commission's Meeting Room

857 Commercial Street

Astoria, Oregon

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's August 2006 Meeting (<i>Attachment 1</i>) | Barnes Ellis |
| 2. Presentations on Public Defense Service Delivery in Clatsop County** (<i>Attachment 2</i>) | Invited guests & audience members |
| 3. Progress Report from Marion County Association of Defenders (MCAD) (<i>Attachment 3</i>) | Steve Gorham
Olcott Thompson |
| 4. Action Item: Review and Approval of OPDS's Report to the Commission on Critical Issues in Juvenile Dependency Practice (<i>Attachment 4</i>) | Peter Ozanne |
| 5. OPDS's Monthly Report | OPDS's Management Team |
| 6. Executive Session: Review of the Search for PDSC's Executive Director*** | Barnes Ellis |

Notes

**PDSC's next meeting is scheduled for Friday, October 20, 2006 from 12:00 to 4:00 p.m. at the Inn at the Mountain in Welches, Oregon.*

***Presentations may be taken out of order in order to accommodate the schedules of the Commission's invited guests and members of the audience.*

****The Executive Session will be held at approximately 3:30 p.m. pursuant to ORS 192.660(2)(f) and (h).*

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

August 10, 2006 Meeting
Office of Public Defense Services
1320 Capitol Street N.E.
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Jim Brown
Chip Lazenby
Mike Greenfield
John Potter
Janet Stevens
Paul J. De Muniz

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Peter Gartlan
Laura Anson

The meeting was called to order at 9:03 a.m.

Agenda Item No. 1 Minutes of the June 2006 meeting

The Commission reviewed and approved the minutes of its June 15, 2006 meeting.

MOTION: Mike Greenfield so moved; John Potter seconded the motion; the motion carried.
VOTE 4-0.

Agenda Item No. 2 OPDS's Monthly Report

Peter Ozanne requested any comments and suggestions from the Commission with regard to the two attachments accompanying this item on the Agenda: (1) a June 22, 2006 letter from Dick Garbutt on behalf of Klamath Defender Services, summarizing the consortium's progress in considering and adopting suggestions and recommendations in PDSC's Service Delivery plan for Klamath County and (2) OPDS's Draft Report to the Commission on critical issues in the delivery of public defense services in juvenile dependency cases.

Kathryn Aylward described the Contract and Business Service's progress in developing new procedures and processes to perfect appeals in juvenile cases. Peter Gartlan reported on the Legal Services Division's progress in reducing its appellate backlog.

Agenda Item No. 3 Challenges in Delivery Public Defense Services in Juvenile Delinquency Cases

Judge Terry Leggert from the Marion County Circuit Judge, Orin Bolstad, a forensic clinical psychologist and Kathy Berger, a public defense attorney with extensive experience in handling juvenile delinquency cases, gave presentations and answered the Commission's questions regarding the challenges facing attorneys and the Commission in delivering public

defense services in juvenile delinquency cases and the quality of those legal services.

[The Commission took a break in the meeting from 10:50 to 11:02 a.m.]

Agenda Item No. 4 Review and Approval of OPDS's Proposed September Emergency Board Presentation & Proposed 2007-09 Budget

Following Kathryn Aylward's explanation of OPDS's proposed letter and report to the Emergency Board, which was intended as a submission to the Board in preparation for its September 20-21, 2006 meeting, and following questions from PDSC's members, the Commission approved OPDS's proposed submission to the Emergency Board subject to minor revisions.

MOTION: Janet Stevens moved to approve the submission; Jim Brown seconded the motion; the motion carried. **VOTE 7-0.**

Following Kathryn Aylward's presentation of PDSC's proposed budget for 2007-09, questions and discussions of the Commission's members regarding the proposed budget and their deliberations regarding fair and adequate hourly rates for public defense services, PDSC approved its proposed budget for 2007-09 as follows:

Essential Budget Level	\$201,851,637
Policy Packages:	
100 Juvenile Dependency Appellate FTEs*	\$958,926
101 Employee Commensurate Compensation	\$350,569
102 Trial-Level PCR FTEs*	\$835,293
103 Public Defense Provider Compensation	
Public Defender Salaries Commensurate with DAs	\$6,211,003
Hourly rate for attorneys**	
Hourly rate for investigators	\$2,616,474

* The total for these policy packages will be reduced by an offsetting reduction in Public Defense Services Account expenditures.

** The Commission instructed Kathryn Aylward to calculate the cost of this package based on \$70/hour for non-death penalty and \$95/hour for death penalty representation.

Shaun McCrea moved to adopt the proposed budget with the components described above; John Potter seconded the motion; the motion carried. **VOTE 6-0.**

The Commission convened an Executive Session at 12:35 p.m. to discuss its search for a new Executive Director.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

August 10, 2006 Meeting
Office of Public Defense Services
1320 Capitol Street N.E.
Basement
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Jim Brown
Chip Lazenby
Mike Greenfield
John Potter
Janet Stevens
Paul J. De Muniz

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Peter Gartlan
Rebecca Duncan
Laura Anson

TAPE 1, SIDE A

[The meeting was called to order at 9:03 a.m.]

Agenda Item No. 1 Minutes of the June meeting

003 Chair Ellis The first item is the minutes of the June 15th meeting. Are there any additions or corrections to either the summary minutes or the transcript? I had a couple on the transcript. On page 10 in the middle of the page, the second line, line 176, where it says "contracting" it should be "competing." Then on page 16, line 46, the word "court" should be "report." On page 38, "Bill Reilly" should be "Bill O'Reilly." Are there any other additions or corrections? Is there a motion to approve the minutes as corrected?

MOTION: Mike Greenfield so moved; John Potter seconded the motion; hearing no objection, the motion carried. **VOTE 4-0.**

Agenda Item No. 2 OPDS's Monthly Report

033 P. Ozanne As I indicated to you in an email message, the attachment to this portion of the agenda, Attachment 2, involves matters that will be taken up at a subsequent meeting. But I thought you could review this material and pass on any comments you might have. The first item in the attachment is a June 22nd letter on Klamath Defender Services letterhead from Dick Garbutt, who's the consortium's administrator. That letter is a follow-up to our visit and service delivery plan in Klamath County. It turns out that Mr. Garbutt won't be able to make the Commission's September meeting in Astoria. With your permission, he plans on attending your October meeting in Welches to answer your questions and discuss the consortium's progress. In the meantime, if you have questions or concerns, I can pass them

on to Mr. Garbutt. The second item is a draft report on juvenile dependency following our May meeting in Portland. I expect that this report may eventually be combined with a report on juvenile delinquency following today's meeting and discussions. It was my intention for the report to serve as a documentary record of your and OPDS's investigations and the issues and concerns that have been brought to your attention as a result of those investigations. As you know, there is probably going to be a fair amount of attention in the next legislative session with regard to juvenile dependency. So this particular report may be a useful document during the session. Again, if you wish to give me your written or oral comments, any way you want, I would appreciate it. Otherwise, the report will be presented to you at your next meeting for formal review and approval. Those are all the items that I have for OPDS's report. Kathryn, do you have any items from Contract and Business Services?

- 062 K. Aylward There is just one thing that I wanted to mention. We had talked before about centralizing the appeals of the juvenile cases so that there would be a web intake form similar to the direct criminal appeals; and that those would then be handed out by our office. I just wanted to say that we have made great progress. The forms are ready to go live as soon as we are ready for intake. There will be a database that will automatically generate a letter to the client and notice of appeal and start production of transcript. So all that stuff is good to go. I just wanted to let you know that we are getting there. It will be a matter of weeks.
- 070 Chair Ellis Good.
- 071 P. Gartlan I thought I would report on the appellate backlog because Commissioner Brown had asked me at the last meeting about the backlog. The backlog right now is at 167 cases over 210 days old, which is the lowest since January 2005. Why that is a critical date is that it is the date that is 210 days after Blakely. After Blakely kicked in, our backlog was going up and our case assignments were going up. Now they have been trending down, and we are at the lowest backlog level since January of 2005. The other part we noticed is that production is actually up as well from previous years. Just a rough estimate: we are handling about 1,800 cases a year within the office and distributing another 300 to 400 a year outside the office.
- 087 Chair Ellis So Blakely is kind of the pig in the python?
- 089 P. Gartlan We think so. The next question is going to be, are there Blakely fix issues that should be coming our way soon? What I mean is, the Legislature passed Senate Bill 528, which was the Blakely fix. So now at the trial court levels, we will see what kind of issues are developing there with respect to challenges to that legislative fix. So far, we don't think that there are going to be too many global challenges. The Supreme Court's opinions in Gornick, Perez, Upton and Sawatzky pretty much pulled the rug out from under global challenges. So what is left is going to be challenges to individual aspects of the Blakely legislation – individual challenges to some of the aggravating factors. Does that make sense?
- 102 Chair Ellis It does; and I know we are going to get to the E-Board submission later in the meeting, but it does seem to me that it is significant that this big run up in appeals, which is a big part of the backlog, or apparently at least a piece of it, is a single, nonrecurring issue.
- 110 P. Gartlan I hesitate to say that, and here is the reason: in prior years, our non-trial type appeals were very low. They numbered about 300 to 400 assignments. Now those assignments are up because of Blakely, and those are up over a 1,000 per year. So our office is processing over a thousand guilty plea type cases.
- 118 Chair Ellis If I understand that, the 111 percent increase that Kathryn has in the report for the E-Board – at least a portion of that – is a single nonrecurring phenomenon. But what you are saying is that another portion of it is the likely ongoing litigation over Blakely.

- 124 P. Gartlan Yes, because we still process guilty plea cases. So even though a lot of the Blakely issues have been decided by Supreme Court cases, we still have to review them and process those cases. Whereas before, we did not have as many claims because the caseload was getting settled under the guidelines. To the extent that there are still issues remaining after Blakely and the Blakely fix legislation, those are still being played out. But the caseload is settling, so processing those 1,100 cases per year gets easier. But they are still there.
- 138 Chair Ellis Did you have more you wanted to share? Other questions?
- 151 P. Ozanne We will ask Judge Leggett to come up, once she catches her breath, and talk about the challenges lawyers face in juvenile delinquency cases. As you all no doubt recall, Judge Terry Leggett was kind enough to speak to us some months ago about the delivery of criminal services in Marion County. Obviously, that was very helpful. Judge Leggett has not only had extensive experience in criminal matters as a judge and a lawyer; she has a lot of experience with juvenile law and juvenile delinquency. So I asked Judge Leggett to come and kick off this session on the challenges that lawyers face in juvenile delinquency from a judge's perspective. And with that, Judge, have you caught your breath?
- 162 Judge Leggett I am fine.
- 163 Chair Ellis Peter, to put it in a little additional context, we had a significant meeting in Portland a few months ago on juvenile dependency and the draft report on that has been circulated. This is the second prong of our efforts to come to grips with issues in the juvenile area. This is the delinquency piece.
- 171 P. Ozanne For your information, Judge, you can take this copy of our draft report on juvenile dependency with you. We will probably prepare a delinquency report following this meeting.
- 172 Judge Leggett This would be nice to have because the Law Commission is continuing working on revisions to the Juvenile Code, with a particular focus on dependency issues. I am on that commission with Senator Brown. Maybe it would be good if you asked me questions. I was in charge of our juvenile court for six years. I was a district attorney when Mike Greenfield was the director of the juvenile department here and Judge Norblad was the judge. I am on the Juvenile Code Revisions Commission. It was supposed to be a two-year project, and I think it has been about six or seven years. Just a couple of things: it varies dramatically around the state regarding how juvenile departments, and I should say DA's offices in particular, handle juvenile cases. To give you some background on that, Linn County, when I was an AG, did not do their support enforcement. They let the Department of Justice do it. They also did no dependency cases, but they did handle the delinquency cases. As an AG, I did the dependency hearings in that county. It is interesting. When I became a judge, I saw where we had some cases that bordered on Linn County. One delinquency case was pretty striking. When Measure 11 was first passed, juveniles fifteen and older were automatically sent to adult court. In our county, the DA said, "We are going to make assessments about whether it is appropriate to charge a fifteen-year-old with a Measure 11 crime in individual cases." We had a case that was an armed robbery, where there was a fifteen-year-old. It was a car jacking with guns, cousins, older brothers. I'm not sure exactly how she was related to the adults who were involved. She was with them. She did do enough to be an aider and abettor legally. They called Linn County and told them she testified and said who the people were and the participants. She had never been in trouble before. They said, "I am sure you don't want to charge this person as an adult. You have to charge her in juvenile court in Linn County because that is where she lived at the time." They said "No. We don't want to be bothered with that. Just charge her as an adult." It ended up they asked me if I would agree to accept an admission for a delinquency petition in Marion County because she lived there. That is always a little bit shocking to me – the extreme differences in how children are treated. Another example in our county: when I came on board – this was really before it became a mandatory reporting for sex offenders and things like that -- a lot of young offenders who

committed sex offenses were sexually assaulted themselves. So they were doing deferred delinquencies and sometimes that didn't work. When I became a judge, sometime soon after that, they split OYA from DHS and the resources between the two were split. What happened in the delinquency area is, in order for juveniles to get the resource of the sex offender treatment that they needed, they had to be adjudicated. All the resources for that went to OYA. We worked out a system where they would admit and state that they needed treatment, and we put it right in the order that, if they successfully completed sex offender treatment, then we would undo the admission so they wouldn't have it on their record. Trying to get the treatment they need is the worst part about juvenile law. You do all kinds of things to get around the rules to get the kid in the right place for the treatment they need, and it is still a mess because of the lack of resources. In other counties, they just adjudicate or say, "Okay, you committed a sex offense." Now, of course, I am sure you all know it is a life-time label of sex offender. It is pretty draconian for a twelve-year-old who has been sexually assaulted and they act out sexually. But you want to get them into treatment so that they don't do that as an adult and be labeled as a sex offender. So we did some innovative things to avoid this. I think in a lot of counties that doesn't happen. So statewide you just have a real mix of what is happening with kids.

248 P. Ozanne

Judge, one of the things we have observed in dependency and delinquency cases, which relates to your observations about how the state handles them, there are wide variations. It is driven by variations in prosecution practices and how judges operate. But another variation is the quality of juvenile law practice throughout the state. I would ask if you could give us a sense of what you think juvenile delinquency representation requires as a practice specialty and what your observations have been both as a judge and a lawyer with regard to aspects of practice that need more attention by the defense.

260 Judge Leggert

To start off with, from the time I was a prosecutor and then a judge, in our county we are really blessed with high-quality attorneys doing work at the juvenile department and representing parents and children. I know when I was a prosecutor, Jay Harris, one of the best criminal attorneys in town, was one of the attorneys that worked out there. So the people on the other side were very talented attorneys and that has continued. I will say in the dependency arena that our consortium looks for people who have a lot of expertise, not just in juvenile law but also in domestic relations, because they really overlap quite a bit in terms of what we do. In the delinquency area, sure, you need expertise in criminal law. There is no question about that. I think as the laws have become more complex, this has become even more important. For example, under sentencing guidelines, you use juvenile convictions in the adult arena to determine the length of sentences. All of a sudden there was a more heightened emphasis on what is happening in the juvenile arena. If you just walked in there and pleaded people out in juvenile cases because you are going to be on probation and not much is going to happen with them, then they move into the adult arena and all of a sudden that is a really big deal. When I went into the juvenile court and took over there, there had been a practice where they were taking admissions in what would be person felonies from juveniles with no lawyers. I said, "Whoa, I know you want to admit you did it, but wait a minute, let's appoint an attorney." I think this has continued to increase the emphasis in the juvenile arena on delinquency work. I just talked about the mandatory, life-time sex offender registration, so it really has changed. Also, at the Code Revision Commission, we have been talking about what happens to the child before they come forward, and looking at the interviews by the juvenile departments. They have been a little bit more circumspect about asking what happened and just going into court and working something out; whereas now, it is having a bigger impact, depending on the sex offenses. I will say that the idea of highly skilled attorneys representing juveniles is not statewide – 100 percent not statewide. It happens in Portland, it happens in Marion County, but my colleagues around the state -- and I am sure you have talked to some of them – say it is just catch as catch can. That scares them and it scares me.

- 312 Chair Ellis I am interested in how the defense services in juvenile cases should be distinguished from one another. What I am getting at is, we have a lot of providers that are juvenile providers and, frankly, it is not clear to me whether we should combine dependency with delinquency or whether delinquency cases really are more like criminal defense cases for adults. Is it more logical to have a dependency provider, who is active in the adult criminal defense field, also doing juvenile delinquency? Or should juvenile delinquency be thought of as separate from the other two?
- 326 Judge Leggert That is a good question. In our county, it isn't always separate. There have been people who have a specialty in criminal defense work, but also have a private practice in juvenile work. And they are great at both. We have tried – and it didn't work very well – to appoint lawyers to represent the parent who is charged in the adult arena and do dependency work too. So that one lawyer did both. I agree with you, you need to have a criminal background. You can not just take someone who does domestic relations and dependency work, but sometimes does delinquency work. I am sure Ms. Berger would say she has done this on more than one occasion: she filled the role in a delinquency case that becomes a dependency case. That is what you want. You are trying to move that sex offender over to the dependency arena. So you need to understand how to do that – what does that look like, what are the alternatives?
- 343 Chair Ellis From our contract administrative perspective, would you encourage us to think in terms of a single contractor combining criminal and delinquency practice, or a single contractor combining dependency with delinquency practice? Or do you think we ought to be looking at delinquency practice on a stand alone basis?
- 353 Judge Leggert The cases so often end up being combined.
- 354 Chair Ellis Cases of –
- 354 Judge Leggert Juvenile cases. You will have a dependent youth who is your client and then they commit a delinquency offense. You don't want to shift lawyers if you don't have to – if the lawyer has the skills. It seems to me you would be asking the lawyers, “Do you have the skills to do the delinquency case?” and then say, “You need to be certified to do one or both.” Just because you are a juvenile lawyer doesn't mean you might not have the skills to do either one. One of the lawyers they just hired here in Marion County came from adult criminal practice. They decided they needed more help in the delinquency arena, and that is all he is doing. You could have them self-designate whether they have those skills. There are times when you wouldn't want to be so rigid about it because I don't think it would be good to change lawyers. I guess you could have two lawyers; that would be possible. Sometimes the only thing some of these kids have that is consistent is the judge and the lawyer. Their case workers change monthly. Probation officers tend to stay with them, but I don't know how many times, during a dependency case, every other week we have a different case worker.
- 378 Chair Ellis We were very impressed from the dependency meeting that we had with the complexity of the legal issues a qualified dependency lawyer needs to deal with – an overlay of complicated federal regulations on top of state issues, overlaying this very difficult field of child psychology and everything else that is going on. How would you characterize the delinquency practice? Is it as sophisticated from a legal point of view as dependency? Is it as sophisticated from a legal point of view as adult criminal?
- 391 Judge Leggert It is as sophisticated as adult criminal because that should always be on your radar. There are all the mental health issues, and there isn't anything in place to deal with those issues right now. There is a whole group of kids who are really young who are charged with crimes. There is a whole bunch of literature about whether they can understand and aid and assist in their own defense. Do they know what they are admitting to? At what level do they know what they are admitting to? What are they charged with? There is that issue because they are only twelve or thirteen. Do they know what a trial is? And let's add the fact that it might be a

felony! Do they know what impact that might have on them when they are eighteen? Just trying to explain that to them is a huge challenge. So, we are kicking around at the Commission the idea of adopting some laws that they have in other states that say you suspend the case until we make sure that he or she understands what they are doing. We just always said, "Sure, go ahead." It didn't matter before because there weren't all these collateral consequences when they got out of it. Now, there are so many that you have to take a step back. There are a lot of issues regarding jury trials, because juveniles don't get jury trials. That idea keeps getting pushed as the consequences become greater. Then there is the fact that, if you are not mentally competent as an adult, you have the Psychiatric Security Review Board. Well, we just started juvenile PSRB and, again, there are a lot of issues around that. Should this person be admitting, and do you let the fifteen-year-old mentally deficient person make that decision like we do in adult court? Those are pretty complicated issues. So I would say it is at least as complicated as the adult practice. Then, along that line, you say, "Do I want to pursue a motion to suppress or do I want to accept the equivalent of a plea bargain in juvenile court?" That goes on all the time. Is there enough evidence to convict the youth? And that is weighed with the fact that you don't get a jury trial. So if your defense attorney said "Gee, I am going to have a judge decide this case," is there a legal defense? It is complicated.

- 437 Chair Ellis How is it being handled in Marion County? Is the delinquency representation being assigned to MCAD, or through the juvenile consortium?
- 440 Judge Leggert The juvenile consortium.
- 441 Chair Ellis That is the common theme. Then within the juvenile consortium, are lawyers dividing between dependency specialists and delinquency specialists, or both?
- 445 Judge Leggert Some do both, and some just do delinquency. Several of the people who are in the consortium have done adult criminal defense work. We now have specialists who only do juvenile delinquency work. Lindsay Partridge joined the consortium and he is a highly skilled criminal defense attorney. What I keep complaining about is they seem to take the best attorneys from MCAD and put them in the juvenile consortium.
- 455 Chair Ellis That is sort of the attorney's choice, I think.
- 455 Judge Leggert Right. You would have to ask them. They may have people who say they don't want to do the delinquency work. I just know that Martin Habekost and Lindsay Partridge have gone over there. Tahra Sinks is somebody else who has represented people in criminal court. I think she now might just be doing dependency and not delinquency. You will have to ask them. I can't think of anybody in the juvenile consortium who hasn't done adult criminal.
- 467 Chair Ellis You obviously don't have to get into the individuals, but how do you gauge the quality of the service that is being provided by the consortium in the delinquency area, both in terms of competence of the lawyers and the responsiveness, communication and timeliness of their appearances?
- 474 Judge Leggert On all of those I think they are fine. I don't see any problems. I did when we were struggling with a procedure I'll call deferred sentencing. They were just right there working with the DA and myself. They were right in there saying "You know what, my client needs to be able to get into this program. They need to admit to X, but the DA says they will charge this. Are you okay taking an admission if that will get my client what he needs and everybody is in agreement?" What does their client need? The biggest problem I found with delinquency was, the kid has X needs and there are only so many programs and so many openings, and this is the right program; and not putting them in the program that has openings, but putting them in the program that the kid needs, whatever it is, so you don't see them again. They are just very aggressive and aware of what programs their clients need. I am sure they work with the

juvenile department too. The juvenile probation officers were really good about that, and I'm not just saying this because Mike is here. But they were really good about finding the right programs and getting the kids what they need. But when you bump it up a step to OYA, there's a big gap. I don't know if it is the number of clients they have or what it is; maybe just not knowing or not being able to get what they need for their clients. It is really kind of sad. This one girl's dad was a drug addict and the probation officer told me her dad had to sign something so she could get into a drug program herself. He wouldn't do it and I said, "Sign it or you are going to jail," and then he signed it. She goes to the program, she is released to OYA, they tell me where she is going, and she is going to live with her dad. I said "Whoa!" So I set a review hearing, and the dad came. That day he went home and stole all her stuff and disappeared and she never saw him again. They just had no idea of that prior stuff. But the attorneys are real aggressive on that. I think that is really one of the big things that they have to do. You don't want to see your client coming back. They have to have the right support system and get in the right treatment programs. That is really the challenge.

- 526 Chair Ellis Do you think the consortium is able to attract enough lawyers to do the work, or is it difficult to attract lawyers?
- 529 Judge Leggett They just keep taking the best people from MCAD is all I know. Every time they do it, it is frustrating to me because, right now, I am full-time handling the adult criminal docket. I haven't seen that as a problem. Again, you would probably have to ask them, but I don't see that as a problem for them. But my colleagues statewide say, and it is my understanding in some of the smaller counties, that juvenile practice is the last thing that the lawyers want to do. I have heard this from down south and the coast – they show up and they don't know what they are doing.
- 544 Chair Ellis What is driving this in Marion County – the attraction to do the delinquency work versus the MCAD work?
- 547 M. Greenfield The impression that I had when we met in Marion County was that Judge Abernethy was essentially managing the attorneys in terms of scheduling and taking a very strong role and very assertive role and actually performing as the de facto manager of that function.
- 555 Judge Leggett Even if you back up and Judge Norblad –
- 558 M. Greenfield He is pretty aggressive too.
- 558 Judge Leggett As Chief Justice De Muniz knows, there are high quality lawyers out there doing all of the work. Maybe they couldn't say no; I don't know. So there was this kind of legacy. I know one of the attorneys who works out there now, Dick Condon, used to work with Jay Harris. I think that is when he started doing juvenile work. It is not full-time practice because they do others things too. But it complements what they are doing in the other kinds of work. Our county has the second highest number of petitions in the state. When I was in juvenile court about six years ago, I kept thinking the numbers were wrong because Multnomah County had 3,500 and we had 2,300. The next highest was Washington County, which had 1,100. Lane County had 1,000 and their populations are much bigger. Clackamas County had just under 1,000. So we were more than double any of these other counties, and the numbers remain the same. Last year, we had several months where we had more petitions filed than Multnomah County. So it is big.
- 585 Chair Ellis Marion County obviously has a significant Hispanic population and some other distinct minority populations. How does that play out? Are the lawyers able to handle the communication issues?
- 592 Judge Leggett I know at least one and maybe two of them are bilingual. I don't mean they are certified bilingual, but they speak Spanish. I know the juvenile department struggles with it. It is

important, but it is not as important in the delinquency area with the kids as it is with their parents.

601 Chair Ellis Because the kids are more language savvy.

601 Judge Leggert Right, they don't need it. That is another bill we got passed with the juvenile consortium and I testified in favor of it – having interpreters for the parents. It used to be that the statute said you didn't have interpreters for the parents unless the child was adjudicated. So the youth would tell their parents, "Oh yes, I don't have to go to school anymore." That happened, and the parents said, "Okay." So the power shifted to the kids. In the delinquency arena, it is real important for the parents.

617 Chair Ellis Any advice or recommendations to us about how we can better do our job of providing competent counsel?

622 Judge Leggert I agree with you that people have to have the skills in delinquency practice. You just can't say, "I am a defense attorney and I also can do juvenile work." They need to have those skills, and they should at least be as competent as you would be to represent an adult criminal defendant. So however you figure it out; whether you have criteria that you have to meet. The skills for dependency and delinquency are different. If you have the dependency skills and your youth commits a delinquency offense and you don't have delinquency skills, do not represent that youth. Find somebody else that does. I think you need to make that real clear. That it is not a minor thing; I don't care what the charge is. I don't think that you can say, "You are doing adult criminal work, so you can do juvenile work." They are different skills and the kids are treated differently.

[Tape 1; Side B]

053 Judge Leggert It is just not okay to say, "I am representing adult criminals," and once in a while go over here and do a juvenile case. That is not going on in our county, but it is in other counties.

055 Chair Ellis I think what I am taking from your comments is, at a minimum, they have to have competence in adult criminal practice, but that is just the starting point.

057 Judge Leggert That's right.

058 Chair Ellis I also take from your comments that, at least in this county, adult criminal work is kind of a farm team for delinquency.

059 Judge Leggert There are good people who stay in MCAD. But what I see is that attorneys with problems at MCAD aren't going to the juvenile consortium. The juvenile consortium is taking some of the best people from MCAD. I think the other thing too is, the judges are creating an environment where they make it attractive. In our county, there has been a line of people serving as juvenile judges. I did it for six years and Tom Hart and Judge Abernethy served about the same length of time, even though she said she was going to do it for a year. The same thing is true in Multnomah County. I think there are a lot of counties now where the judges are saying that juvenile is important work. That just didn't use to happen. It was a place where people just went. It was a bad place to be. It was the same with the DA's offices. Now they are saying, "You know, this is an important place to be," and we are putting people there who want to be there. There is more respect for the practice and the judges want lawyers out there who know what they are doing. By the way, the judges are getting trained too – through "The Eyes of the Child." That program used to be a conference in the summer for judges who wanted to do juvenile work and learn more about it. The number of judges that go to that program now is huge. So judges want to do it and they know what the laws are. So they are demanding that of the lawyers.

- 077 Chair Ellis This is probably impossible to demonstrate statistically, but let me try an optimistic thought. Obviously, the juvenile delinquent is your most likely person to end up as a repeat offender in the adult system.
- 083 Judge Leggert You can say that.
- 083 Chair Ellis The question I have is: do you believe that, anecdotally or just based on your own experience, providing quality defense lawyers at the juvenile delinquency stage, and all the education that this involves, has the potential of diverting potential adult offenders?
- 088 Judge Leggert What you need, in order to have kids change, is money for the necessary programs, whether they are a dependent or delinquent youth. Like that girl who I told you about. She is fourteen or fifteen and her dad took everything. It costs money to have her in that drug program in order to keep her clean and sober. You can't just say "Okay, you are fourteen, your dad is gone and you just came out of a drug program. We are going to have you go live with your sister." It costs money. The people representing delinquent youth are fighting for resources and the good ones are going to find the right resources, so that the kids get the help and they don't end up as adult offenders. But if we don't put money into this area it will happen. I am sick of people saying, "We care about kids, we want to help kids; however, we won't give them any money and we won't give their parents drug treatment." Hello! If the kid gets in drug treatment and the parents are still drug addicts, the kids are going to use when they get out. You need to put money in these programs, if you want it to stop. The cycle is going to stop here if we put the right resources into it. If you have quality people helping them and not just saying, "Plead guilty, you'll be on probation and you'll be fine. You are going home and live with your drunk dad." That is not going to help. You have to have people who care about kids and care about what they are doing. When you asked if they are more likely to be adult offenders; yeah, given nothing. If you do nothing, they are going to keep committing crimes. That is simple enough.
- 111 J. Potter Judge, we are always heartened when we hear from you that the bar in this county is doing a good job in juvenile representation. What I didn't hear is your assessment of the caseloads that these lawyers are handling in juvenile cases. Are the caseloads acceptable?
- 117 Judge Leggert I don't know what it is right now in terms of numbers. I just know that they keep adding people, and they are good people. You might want to get better information from them. I didn't feel like they were overloaded when I was the juvenile judge, and I was very careful not to put them in a place where they wouldn't be prepared in terms of setting trials. Some judges require that you need to try this case in a certain amount of time. Well, you know what, the lawyer needs to be ready to try the case. But you would have to ask them. I know a lot of the big numbers are not delinquency cases, but a growing dependency problem.
- 126 J. Brown My sense is totally removed from the practice area, but one of the things a competent practitioner does, in either a delinquency or dependency case, is to be current on not only what treatment options might be out there, but who has got them today and who is going to have them next month. It sounds like that is happening at a pretty sophisticated level in the larger counties. I am wondering, in the smaller counties where we are paying lawyers, are they putting in the time to find resources? Is there any central place they can go to say, "I have got one of these, so who ought I to be talking to?"
- 141 Judge Leggert I do know that, in eastern Oregon, they used to have a process where all the resources for juveniles were funneled through one group to try and maximize the efficiencies. It is a waste of money, just because there is an opening and the kid can't go home, to put kids in a place where they are not getting the right treatment. But sometimes that happens. The whole eastern part of the state had this process that they all went through. I would expect that they are just as frustrated as I am, and it becomes amplified in smaller counties. I know they are frustrated because every time you talk about resources like mediation in divorce cases, or

mediation in juvenile dependency cases or drug treatment, or psychiatric treatment for kids or whatever, with eastern Oregon people, they just say it is so hard because they have to drive long distances, etc. So I am sure it is magnified.

- 163 J. Brown I am wondering, it seems over the last several years we have seen some really terrific things happening in terms of resources for the practitioner and greater communication between the appellate function and the trial practitioner in the adult defense arena. And we are constantly looking for the bang for our buck out of public defense services. Is there anything we ought to be exploring in terms of, for example, contracting with somebody whose job would be to be current on the resources available and consult with juvenile practitioners in the smaller areas – or anything like that?
- 173 Judge Leggert I think that would be great. I know I do that as a judge. Who knows about all the domestic relations laws? If something comes up and you are not an expert at it – and you can't be – something like that would help. I think they do that some anyway. At the state level, that is something that OYA, being a state agency, can do: a lot of these kids are delinquents – like pre-OYA – and you want to know whether this youth will end up in an OYA facility. Is that the best thing for them? I think that is a great idea.
- 192 Chair Ellis Any other questions?
- 193 M. Greenfield Judge, a couple of things. I took from your comments that, in many instances, the cost of admission to get resources and services is a delinquency petition; and the other one was, in counties where the juvenile system is not working as well as it could, is there an equal problem on the prosecution side, where they are not knowledgeable and are taking shortcuts?
- 200 Judge Leggert Or don't care. We were stunned at how many youth under eleven were charged with delinquency when we were trying to figure out this statute we wanted to pass, which talks about whether the child is able to understand what we are talking about – not that they are mentally defective, but that they are just too young. They don't get it, they can't.
- 207 M. Greenfield So, from a prosecution prospective, it is perhaps a caseload issue, or a per hour issue? It is just a low priority.
- 208 Judge Leggert Yeah, a low priority; and then they just say, "Okay, they committed a crime. I've got to file."
- 211 Chair Ellis Thank you very much.
- 212 P. Ozanne I would like to ask our other two guests to come up together and I will introduce them. I want to welcome Dr. Orin Bolstad, a highly regarded forensic clinical psychologist. I shared his resume with you to indicate his background and experience. I call your attention to the second page of his resume, which I understand in talking to Dr. Bolstad will be the subject that he'll be covering today. Doctor, we do have a tape recorder for you because I also understand you have something you want to play back during your presentation as well. If you look at the top of page two, under "forensic psychological evaluation," Dr. Bolstad specializes in "child, adolescent and young adults in the areas of aid and assist, Miranda evaluations, psychosexual evaluations, mitigating circumstances, guilty but insane, and assessment of risk for violence and comprehensive psychological evaluations." As you can see from his resume, Dr. Bolstad's specialty is juvenile law and he will tell us how important mental health and psychology issues are in the practice of juvenile delinquency law. Kathy Berger, who many of you know, and she has been to our meetings before, is a highly regarded juvenile and criminal lawyer. Kathy for a considerable time specialized in juvenile law and now, I am happy to say, has become one of our contractors specializing in murder and capital cases. She has conferred with Dr. Bolstad in preparation for today, so the two of them will present together. Thank you very much for coming.

235 K. Berger

I want to try to answer some of the questions you asked Judge Leggett, and explain to you what it is like to represent kids in delinquency cases. Imagine that you are representing a fifteen-year-old girl who is charged with DCS, delivery of a controlled substance, and PCS, possession of a controlled substance. There is a winning – absolutely not a question in your mind – a winning motion to suppress in the case. You talk to her and you find out that her boyfriend is a 22-year-old man who you believe is getting her ready to be a prostitute. She is an IV heroin user. That was the drug that she had in her possession when she was arrested. She is not looking healthy and she is having unprotected sex. She lives with her mother, who is in Section 8 housing. The district attorney has offered you a plea to possession of a controlled substance because your client needs inpatient drug treatment, and the only way she can get it is if she is on probation. This is her only charge and you are her lawyer.

253 Chair Ellis

You can either win the case –

253 K. Berger

You can either win the case and, if this is an adult there is no question if you are a criminal defense lawyer. You do the motion to suppress and you win the case. It never even enters your mind what the collateral consequence of winning this case are and what affect it has on your client. You may worry about it. You may talk to your client about it. But you also figure she is an adult and she knows what she is doing and she tells you, “I want to win this case.” On the other side, you heard Judge Leggett talking about how the delinquency system and the delinquency lawyers that she termed as good were the ones that were able to get their clients into the appropriate services and get them the services that they need. Because she is fifteen years old and you know that this girl really needs inpatient drug and alcohol treatment – and there are probably some mental health issues – and you also realize that if she admits to a PCS she may not be able to go back and live with her mother in Section 8 because the Section 8 housing won’t allow it. But nobody has actually told her mother that. Her mother may or may not have mental health or drug issues, and you have got to deal with the relationship between the mother and the daughter and figure out how that is working. Is the mother going to be a support person, or is she actually dragging this kid down? You have to deal with that. Being a delinquency attorney is like playing chess in 3-D. It really is because you have to not only look at what is my strategic move; but you have to think three steps ahead and figure out what this child needs. My ethical obligation as an attorney is to do what my client tells me to do, and I think that doesn’t matter whether my client is a twelve-year-old or a 32-year-old. No where in my ethical obligation does it say, “If your client is twelve, it is okay to do whatever you think is best for the kid.” My ethical obligation as an attorney is to explain the options to my client and then, after my client makes a decision, go forward with that. I am stuck with trying to explain all this to a fifteen-year-old. Now, do I go and meet this 15-year-old and do everything I can to convince this fifteen-year-old, who doesn’t want to go into drug treatment by the way and loves her 22-year-old boyfriend and thinks that they are going to have a great future together, what I think should happen. Yeah, of course I do. But you can’t do that just by showing up one time because this kid is going to look at you and say, “Kid versus adult; yeah, I know what side you are playing on. You are not on my side. You are on their side.” A delinquency attorney has to have a lot of contact with any teenage client because you can’t show up one time and say to a kid “Okay, you have a motion to suppress here. This motion to suppress, I think we can win. The other option is the DA has offered you a plea to PCS. If you go for that, you can get into drug treatment and probably a lot of your life problems will be solved.” The kid is just going to look at you like, “Huh, what are you talking about?” The first question I have to ask any of my clients on a delinquency case is: “So I am your lawyer. Do you know what a lawyer does?” That is how basic you have to start: “This is what a lawyer does and I am going to prove to you that I am on your side by every time I tell you I am going to show up, I have to show up.” You have to do the things so the kid knows that you are somebody that cares about her and will be there for her. A lot of these kids haven’t ever experienced an adult who is going to do that and be there every single time that you say you are going to be there. You have to be the one because you have to be able to get their trust so you can have the conversation about “how is your life going?” If you don’t do that extra step and you just say, “Okay, you have a winning motion to suppress.

What do you think about drug treatment or walking the streets?” and the kid says, “Walking the streets,” you have done your ethical job as an attorney. But you haven’t probably served your client very well. That is what it is like representing a teenager on a delinquency case. And this isn’t an aberration; this is every single day. Judge Leggett is not kidding when she says that the most consistent person in a lot of these kids’ lives is their attorney, and perhaps the judge. A couple of weeks ago I went and witnessed the birth of a child of one of my fifteen-year-old clients. Why? Because she didn’t have anybody else in her life to be there when she gave birth. So I am sitting there as a lawyer, and going to law school didn’t really prepare me for this one – but, “Breathe, push.” I went to law school, but I can tell you that one of the reasons why I was such a good juvenile attorney is because of this man sitting right here. The other thing that delinquency lawyers have to know is they have to understand how to even get the idea that there might be some mental health issues with their clients. For kids, it is really hard to pick out a lot of the mental health issues. It wasn’t until I did some cases with Dr. Bolstad that I learned some of the questions to look for, and what are some of the things to ask. You can’t just ask a kid: “So, have you had any significant injuries?” What Dr. Bolstad taught me is to ask them: “So, do you have any scars on your body? Let me see them. What are they from? How did you get that one?” Those are the types of questions you are going to get answers to. He taught me to look at their hands, look at their facial structure, that sort of thing, to see if there is anything that seems abnormal. The reason that is important is because a lot of the kids that we see who are committing delinquent acts are mentally ill and have not been caught yet; by “caught” I mean haven’t been diagnosed yet. There is a lot of cultural bias against being mentally ill, and a lot of parents aren’t going to be real thrilled when you start talking to them about the fact that you think their child is mentally ill and that is the source of his problems. What parent wants to hear that about their child? That he is just acting up or that “boys will be boys,” or that she is just running a little wild; those things are a little bit easier for a parent to understand and accept. To be able say that “I think your child is bipolar” is really tough for parents to absorb, and yet you have to be able to identify the problems and ask the questions so that I even know to call Dr. Bolstad. Without that, I am not doing my job. I am going to turn it over to my colleague –

- 371 O. Bolstad Let me suggest a process for our discussion. Kathy and I have done this presentation before and we are going to be flexible and just kind of bounce off of each other. Any time you want to ask a question, feel free to do so. Can you give me some guidance as to how much time we have?
- 376 Chair Ellis What would you like?
- 378 K. Berger A cruel defense attorney once told me that they can’t do anything bad to my client as long as I keep talking.
- 381 Chair Ellis Someone else said, “When you are winning, stop talking.” How about fifteen minutes or something like that?
- 383 O. Bolstad That is a tall order.
- 384 Chair Ellis Is that too short?
- 384 O. Bolstad Probably, for I think what we had in mind. But I don’t want to evade. How about an half an hour; can we do that?
- 386 Chair Ellis Half an hour.
- 388 O. Bolstad Kathy, interrupt any time you would like. Ingrid indicated to me that the focus that she would like me to address today is aid and assist, so I would like to spend a little time talking about aid and assist issues. There is a lot of relationship between aid and assist and Miranda, and certainly Kathy and I have had a lot of fun with those issues over the years. I would like to

focus on aid and assist issues, especially aid and assist issues that are relevant to juveniles. I would like to begin this discussion by sharing with you the critical importance of recognizing that there is a difference between adults and adolescents. I think we have known that for a long time. Parents know it intuitively. I think the court has taken a position about a hundred years ago that stands in recognition of this difference. The creation of the juvenile system was intended to provide more humane treatment for juveniles than having them go through the adult criminal system. We have a long history of *parens patriae* in this nation. I think in the 80's and 90's things got turned upside down with the emergence of violent crimes among adolescents. It led to things like Measure 11 all over the country. So we saw remands and transfers and waivers in pretty significant numbers. I thought I would share with you some numbers that I just looked up the other day. I noticed that last year there were 7,500 youth in America sent to criminal court by judicial discretion. There were 218,000 who were bypassed from juvenile justice by a legislation that lowered the age of remand below eighteen. My reading of the research, which I think this can always be debated, is that this transfer phenomenon that we have seen nationally has not really reduced crime. It has not really protected the communities. The last thing I would say about the transfer issue is that it has disproportionately affected minorities. I think we need to recognize that adolescents are not adults. The assumption behind remand and transfer is that they should be seen as if they were adults. I think that, if we really understand child development, we have to recognize that this is simply not true. There is a maturation curve that adolescents go through. There are predictable stages of maturation, cognitively, emotionally, socially and morally. There are moral stages of development. These things are very different from the age of twelve to the age of eighteen. What I would like to share with you today is that there is a lot of research which shows that this kind of maturation process is happening well into the 20s, such as abstract reasoning. There has been a lot of research coming out of Harvard in the last few years that shows that abstract reasoning is still developing as late as the age of 30. Why is abstract reasoning so important? Because, without abstract reasoning, you are not able to very well anticipate the consequences of your actions. You are not able to weigh options and see the advantages of option A versus option B. You are not able to handle complexity. You are not able to handle metaphors. If you sit in the courtroom as often as I do, and you watch how much metaphorical discussion is going on in that courtroom, it is really remarkable. And these kids are not following these metaphors. They do not understand. Let me give you an example of a metaphor, one from yesterday at MacLaren. A staff member yelled at the kid "shape up!" I watched the kid, and this is a special needs kid, and his reaction was to look at his shape. It is very concrete and he didn't understand that the metaphor was referring to his behavior. That comes with abstract ability. I could wax eloquent on this point, but I have decided to bring some articles instead that pertain to the recent research over the last decade about the brain maturation. A lot of that research is going on in different places in the country. It is converging and it really began at Harvard. It has been picked up in Vermont and many other different universities and medical schools. The theme of this research is that there are biological data points which are very clear in indicating that the brain is maturing. We are seeing a pruning of the gray matter over adolescence. We are seeing increasing myelination, especially in the prefrontal cortex. We are seeing a number of changes that are very noteworthy, very important, which can be documented -- changes in the area that divides the two hemispheres and has responsibility for organizing information that goes up to the frontal lobe. There is clear and evident data that shows that this is developing in adolescence due to the kind of new technology that we have with MRI and MFR research. The brain is changing and developing, and we need to be very sensitive about this evolution of the brain. The last thing I would say about the evolution of the brain that I think we need to be sensitive to is there is a lot of research, typically presented by Dorothy Lewis back on the East Coast, about the high percentage of kids that are showing up in correctional facilities like MacLaren and Hillcrest with significant brain damage. It is becoming more and more evident, to those of us who are working in this environment, that we are seeing this as we get better training. For instance –

488 O. Bolstad

I would say probably the majority of it comes from fetal alcohol syndrome, fetal alcohol effects, and our research is quite good about alcohol, but far less good about methamphetamine and cocaine and some of the other drugs. But it is starting to show up. I think there was a presentation just yesterday that you had over at JRP on fetal alcohol effects and some of the research that is coming out on that. We are getting a very high percentage of kids in MacLaren, where I work, whose brains just aren't working right. They are particularly delayed in terms of things like anticipating the consequences of their actions. Let me give a graphic example that just happened to me a couple of weeks ago. There was a kid there in central segregation. When I went to meet with him in segregation, I said, "Why are you here?" and he said, "Because I was making clicking noises." I thought that was interesting and I said, "Do you mean clicking noises got you sent down to segregation?" and he said, "Yep" and I said, "Anything else?" and he said, "Nope." I thought maybe we have a staff that went nuts over a clicking noise, so I guess I better go check this out. I went back to the staff on the unit and learned that the progression of things that happened that day was phenomenal. It began with him breaking a window in the morning, and then assaulting a staff member who kind of backed off and gave him some space. He had multiple warnings, advising him to be careful today because he was on a tear. But he didn't get it. When I interviewed him, he still thought he was there because he made clicking noises. He didn't see any relationship between those earlier actions and the ultimate consequences. We see this with aid and assist. What do we do with aid and assist? Well, we begin by doing a mental status examination – the kind of thing that Kathy and I have talked about a lot. In a mental status examination, you begin by looking at someone's facial features. The left side and the right side, are they balanced? You look for things that are classic signs of fetal alcohol syndrome. There are a lot of signs for that that pertain to things like the placement of the eyes, the septum below the nose, the size of the lips, especially the upper lips; you look for these things. You look at hands because hands are a really good indicator of neurological abnormalities, as is the face. You have to know these things and you have to study them. But you also, in a mental status exam, start looking for things like: do you see evidence of thought disorder? Is there any evidence that this kid has been hearing voices or is delusional? You have got to begin looking very carefully at these signs of mental illness. You pay a lot of attention to intelligence. Is this person sticking with you in the conversation? In any aid and assist evaluations, you have to do an IQ test. You are not looking just for a score; you are looking for the way that this kid thinks. I think the value of the IQ test is less about the scores that comes out that everyone talks about; it is more about how the kid approaches the tasks and tries to deal with the tasks.

548 K. Berger

One of the things as a lawyer that is difficult is that the legal arena has no basis for understanding kids in their real life. They know nothing that is like that. So part of it when you are trying to figure out, are they tracking you, is you have to figure out is it because they have no basis for this world that they have just stepped into? Or are they just not getting it that way? Or are they just not following you because there are two separate things? You have to also be able to figure out how you can explain the legal arena in a way that goes back to their world and what they are used to. It is real easy if they are good at sports. I love boys that have had sports experience because then you can talk to them about one side versus the other, and the referees and that sort of stuff. But you really have to get it back to their world so that you can make a determination if it is intelligence or lack thereof, or is it just that they are not getting it when you talk about prosecution and defense. Once you have explained it in a way that they can understand, they will follow you and follow your example.

572 O. Bolstad

You asked me earlier: are most of these kids with brain problems related to alcohol and drugs? I would say probably the majority are, but there is another big category of children who were pretty severely abused as children – hit in the head and knocked around. Probably one of the most famous cases that I have ever been involved in was the Ray Deford case. That was the young man who burnt down the apartment building in Aurora and eight people died a number of years ago. I will never forget, I asked him, "Do you have any scars on your head?" He said, "I don't think so," and I said, "What are you touching up there?" So I went

over and said, “Can I put my hand on your head to see what is here?” My fingers sunk down into his skull to my fingernails. He still had the evidence from a significant blow to the head that came in childhood. His father hit him over the head with a clipboard. That was going to have an impact on his ability to aid and assist. You look at mental illness; you look at neurological things. Here is one that a lot of folks aren’t spending enough time looking at; and that is just maturity. I just recently evaluated someone at the Center. All my testing showed that he was functioning roughly around the age of five years and nine months. This kid is seventeen years old, but all the tests show that he is functioning at a very immature level. Interestingly, he had a lot of experience in court. But when I would ask him about the courtroom, I wanted him to define things: what is an attorney, what is the difference between a prosecuting attorney and a defense attorney? And we started talking about the court. He had only had one experience in the court and, for him, court was where you go where they tell you where you live next. That is what court was for him. Distinctions like prosecuting attorney and defense attorney, he just didn’t understand any of that. The notion of plea bargain was so far removed from his thought process. Plea bargaining, when you think about it, involves a lot of abstraction. Remember earlier, I said abstraction is the ability to compare options and see the plusses and minuses of both. Kids are not going to be able to do that. Another comment I would like to make about a lot of these kids who are immature and mentally retarded and brain injured: many of these kids have self-esteem issues that surround those kinds of problems. When you ask them things like, “Do you understand your Miranda rights?” they will say, “Yeah” because they want to look good. They want to look presentable. They want me to think they are competent. But when you start scratching the surface of how well they understand that Miranda right, amazing things come out.

- 630 C. Berger Because of the culture of TV, a lot of them can repeat the Miranda rights to you.
- 630 O. Bolstad They have them memorized.
- 631 C. Berger They know the Miranda rights, but that doesn’t mean that they understand it. That is what I often will see in court. Just because I know Einstein’s theory of relativity is $E = MC^2$ does not mean that I understand what E is, what M is and why the hell it is squared, but that is the level that kids understand Miranda. They can rattle it off. Orin and I have a joke that the most common answer we get when you ask them what does it mean that you have a right to remain silent is: “Well, when somebody else is talking, I need to be quiet; and then when they stop talking, it is my turn to start talking.”
- 647 O. Bolstad There are so many variations on that theme. In my list of definitions, I ask them what does the word “remain” mean. Not many kids can define the word “remain.” When they hear the word, it generally means to them that they are supposed to be quiet. So they might respond to a police officer’s question, what do you think that right means: “It means you are supposed to be quiet.” And the police officer says, “Well, that is good. He understands.”
- [Tape 2; Side A]
- 002 O. Bolstad This tape I’m about to play is an interview with an autistic kid who is being given his Miranda rights. It is worth listening to him just to get a perspective on how this goes.
- [Tape is played]
- 073 O. Bolstad I think this is an example of a kid not really understanding his rights. But he tries to present himself as if he can – tries to present himself that he is a good reader, etc. Obviously though, in this case, he could not do that. You look at a lot of factors. You look at immaturity, you look at mental illness, you look at neurological deficiencies and you try to bring this all home. Can he understand what is going on in the courtroom? I give them a schematic of a drawing of the courtroom. I ask them to say who sits here, who sits here, where would you sit? You look at their understanding of the courtroom. You look at their understanding of legal terms.

You have discussions about plea bargaining and see if they can make any kind of weighing or comparison statements. These are the kind of things that go into aid and assist determinations. Interestingly, this young man on my tape, in my opinion, did not understand his Miranda rights. But curiously, I think he could aid and assist. The reason why: I think that, in the company of counsel, who can explain things to him and take a time out and review what is going on, the young man was capable of aiding and assisting. He knew what the courtroom looked like; he knew where he sat; he knew the roles of people; he could define not all the terms, but some of them. As an example of trying to show off how smart he was: at one point, he dropped the word “plaintiff” on me. I said “Plaintiff? What is a plaintiff?” His answer was “I have no idea.” I think nonetheless that he could aid and assist. In a Miranda situation under a lot of stress without a lawyer there to help him, that is an entirely different situation. It is usually the case in Kathy’s and my experience: if you can’t aid and assist, you probably couldn’t understand Miranda. That is usually the case. But in some cases, you can do one without the other.

- 096 K. Berger It is difficult. What Dr. Bolstad would have told me is that this young man can aid and assist. So that is the client that I have to then sit down and explain things to. In court, when things are going hot and heavy and we are making legal arguments, I have to remember that, at the end of that discussion, I need to sit down and do a little debriefing with my client to make sure that he is understanding what just happened and what was the impact of what just happened. And, of course, it is not like court stops while you are doing this. You are listening and talking and making sure the client is following you because, if you don’t, you have a kid who goes from being able to aid and assist to one who is not being able to aid and assist. Then I am just winging it on my own, which is not what I am supposed to do.
- 108 Chair Ellis I am getting two things from the combination of presentations here. One, your point is, to do the job, it takes a lot of time with the client; and the second is, to do the job, the lawyer has to have an understanding of your field.
- 113 O. Bolstad Right.
- 113 Chair Ellis My question is, getting back to where we came from, do either of you have any observations on the practitioners that work on these cases. Do they (a) take the kind of time you say, and persuasively say, that is needed to do it right; or are they under a caseload push that they don’t do that; and (b) what is your sense of the level of understanding that the practitioners who we are funding have of the kinds of issues that you have been talking about?
- 122 K. Berger I stopped doing juvenile delinquency cases and moved over to doing capital cases mainly because I started feeling like I was dialing it in. My caseload was too high. If you looked at the snapshot of my caseload, and at any point versus the caseload of the dependency attorneys that were in the same office that I was in, my caseload looked low. But the timelines in delinquency cases move much faster. The statute says that, if a kid is not in detention, you are supposed to try that case within 56 days. If the kid is in detention, you are supposed to try that case within 28 days. The judges were very good about me saying, “Hey, time out, I need to talk Dr. Bolstad, I need to spend more time with my client.” But you can’t take that time on every single one of your cases when you have 25 of these kids. Some are in detention; some are not in detention; some are in residential treatment; some aren’t even in the area where you are. The caseload was much too high to spend the time that I needed to. What I felt was happening was, yeah, the cases where there were significant issues that were easily spotted, I was spending the time on those cases. But there were other cases that were just “balls in the air” that I needed to keep up as long as I could, until I could get to them. They weren’t getting my time with that kid to find out if there were mental issues or other problems going on. It was at that point that I said, “I didn’t go to law school to dial it in. I don’t want to do this anymore.”

- 145 Chair Ellis What strikes me, in the dependency field, the testimony that we heard was that the number of appearances is remarkably high.
- 148 K. Berger It is.
- 148 Chair Ellis In the delinquency field, I am guessing, the number of appearances isn't as high, but the time required to do an appropriate job in the fewer appearances is much higher.
- 153 K. Berger I think that is true. I think that makes it extremely difficult for one lawyer to be doing a lot of dependency and delinquency work, because we all operate on deadlines. If I have got a review hearing on a dependency case next week that some works needs to be done on –
- 155 Chair Ellis That is going to get the attention.
- 155 K. Berger That is going to get the attention because I have got to stand in front of a judge next week and say to the judge, "This is what is going on in this case and this is what I think should happen," versus a dependency kid who is home doing okay. I can put that case on the back burner. I think the other problem with mixing dependency and delinquency is, as Judge Leggert said, in delinquency cases, you have to keep up on the criminal law stuff. That means that I have to read the cases and keep up on the cases in Oregon, the Ninth Circuit and the Supreme Court on search and seizure and all of those usual criminal issues. I also need to keep up on the new brain research that is happening with juveniles. I have to keep up on the placement issues because it is not good enough for a delinquency attorney to leave the decision of placement to OYA or the juvenile department. Part of the advocacy that you have to have is perhaps getting your kid into a certain placement, or helping to get your kid convinced that this type of placement is better than this type of placement; which means you need to know about the placements and need to have the relationships with OYA and the juvenile department. So you can make those recommendations without sounding like you are trying to do their job; that you are a partner, rather than somebody that is just trying to bowl them over and tell them what they should do. It is a real give and take. In terms of the caseloads, I think the caseloads are really high. In terms of, do people know what is going on, no. I still get phone calls even now from practitioners who tell me, "Well, I am representing this eleven-year-old on sex charges and I heard that you have a really good motion to suppress about kids not understanding Miranda. I was wondering if you could send me a copy of it." I say, "Sure, no problem, if you have an email that is probably the fastest way. I can email it to you or I can fax it to you. But have you checked whether this eleven-years-old kid can aid and assist?" "Well no, the parents say he is okay." "Okay and when is your trial?" "Tomorrow." It is very difficult because it is a colleague; and you try to say to them very calmly that you might want to ask for a set over.
- 193 O. Bolstad I am impressed that there a good number of attorneys in my community who are very sophisticated about some of these child issues. Some of the firms, like The Juvenile Rights Project, regularly have people like myself and others come in and do training on some of these issues; and I think that is all good. There is good news. The flip side of it, I would say, is that I cultivate relationships with attorneys who are sophisticated about children, and I have worked with them for a long time. When I work with a young attorney who has never really done this sort of thing, I am often just nonplussed, I am amazed.
- 201 Chair Ellis So there's a big disparity?
- 201 O. Bolstad A huge disparity. I also have the perspective of spending three days a week at MacLaren and Hillcrest. I am astounded by the number of kids that I encounter where issues of aid and assist were never raised. We are becoming inundated at MacLaren and Hillcrest with special needs kids – kids who are retarded, kids who have brain damage, and kids who are neurologically in bad shape. It is phenomenal. They don't really belong in a place like MacLaren or Hillcrest. They are there because no community provider will take them. I have

had many a judge who almost apologizes to me after a hearing: “Orin, I heard your point. I know he is not really appropriate for MacLaren. He hasn’t really committed a crime that serious, but where am I going to put him?” All these providers won’t take him, so that is the kind of kid we are getting. And I am often struck by how they were not represented well in court.

- 213 K. Berger The flip side of that is that it means that the judge knew that perhaps they couldn’t aid and assist, but that it was going to be the best placement for them.
- 215 Chair Ellis That is what Judge Leggert was saying. You bend the rules to get to the outcome.
- 216 K. Berger At some point, the defense attorneys are letting that happen. That was my biggest frustration. I can argue until I am blue in the face that this kid can’t aid and assist and, if the judge is going to do what the judge is going to do, then I can go to the appellate courts if I think I have made the issue. I think it happens in Marion County, I think it happens in Lane County, I know it happens in Multnomah County, I think Washington County and Clackamas County. But when you start going to the smaller counties, where people are doing dependency and criminal and juvenile delinquency, I think the quality you get is not the same because people are not putting in the time or do not realize that it is such a specialty.
- 227 Chair Ellis You made a comment a moment ago that you questioned the wisdom of a single lawyer trying to do both the dependency and the delinquency from a scheduling point-of-view.
- 230 K. Berger Yes, a scheduling point-of-view. I think also the sheer volume of information that you have to know.
- 232 Chair Ellis Do you think we ought to be looking at who we contract with and breaking out dependency from delinquency practice?
- 235 K. Berger I think that there are some ways that those two can work together. But I think that, for example, MPD, MDI, there are a lot of firms that do a very good job at representing dependency and delinquency clients. I get concerned about people who represent only kids in dependency cases because, over time, they can become very prosecution oriented. The idea of them going to a prosecutor and fighting tooth and nail can get lost in the idea that I need to maintain a relationship with the prosecutor. It doesn’t happen all the time. I have to say that in the time that I worked at JRP, I’d say it happened infrequently, but it did happen. And it does happen in other firms. If you get to representing too many kids, too many times you are on the prosecution side, you start to think that way, and that is a very dangerous way for somebody who then wants to do the delinquency part of it – unless you really sit down and as a person you can say that this is what I am doing in a dependency case and this is what I am doing in a delinquency case, and my ethical obligations might be completely different in those two types of cases, even though my client in the dependency case and my client in the delinquency case look exactly the same.
- 256 C. Lazenby Judge Leggert brought up, and this is from the service delivery point of view, the issue of continuity – that it may not be well served for anybody concerned to have lawyers with basically two different interests around the same individual. My sense is there is a lot of that crossover among this clientele – where you get them on the dependency and then there are delinquent acts that occur. They progress and they have a history that goes on for a couple of years. So, from the service delivery standpoint, you seem to be suggesting that we ought to contemplate funding a dual system, which will end up having a couple of lawyers operating with the individuals all the way along the line.
- 267 K. Berger I didn’t mean to give that strong a statement, I guess. It is true that there is a lot of overlap between the two systems. Not only do kids from the dependency side come over to the

delinquency side; but a lot of times kids on the delinquency side go over to the dependency side.

- 271 Chair Ellis I would think the role of the lawyer becomes almost gatekeeper to services, if you are doing both delinquency and dependency work.
- 275 K. Berger It certainly helps to know, if you are doing the delinquency system, the dependency system. I can manipulate the system because I know the system; I know what OYA has to offer because I have figured out what OYA has to offer. I know what DHS has to offer because you figure out what DHS has to offer. Whether a kid should go into OYA or DHS is a question even in a delinquency case. You can have kids that are on probation, but put in the custody of DHS, because that is a more appropriate placement for them. You have to know that system. I think there is a lot of benefit in taking that kid from one system to the other and being that constant person, if you can ethically do so. The problem is that the lawyers have to be able to say ethically, “Yes, in the dependency case, I am working at getting my kid the best services possible, but on the delinquency side that might change and my focus may have to be winning the case for the kid versus getting the kid into the system,” so the kid can get the services that he needs and that is what my client is telling me they want to have happen.
- 295 C. Lazenby Let me follow up on that because I was hoping you would get there. We have this acknowledgment that children are different from adults and we have a separate system that is set up for them. Having been a lawyer for some period of time and having done some of this kind of work, I understand the strict advocacy role that you have. Maybe that is misplaced, or maybe we need to have, in the case of children, whether they are on the dependency side or whether they are on the delinquency side, a much more inquisitorial, European style, process where there is a collective inquiry into what goes on and some collective determination, so that the lawyer’s role is really to provide the court with the information so the court can make the best decision in that case. Take the adversarial piece out of it.
- 307 K. Berger That is fine, but then tell the Oregon State Bar to change my ethical obligations when I am representing kids, because my ethical obligation as an attorney is, when a kid is facing a delinquency charge -- let’s say a sex abuse which carries lifetime registration, which means that this kid, who is probably younger than fifteen, can’t go into the military, may not be able to get student loans, may not be able to get public housing – to zealously advocate to avoid all of the consequences that may attach for that kid. Does that kid need sex offender treatment? Perhaps, yes. Would the kid do better getting sex offender treatment? Perhaps, yes. But I also have an ethical obligation to make sure that the kid doesn’t have lifetime registration, because lifetime registration attaches by me just going in and saying “Yeah, your Honor. This kid does need sex offender treatment. So let’s make a deal and let’s get this kid into treatment.” That decision I make for that kid at fourteen is going to affect the child when they are 34, and I am not going to be around. I can’t be held responsible for having made that decision for the fourteen-year-old when he is 34 and can’t get a job. That is the impact of me just saying “Yeah, this is what is in the best interest of this child,” versus needing to fight this as if this person were an adult facing criminal charges. I don’t think that any of us would think that, if that fourteen-year-old was 34 years old and facing a serious sex abuse charge, that I shouldn’t fight that charge tooth and nail to make sure that the state proves the case beyond a reasonable doubt.
- 339 M. Greenfield What do you think of the notion with the reference to the price of admission for what our culture is going to do in terms of treatment for kids? Certainly, the notion in the late 70’s of creating status offenders, where we said kids who ran away, kids who were truants, kids who had other issues where the court could take jurisdiction, and the ante wasn’t quite as high. So when we created status offenders what we did was create an entire category of kids who were being self-destructive, but they weren’t violating the law and crimping our style. So we said, “Hey, you are kind of on your own, and until you break the law we are not interested in you.” We created street children and so forth and may have even contributed to kids not getting our

attention and the resources and to a huge increase in the sophistication and the seriousness of crimes in the 80's and 90's.

- 354 K. Berger I think that you can deal with status offenders on the dependency side. The fact of the matter is that the State of Oregon has chosen not to fund what is known as Level 7, the older kids that are just kind of acting out. A good friend of mine calls them the "soup spitters." They don't do anything except really annoy every adult that is in their life. Evidence has shown that locking those kids up, or subjecting those kids to a situation where they could be locked up if they keep annoying every adult that is in their life, doesn't work. It actually just brings those kids deeper into the delinquency and criminal justice system.
- 367 M. Greenfield If you are a street kid and out living on the street, we don't care, do we?
- 368 K. Berger Apparently the State of Oregon doesn't.
- 368 M. Greenfield Well, most other states don't either.
- 369 K. Berger That is the decision that we have made as a society. One of the things that we have lost in our society is the idea that "tough on crime" somehow helps kids, even when faced with overwhelming research that it really doesn't. If you want to get kids to stop committing crimes, you are going to have better success by getting them into positive activities, having positive adults in their life, having people around them that care about them, the community who cares about them, getting them success in school so they are staying in school, because kids who drop out are more likely to commit crimes. Those are the things that keep the kids out of the juvenile justice system. As a society, we have moved from giving kids what they need to stay out of the system into a tough on crime. We are going to "we'll lock you up and we are going to teach you." I can certainly tell you, having been a stepmother of a very out-of-control teenager, that there is a lot of relief for adults when they say "We are going to teach you and, by gosh, you are going to learn." It doesn't work though.
- 391 M. Greenfield I am not suggesting that. What I am suggesting is that we created an entire class of kids where we decided what we weren't going to do with them. We were not going to have them in that coercive system, and I completely agree with you.
- 393 K. Berger And we did.
- 394 M. Greenfield We don't have the tools to have the court actually order the kind of supportive and positive things that you just mentioned.
- 396 K. Berger Well, I think we have the tools, but we are not willing to fund the tools.
- 397 O. Bolstad I spent fifteen years of my career at the Morrison Center treating many conduct disordered kids, many who were status offenders. I think the main reason why I left the Morrison Center after fifteen years was that it was frustrating to see the programs that we were offering, which at one time were very good programs in the 70's, just aggressively get cut back and cut back and cut back, and see the dollars going more and more into juvenile justice in terms of hard beds, jail beds. We had some studies that we did many years ago that indicated we were very effective with status offense kids, and they weren't even court-ordered to come and see us. We made services available for them and we had good results with them. It just disappeared in the era of cutbacks.
- 412 K. Berger One of the things that I often say when I am speaking to the community: people can show a picture of Kip Kinkel and say "This is why we are tough on crime." You can't hold up a picture and say "Because we have midnight basketball and mentoring services, this kid didn't go out and commit a crime." There is no spin there, even though it is true.

421 Chair Ellis Thank you both. This was very informative. Let's take an 8 minute recess.

[Break at 10:50 to 11:02 a.m.]

Agenda Item No. 4 Review and Approval of OPDS's Proposed September Emergency Board Presentation & Proposed 2007-09 Budget

431 Chair Ellis Kathryn, I believe you are our key person on the next topic. The first part of this is your draft letter to the E-Board.

432 K. Aylward Yes, that is correct. Before someone else tells me, there is a mistake in it, at least one that I have caught. I wrote the narrative before I finished crunching the numbers and that is on page two.

438 Chair Ellis Of the letter or the attachment?

439 K. Aylward The letter is not numbered, so it is the page that has a number 2 at the bottom under mileage reimbursement. I put "over 250,000" and it should be "over 245,000." Actually at the top of that page, on page 1, Commissioner Potter was surprised by the fact that the trial level caseload had only increased three percent between 2001 and 2005 and he asked me to reconfirm that that number was correct. I believe it is correct and I will confirm that – surprising, but true. So other than those things that I will fix or confirm –

454 Chair Ellis Are there comments or suggestions on the draft letter? I had a couple; and this is just me putting myself in the shoes of an E-Board member reading it. It isn't a particularly substantive change. In the paragraph in the middle of the first page, it felt kind of abrupt to me to just say that "the overall projected expenditures, including appellate and capital cases, will exceed the original allocation." I think it would be useful to give them a heads up why. You might consider adding something like "comma, primarily because of significant carry over in capital cases and a substantial increase in appellate cases." It just felt to me like it falls off a cliff. Then again, this is a small style point. In the next paragraph you say that, last May, it was \$7.6 million; and then the current sentence now is: "Current data indicates that the shortfall is over \$7.8 million." I would rather be kind of precise about it: "is now \$7.85 million," which is not a radical change, it is just updating them from May to September. With those two changes, I thought the letter and the attachment – I liked it last time and I still like it.

486 K. Aylward It is a little different. I put some work into it.

488 Chair Ellis What is the schedule on this? You submit the letter and then there is a hearing?

491 K. Aylward The E-Board meets September 20 and 21. But generally, the 20th is when agencies would make their appearance and then, on the 21st, would be the full E-Board, where we would sit in the back, but nobody would want us to present.

496 Chair Ellis Is the plan that you and Peter will make the presentation?

497 K. Aylward I think so.

497 P. Ozanne Yes, and I have already asked Mike Greenfield if he would be able to attend with us. If he could, it would certainly be helpful.

502 Chair Ellis Remind me of the times?

502 K. Aylward Peter pointed out to me that I got the dates wrong. It is the 21st and the 22nd.

- 506 O. Thompson Mr. Chair, just a comment on the attachment. It is on page 2 and then it also on page 4: the comment on costs exceeding the inflation rate. I don't think that is what they are. The mileage reimbursement went up 25 percent. It is not the inflation rate. A lot of these aren't tied to the inflation rate at all.
- 515 K. Aylward What this refers to is the budgetary inflation rate. The inflation rate that was provided in our budget for this biennium which I believe last time was 2.4 percent. The Legislature says, "We know costs are going to go up, so next time we are thinking 2.4 ought to cover you." Maybe it would for some categories, but certainly not for these things. Although I take the point of the speaker, because it doesn't really have to do with inflation. But it is talking about the amount provided in our budget for inflation.
- 526 Chair Ellis Does that clarify it?
- 526 O. Thompson I am just reading it from a non-
- 529 Chair Ellis Should we put that clarification in?
- 530 O. Thompson I am just reading it from a lay person's viewpoint. Obviously, when you are talking to a different audience –
- 534 Chair Ellis We had a discussion at the last meeting on Jessica's Law and whether it is happening yet. I noticed a piece in the paper this morning. It sure looks to me like there is a case under Jessica's Law that has just been filed.
- 541 K. Aylward Is he indigent?
- 544 Chair Ellis I thought that the way you presented that was what we were trying to do.
- 547 C. Lazenby I had a faint recollection of battles ended in the last legislative session with this Emergency Board allocation. There was \$7 million that was part of an understanding we had or was this a part of any last minute –
- 552 K. Aylward That was a prior biennium. In the last biennium, our budget was cut by I think \$9.1 million. So we went back to get \$7 million, and then we went back to get \$7 million again in January of 2005.
- 558 C. Lazenby Do you anticipate any, or are you getting any, hints out of Legislative Fiscal that there is an anticipated problem here?
- 561 K. Aylward As Robin LaMonte has mentioned, the anticipated problem is that the Emergency Board fund is down to \$15 million, or something like that. What they may have to do is wait. Special reservations to the Emergency Board fund expire in December. Basically, if it hasn't been needed for other areas where it set aside and allocated for, then it reverts to the Emergency Board fund. We may be looking at early January. I actually think that is likely. In September, they will hopefully listen politely and agree and say that we need to come back in January.
- 474 M. Greenfield I am assuming from reading the letter that you had conversations with Robin about the steps that have been taken to ameliorate this problem prior to going to the E-Board.
- 480 K. Aylward I have, and this E-board letter is very similar to a report that was sent to the Legislative Fiscal Office in May. You know, the question of ameliorating any of these things – everything that we can possibly control – I think we already do. We are coming forward with things that are not in our control where there is nothing we can do.

590 M. Greenfield The question they will have is: “So what have you done to solve this problem before you came to us,” and I think that you have made that case pretty thoroughly with Robin.

593 Chair Ellis Am I right that the attachment that will go to the E-Board is pages 1-4.

593 K. Aylward That is correct.

594 Chair Ellis Then the materials after that that we have, pages 1-8 –

597 K. Aylward They just happen to be part of the same topic on the agenda. So that is the E-Board part.

600 Chair Ellis Any other questions or comments on that? I don’t think it requires action by us. If you tell me it does, we will do it.

605 K. Aylward I don’t know that it requires a vote.

607 Chair Ellis Why don’t we err on the side of caution. Is there a motion to approve the submission?

MOTION: Janet Stevens moved to approve the submission; Jim Brown seconded the motion; hearing no objection the motion carried. **VOTE 7-0.**

613 Chair Ellis I do want to note for the record that we have complete attendance of the Commission. Kathryn, do you want to now talk about the proposed 07-09 budget?

616 K. Aylward First, it is numbered page 1 after the E-Board materials. Just to give the Commission and the audience an understanding of how the budget is built and what our limitations as an agency are, it starts out with 2005-07 Legislatively Approved Budget. Now these numbers here, I have only listed the General Fund dollars. That is really what is at issue. Our Other Fund limitation has to do with the Application Contribution Program. So in terms of the General Fund dollars, we had \$175,300,000 last time. Then they take a look at that and they say, “Well, we know you are going to need about 14 percent for state employee increases,” and that comes out of the payroll system. They basically tell you, “We see all the people you have now. We know, given their steps and other things that have been negotiated, like an additional top step for state employees, that is going to cost an extra million.”

644 Chair Ellis Is that just our FTE?

644 K. Aylward That is correct.

644 Chair Ellis It is LSD and OPDS?

646 K. Aylward LSD and CBS, correct. So they tell us that figure. On top of that, you add what are called Essential Packages. So there is a vacancy factor where they basically look at: “Did you have more vacancies than we thought you would have and, if so, then we will take the money back, thank you.” So that is a negative for us. They will pull some money out. We have had a high vacancy rate, at least in LSD.

658 Chair Ellis If those positions are all filled at the time the session starts, will the same thing happen?

[Tape 2; Side B]

044 K. Aylward What they do – it is called the PICS system, the people system – and, in April of even numbered years, they do what they call the PICS freeze. They basically take a snapshot because they know, for building your budget that people would be saying right up to the last minute, “Oh wait, that got filled” or “One more vacancy.” So they take that snapshot, and that is what they are comparing biennium to biennium, looking at how many vacancies were

open longer than six months or 12 months or 24 months. They give you a little worksheet and it tells you, “Put this number here, this number here and, whatever drops off the bottom, is what you have to pull out of your budget.” There is not a lot of choice. I did talk to DAS and explained to them that, “Yes, we had a large number of vacancies, but it was because of this reason and that reason. It is not representative of what we will have in the future.” They took that point and so this number, \$47,000, is lower, or higher, I suppose, because it is a negative number. There is some room to explain why there has been a huge turnover in Legal Services Division, compared to earlier biennia. You have a little bit of influence there, but they basically tell you, “That is what you have to pull out.” The 030 package, Inflation and Price List Adjustment, most of what you spend your money on, other than people, are state government services charges. As soon as all the other state agencies decide how much they are going to charge you, like the \$128 an hour that Department of Justice attorneys will be charging us next biennium for legal representation, we will have to pay them. The archives cost and capitol mall improvement –planting trees, everything that all state agencies get assessed each year – every agency that has a little assessment has a new rate structure. So they tell you that your agency has to contribute X dollars next biennium for all these state agency services. They also assume that your rent is going to go up three percent, which is fine because ours is; and inflation on your services and supplies, which for us is 16.8 percent of our people costs are our services and supplies. They are saying that you can add 3.1 percent to that. So that figure, that \$696,000 that is inflation, does not include inflation on the account. That is just inflation on our operating pots of money and the increased price list. Again, those numbers, they just tell you what they are. Mandated caseload is for agencies like ours, where we have services that we are required to spend money on, that don’t relate to our operations and our people. So that is where we would be able to have input – you know, last biennium, what we were funded for in 05-07 was 340,000 cases and, next biennium, I think there are going to be 10,000 cases more. So I need the dollars for 10,000 more cases. That is where you would put changes in your budget. Likewise, it could be a negative number if you expect caseloads to drop off. In this budget, the mandated caseload package is nearly 24,000,000. A lot of that is, as we have discovered and as we are presenting to the E-Board, simply looking at the number of cases you have. But it is not a good predictor of what your expenses will be. We started to be a little more sophisticated in our approach to looking at things. For example, you see these statistics in Washington County between the 1990 census and the 2000 census: their Hispanic population grew 245 percent. Now, if you just imagine that our caseload is all English speakers and we have 340,000 cases, and next biennium they are all non-English speakers and it is still 340,000 cases, we are going to need more money for those cases. That is clear. So only putting caseload into that mandated caseload package has caused us, year after year, to have this kind of shortfall.

- 098 Chair Ellis Is every case weighted the same, when you talk about caseloads in these contracts?
- 100 K. Aylward That is correct for the trial level, non-death penalty caseload. That is the yard stick that we have historically used as a predictor of costs.
- 101 Chair Ellis So a misdemeanor and a Measure 11 are weighted equally.
- 103 K. Aylward Yes. So some of the other things that are included in mandated caseload, obviously, the things that are in the Emergency Board letter. The fact that death penalty cases are ongoing. In fact, it is kind of interesting. I don’t know if you have time for statistics, but there have been 656 aggravated murder cases filed since 1984. Seven of those were acquitted. Fifty-six got the death sentence. Out of those, fifty-six two were executed and one died. Four have now moved through the system and are in the federal system. So out of the 56 death sentences, we still have 49 of them around in some form. They are either on appeal or post-conviction relief or appeal of post-conviction relief. But we are still paying for those cases, in addition to the 20 to 25 new ones that come up every year. This stuff is adding up. So what else is in there? Increased interpreter use; and I put something in there assuming that the Commission will want to increase the mileage rate. It is currently 40.5 cents for our providers

and employees. The federal rate is currently 44.5 cents. I assumed that the Commission would like to be able to increase that to 44.5. So I have built that into our budget as something I think you will have no choice but to do, at least by the beginning of next biennium, if not sooner. The non-attorney provider costs, all the reasons that things are going up beyond the inflation rate that they allow. After you add all those things together – the ones we have no input on and the ones that are mandated by actual numbers we see now – then there is a big dark line. Everything up to that point is our Essential Budget Level. Anything beyond that that you want to do has to go into a Policy Package. So it then becomes a question of, “We don’t have to do this, but we think it is good idea, and here is how much it will cost.” As many of you know, traditionally, a Policy Package always sounds optional. So when money is short you sort of say, “I agree with you, it would be nice to do that, but it’s optional and we don’t have the money.” That is the problem we have always faced is: our Policy Packages for changing rates are considered optional. Some of the Policy Packages we have in there now, number 100, Juvenile Dependency, as Commissioner Potter pointed out, is different than some of the figures that were provided in the juvenile dependency report earlier this biennium. But the question asked for the report was what would it cost now, not what would it cost next biennium. So those figures were based on current costs for attorneys and, of course, we know if they were employed attorneys, they would be costing us 14.67 percent more next biennium. The juvenile dependency package actually includes one Senior Deputy, and three Deputy Defenders II to handle appeals of juvenile dependencies. That figure that is in the policy package, the \$958,000, does not yet have removed from it the savings that we would have from the Account. I will do that. Technically, it is a little complicated because you have a Policy Package that takes from two different allocations. We will figure out how to do that. The employee compensation one is the same as we put in every biennium because we would like to have the Legal Services Division attorneys be paid the same as Department of Justice attorneys. That figure is simply generated by the payroll system. Likewise, we have no input. We just say, “These people match up to these people,” and the system tells you what the differential would be in their salaries. Post-conviction relief is for trial-level full-time attorneys to be employed by our office. The structure is a little bit different, and that is why it is a little bit less money. We have put the package in with a Senior Deputy Defender, a Deputy Defender II and a couple of Deputy Defender Is – more the notion if you have somebody experienced and can train people up for this work. Then on top of the cost of these people, you add 16.8 percent for services and supplies, which is the percentage of services and supplies in our current budget. The last one is “parity.” Looking at page two, I separated out which portion of the budget is the Account because I think, for a lot of people, your operating expenses, we don’t care about: how much money is the Public Defense Services Account? So the Account last biennium was \$166.5 million. Mandated caseload goes into the Account because it is not money for funding anything that happens in our office. So that is just shy of \$25 million. Then the Policy Package that goes into the Account would be this parity package.

- 176 Chair Ellis Let me suggest we use a different name, and here is my thinking. Parity is driven by what the DA’s are paid more than our comparable contractors. I don’t want to pitch it quite that way because that says, “Well, we could solve that by reducing the DA’s pay,” and it sounds a little competitive. What I really want to call it is something like “Contractor Compensation Equity.”
- 184 J. Stevens How about something like “Family Living Wage.”
- 185 Chair Ellis That is what the word “equity” is intended to pick up. I may not have the right words, but I would like to find a phrase other than parity.
- 187 K. Aylward I just picked that because that is what we did last time.

- 188 Chair Ellis Sure, and part of my reasoning is it didn't work last time. It is a word that has been used every year that I have been involved in this, and it hasn't sold. I am happy to hear other thoughts, but you get my drift.
- 193 K. Aylward Did we settle on something?
- 194 C. Lazenby I like the "Contractor Compensation Equity."
- 196 K. Aylward But it is not just contractors.
- 198 G. Hazarabedian "Public defense provider."
- 200 Chair Ellis "Provider," I am okay with that.
- 201 K. Aylward I just put in \$20 million as a place holder. It is not my opinion or anything. If you look on page three –
- 204 C. Lazenby I think that number should be a little more precise. You have these disparities that are here and you should be able to make some sort of projection, rather than just have a plugged number.
- 208 K. Aylward That is right, and you will be doing that for me today. In the next 30 minutes, you will be telling me what that number is.
- 208 C. Lazenby Talked myself into a job, didn't I?
- 208 K. Aylward Well, it can be done collectively. The Public Defense Provider Compensation Package, 103, has three components to it, the same as last biennium. One is for public defender salaries to match that of the deputy district attorneys in their counties. The second one is to increase the hourly pay for hourly paid attorneys. And the third is to increase the rate paid to investigators. If you look on page four, this is the portion of the package that pertains to the first part, about \$6.2 million. When we say "full-time," what it means is employees of public defender offices.
- 220 Chair Ellis When we use the word "average" salaries how are we defining that?
- 221 K. Aylward We get the information from the contractors in their contract. They tell us the total amount they pay for salaries and the total number of attorneys, so that becomes their average. With the district attorney's office, there is a survey that I get the information from, which actually specifies one to three years experience, three to five and seven to 10. I went through and compared the years of experience of the actual employees in public defender offices and lined it up with what their salaries would be. So, in other words, even if the district attorney's office says "Well, we pay our entry guys \$3,500 a month." Well how many entry guys do you have? "None, we only have the senior guys." Then that maybe isn't comparable to MPD, which has a whole lot of entry level people and fewer up at the top. We did try to take that into account. Not surprisingly, it is a bigger number than last time because the gap continues to grow.
- 239 Chair Ellis I thought that was a very impressive data. We have seen it for the Portland metropolitan area. I don't think I have seen it in the other areas where we have PD's. I was impressed with the consistency.
- 243 K. Aylward Well, it is horrifying, frankly. You look at some of those and you think somebody could make \$37,000 a year more doing essentially the same kind of work on the other side. On page five, I have pulled together information, which I would like to discuss right now, about hourly rates for attorneys. The current hourly rate, our guideline rate, is \$40 an hour for non-

death penalty and \$55 for death penalty. That rate went into effect June 1, 1991. So looking at the Portland/Salem consumer price index, if nothing had changed and these rates had kept up with inflation, that is where we would be. I used a projection of 2.6 for the years where we don't have information. It seems reasonable. In any case, you could use 2 or you could use 3; it only changes it by pennies. So give me a number. Part of this conversation is, in my view, the very least that you have to do is make people's situations not worse than it would have been. In my view, just keeping up with inflation is the starting point. Then you have to look at the supply and demand issues too. Can you find attorneys? Can you find enough attorneys? Can you find good attorneys? How much would you have to pay? Let's say keeping up with inflation would put you at \$62 and \$85. Would I be able to find enough attorneys at \$85 for death penalty cases? I think not. It would help, and it would help tremendously. It would be okay for awhile but, given the fact that many of these cases take two qualified attorneys, there has to be a lead counsel and co-counsel – certainly at the trial level and often times at other levels as well. I am eventually going to run out of supply.

- 273 Chair Ellis Are you able to give an aggregate amount, assuming that we are able to estimate the number of hours we are paying for hourly paid attorneys, both the consortium hourly and the appointed hourly. Are you able to run numbers that would tell us in aggregate dollars –
- 282 K. Aylward Yes, on page six. It is like a menu. What would the cost be if you made the non-death penalty rate \$50 and you made the death penalty \$75? It is a nice easy number, \$50 and \$75; and that would cost \$5.5 million. I wouldn't approach it in terms of how much money do we want to ask for. I suggest you figure out the appropriate hourly rate.
- 291 Chair Ellis But the logic is pretty darn powerful. I think non-lawyer, unsympathetic legislators would recognize that, if in 1991 it was reasonable to pay \$40, then why do we stop short of at least an inflation adjustment? That is what ought to happen.
- 297 K. Aylward I don't know. We can see what happens in the future. But I know historically that our budget had always been underestimated because we weren't considering things like Oregon is number two in the nation for Russian speaking immigrants. Who in our office was thinking about stuff like that? It didn't come into the picture. So, because we have always run short of money, we have never finished a biennium saying, "Wow, I have got a dime left; that is great." We are always in the red. So what happens is that all we can do is say, "Well, we have these contracts and we are committed to this money. Even though there's 2.4 percent inflation, some portion of that ought to go to the \$40 an hour guys. But we don't have to. We can still find people that will do this, so let's just leave them at \$40 instead of \$41.75. You know, big deal, because we need this money over here for things that we can't avoid paying and we are trying to stay within budget." We have done such a good job at that, so now the \$40 an hour is just unsupportable. I think in the future, now that we know how to better anticipate, even if you say, "Forty dollars an hour, guess what, you got 3.1 percent, so now it is \$41.23," or whatever it is, I think you do it and you do it every single time. Don't allow us to lose ground on that. You were saying surely anyone could see this.
- 325 Chair Ellis That isn't exactly how I phrased it.
- 328 M. Greenfield It would be fair to say that, if we ask for and receive an increase, and we base that request on these rates, that is not a direction from the Legislature or an intention on our part that these are going to be the hourly rates for every attorney that we contract with. All that does is just establish a budget amount and then we continue to negotiate with providers. Is that right?
- 334 K. Aylward I think that would be up to the Commission. One of the things that this model doesn't show and my recommendation would be that, instead of having two tiers, you actually have three. You have something like \$50, \$60 and \$75, or some range of cases where you have got something else. Now I don't know if we go to the Legislature and say, "We have to be able to

pay \$50 and \$75 to do this and they give us the money and we say, “You know, I think we are going to go to \$45 and \$80.” I don’t know if that is okay.

- 343 M. Greenfield It is okay to go to the Legislature and say that we are asking for an amount of money based on this particular variable, but that we are going to continue to do this on a market place driven and bidding basis, if that is the basis we are going to use. I am just wondering if Peter has a recommendation.
- 350 P. Ozanne I think probably, pragmatically, we have to say we are negotiating with our contractors. I think we would still negotiate if we have established the floor. In other words, establish quality standards and an associate compensation rate through which no one falls. Right now, the negotiation process can lead us to sacrifice quality in search of the lowest bidder. I think we have to maintain a floor with quality standards and then you can have some negotiation within that range, based on local circumstances, such as prosecutors’ charging practices. But I don’t think you want to get into a situation where anyone will do the work, no matter the level of quality. Historically, that is what the Legislature has figured: Someone will still do the work. Somebody has to say “No, we won’t fall below this level of quality.” Somebody out there will always be willing to do the work at \$40 or \$35 an hour, but quality won’t be maintained. So I am happy with negotiations, as long as there is some floor of minimum quality with minimum rates.
- 364 M. Greenfield Do you have a flooring recommendation?
- 366 P. Ozanne We probably have to do it pragmatically by looking at the bidders and saying, “Based upon what we know about you, we are not going to do business with you at this rate.” Ideally, I think we should have an ongoing quality assurance process that is adequately staffed with personnel in our office.
- 379 J. Potter Mike, are you asking him, based on the information that we have, what the floor might be? I thought the answer would logically be based on the CPI and based on \$40, your floor would be \$60 and \$85.
- 386 P. Ozanne Sorry Mike, I thought you were asking about the floor of quality. North Dakota just set their rate at \$90 an hour. North Dakota does not exactly have a thriving economy; so why are we talking about \$63?
- 392 O. Thompson Olcott Thompson, again, from Marion County. I would urge you to take a longer view and to go back to when it was \$30 an hour. I won’t guarantee my math but I think the rate, based on inflation, would now be over \$80 an hour. The \$30 an hour went into effect January 1, 1979. It should be over \$80, based on inflation, if my math is correct.
- 402 K. Aylward I don’t believe it was ’79. The state was –
- 403 O. Thompson It was ’79.
- 404 Chair Ellis I think there is another change that has happened. These 16 to 17 years at the \$40 rate, I would bet that a much higher percentage of providers are now the equivalent of full-time providers. I would bet that, back in 1990, a lot of what you were looking at was lawyers who did this work as incremental to a general practice. To me, that just drives the analogy. If you had this service being provided by state employees, this inflation rate would have been built in and we wouldn’t have this situation. What we have – and I think it is a system that is working and I think the state has a lot of reasons to be very proud, and I have certainly been an advocate of keeping the private contractor, privately appointed lawyer component – is a system of people who are now specialists in this area. So the quality is higher than it was in 1990. You have people who are at 100 percent of their practice devoted to public defense, which means their dependence on this is 100 percent, and the analogy to the service being

provided by state employees is very powerful. To me, this is just an easy argument. A legislator ought to look at this and say, "That is absolute, common sense." They ought to think of this like a budget change and not a policy package change.

- 438 J. Hennings Barnes, one thing that is sort of an elephant out there is that there is now an ABA opinion on caseload. You establish a caseload – actually by policy within this Commission – that I think is drastically too high. But you still established a number and we are at least 30 percent over that number. One of the reasons we are 30 percent over is that there was never any money and there was never any cost-of-living increase. The only way that we got more money was to take more cases. Now, we are at least at 30 percent over and that leads to a quality issue.
- 450 Chair Ellis That leads me to the notion that you do this change plus 30 percent.
- 452 J. Hennings I understand that, but I don't think you are going to get there with this Legislature. But I think something that you are going to have to look at is whether or not you should contract beyond what you said was a reasonable caseload. If you don't do that, you are not going to have anyone who is going to come to the game because it is no longer a living salary. If you are really talking about fairness, it is fairness to guarantee quality services, which means fewer cases. You heard this morning about the problems in the juvenile area. It is the same problem in the adult area. We have pushed to do more and the juvenile area has been aggravated because more is being expected. The law is becoming much stricter and much more insensitive to what is going on. We have removed all the resources and the lack of resources now fall on the defense bar, such as when a judge turns to us and says, "You defense attorneys, go out and find some program" that 10 or 15 years ago, the juvenile department would have done. In Multnomah County, they are absolutely destroying a very good system because it was all funded with county money that no longer is there. The state won't pay what their fair share is – what they agreed to pay on the adult side to house people locally. We have run out of money. It seems to me that it then all comes down to the defense attorney sooner or later. It is your client and, if you want your client to be treated fairly, you go find something.
- 481 C. Lazenby Jim, I agree with everything you say, except for one piece of that. That is we are not running out of people who are willing to do the work. Every time you have an opening, you get flooded with lawyers that want to escape the law firms and want to come in and do this stuff.
- 484 J. Hennings You are wrong because we are not getting flooded any longer. In the juvenile area, in the last four years, I have lost tons of people because they can no longer afford to do it. When the AG's office can double their salary immediately, they go to the AG's office. I have lost two people within the last six months to the AG's office.
- 492 C. Lazenby That is the type of thing that you would have to build a case – to start speaking to the Legislature so that they can see that this is a looming problem in terms of the state meeting its constitutional obligations. Because I think there are still lots of younger folks that want to try to do this work. I understand what you are saying about not being able to afford it, but it has got to become more tangible.
- 498 J. Hennings There are individuals, but they are not going to have a system behind them that will allow them to do it; and they are not going to have the educated and trained people who you are asking for in the juvenile area.
- 502 Chair Ellis Part of what I think is realistic is to assume for the moment that we put in a package that has the 6.2 for the PD, 21.6, which is \$70 and \$95 for the hourly, and 2.6 for the investigators. You are up to 24.2. Now assume for the moment that miracles happen and somebody says, "okay," because these are pretty powerful arguments. My prediction is that incremental money would be spread between increasing rates and reducing caseloads. It wouldn't all go to increasing rates.

- 517 J. Hennings Whatever it is, it is a multi-session issue because we have spent many sessions getting here without getting the kind of increases we should have. But I think the Commission needs to be a little bit protective of the field in terms of numbers of cases expected and quality level expected, and a willingness to pay for those things to guarantee quality.
- 523 Chair Ellis I am planting a seed. I don't want the provider group to think that, "okay, we get this money based on this argument," which I think is a very powerful argument, and that, immediately, everybody's rate goes up by that amount. I think there has to be a balance between caseload and rate.
- 531 J. Potter Isn't this a two-step process that we are looking at potentially? One is what Kathryn is presenting to us with all these numbers to get it up to some level of cost-of-living increases, and there can be a package of dollars. The second issue is the caseload increase, based on the ABA ethics opinion that the bar will vote on. The Bar will decide if that ethics opinion applies to Oregon lawyers and we will do some sort of process of determining how fast that goes into effect, if it goes into effect. Then it becomes a caseload argument that goes to the Legislature to say that we did the first step, we did these numbers, but caseload is now a totally separate package. Kathryn has always said to us that caseload arguments are ones that she can make and are usually addressed. Pay raise arguments are ones that we make and that are never addressed. I would rather deal with these things as two separate issues, recognizing that the caseload issue is in the background, recognizing the Bar is going to vote on it and we can tell the Legislature that something may happen: "We are watching it." We are interested, clearly, but at the moment, let's deal with this. I fear that if we try to mesh them together, going to the Legislature in one big argument, it just gets lost.
- 564 J. Hennings I completely agree with you, but I am making the point that I think the Commission has to come back to all this. How you can guarantee quality? One of the ways is to make sure you have a ceiling on your caseloads. The other is to make sure that you have a living wage out there, so that people will do it and stay at it long enough to become experienced in order to give you the kind of quality you want.
- 571 Chair Ellis I think Commissioner Potter and I are saying the same thing. I think I hear him saying that the argument that has the best chance of resonating with the Legislature is this one. Ann, you had your hand up?
- 580 A. Christian No, it is no longer relevant.
- 581 Chair Ellis You just bought the piece of art behind me.
- 582 A. Christian I am indigent and can't afford it.
- 584 P. Ozanne We have talked a long time about these hourly rates, and I agree with everything that has been said, including John's two-pronged approach. But Barnes, when you came up with the number, was it \$70 and \$95? I just wonder if that looking with our mind's eye at the ultimate number – the total number. It seems to me that, as long as our system continues to seek rates that are so far below the market rates for attorneys, we are inviting, forever, a view that this kind of legal service can be funded by the Legislature on the cheap. In other words, is anybody in a law firm really, on average, charging clients \$70 for cases versus \$95? The AG is charging over \$120. Aren't we being hoisted on our own hourly rate system? Why did you land on the \$70 and \$95?
- 607 Chair Ellis I did it scientifically. I took Kathryn's estimate as of the end of '08 and went to the next highest rate; that was on her page six and I did the same with the PD.

- 615 K. Aylward Could I just point out that these costs and figures do not include the Marion County Association of Defenders or the Yamhill County Defenders. They are hourly paid, but some of them are hourly paid more than this. In other words, if you decided we want the \$40 to go to \$45, and if MCAD is already getting \$50, then I am not assuming that MCAD needs to get any more just because everybody else finally got to \$45. If you decide that the \$40 should go to \$55, then I would have to look at MCAD and include their costs as well and the Yamhill County Defenders. So I haven't put them in here pending whatever you settle on. But know that whatever you settle on, the final dollar amount will be more than that.
- 634 S. Gorham Two things about that: one, you also don't show the Marion Public Defender, or whatever it will be called here at all, so that has to be figured in. I think I agree with what Kathryn said before and what Peter said. You don't want to keep the low rate. I think you have to ask for at least a more reasonable rate. You are never going to get to what is parity with the private bar, even if you are talking about \$70 an hour. I don't know how you use the argument, but you are spending at least half of that for overhead costs if you are in the private sector.
- [Tape 3; Side B]
- 047 S. Gorham I think what I heard Peter saying is that even though Chair Ellis used a scientific method we should go to something more like what North Dakota is doing. Maybe you split you the difference and go to \$80 an hour, rather than \$70.
- 051 M. Greenfield It seems like we have two problems. One problem is the hourly rate and another problem is the caseload. The firm data that we have is simply a math problem, which tells us the hourly rate at some point in time and what it would be for the coming biennium. That is a marketplace issue. The argument that comes back is that, apparently, we are giving them enough money because the work is getting done. A way to maybe approach it is to say that the firm figure that we know about is what the rate would be today if it were adjusted for inflation. What we don't know is what the ABA is going to do; and what we don't know is how the marketplace would react to more resources. So what we would like to do is have the Legislature allocate the amount of money equivalent to increasing to the inflated amount, reserve a portion of that in the emergency fund, and let us go out and negotiation and see what kind of a services we can purchase for that, and how we can affect the caseload with that. We will come back and report that to you, and then see how much of the reserve we need. It is an approach that tries to grab the one thing we actually know about, but we don't guarantee that that is going to be the rate. Just let us go out on behalf of the judicial branch and the Legislature and see what we can get, and see what we can do about the caseload, and then we will report back. That is an approach that probably won't succeed but –
- 072 Chair Ellis My concern with Steve and Peter's point is, if we go that route, we lose the simplicity of the argument. I really do think that legislators would understand what we are saying by tying it to 16 and 17 years of being static in an inflationary environment. But if we start going for, you know compared to the private bar, even comparing it to the DA's in that context, we are going to get them saying that all they want is money. I think the presentation is so potent. John, you left me a voice mail. Did you want to make some comments now or as a separate piece?
- 083 J. Connors Now would be great. And if it is alright, I asked Ann and Greg to join me.
- 086 Chair Ellis Certainly. We have two empty chairs all lined up for you.
- 087 J. Connors We are here on behalf of OCDLA with some information and then an offer to help in any way we can. The board recently had its three-day retreat and I think it is fair to say by far the most important issue for us and our membership right now is the compensation issues. In an effort to address some of those issues, we created what I think is a very strong committee to work on them. The people on it have a wide range of experience, and represent the state pretty well, I think. It is chaired by Gordon Mallon from eastern Oregon, who I think you know has

soldiered for a long time with these types of cases. In addition to forming the committee, we have drafted a resolution that you have in front of you. Our plan is to present that to the House of Delegates in September. We are pretty confident that they will adopt it, so we wanted you to know about it since it asks the Bar to officially work with the Commission and OCDLA on these compensation issues. I think implicit in this resolution is the need for the Commission to submit as ambitious and robust a number as is possible in terms of the funding. We really appreciate the careful, detailed work that Kathryn has done on things like tracking the death penalty costs and the added costs for appeals. We really applaud the discussions the Commission has had about things like “Jessica’s Law” and the 30 percent overage in terms of the caseload. But we really feel like it is a critical time right now. It was unanimous among the board. In terms of the traffic on the OCDLA’s list serve, this has been a dominant issue. People are struggling and are looking for leadership to do something in this area. If there is any way that we can help and, as I said, I think it is a good committee. We are certainly willing to go to the Legislature. Both Ann and Greg have been parties to the discussions and are both on the committee and are available to answer questions. Greg may have some additional specifics about areas of concern.

- 115 G. Hazarbedian Thank you, Mr. Chair. First, let me say for those who didn’t know that John Connors is the OCDLA president. The request that we have is that, if you read our resolution – the resolution which we think the House of Delegates will pass without a lot of drama – it instructs the House of Delegates to make the Oregon State Bar work with this Commission and OCDLA to put together a proposal for fair compensation. Fair compensation is the title and right away you were talking about equity. What we think is that adopting a policy package with minimums of \$60 an hour for non-death penalty work, \$85 an hour for death penalty work and investigative increases of \$35 for non-death and \$45 for death would be the minimum that the Commission would want to seriously consider at this time, so that the Commission is seen as taking a step in that direction, ahead of this being passed by the House of Delegates. Clearly, the Commission and everyone in this room wants to solve some of the problems that we have had with regard to compensation for public defense providers. That is why you all volunteer to serve on this Commission. There is no question about what the desire is in the room. But there is some debate now about what is the best way to get there and we think that adopting a policy package with the minimums that I just set out would be what we would ask you to do today. I also agree with Commissioner Potter’s statement that the caseload piece, as described in the ABA ethics opinion and that may or may not be adopted by the Oregon State Bar, is a separate piece that we can come back to after that happens. That is all I have.
- 139 Chair Ellis Why do you go to \$60 and \$85?
- 141 A. Christian We say “at least.”
- 141 J. Connors We hadn’t seen Kathryn’s report.
- 141 G. Hazarbedian I don’t want to speak for the whole group in terms of what logically we individually used to get here. I can tell you, personally, that I think there is a much higher chance of getting these numbers because, as you have said a couple of times today, they are just highly defensible and common sense by getting back to where we started from. I think I would rather see us get that kind of package and achieve it, and then propose a package that is not achievable. I guess that is where I personally come down – practicalities, I guess.
- 151 A. Christian Part of when I was looking at is trying to come in within the \$20 million dollars. It rings true to what Greg was saying, what is possible with the Legislature as a first step. Our resolution anticipates that the Bar, criminal defense lawyers and the Commission would work on more than one biennium to reach the compensation levels and address this caseload issue. I am here because Paul Petterson from Multnomah Defenders had to be in court today. Our Board of Directors for MDI has decided that, for any meeting that has a potential impact on MDI,

either a board member will be here or Paul will be here. I had planned to be here today and I have enjoyed working with this group. I was talking with Paul last night, just to touch base as far as what is going on, and I was informed that the most senior juvenile attorney at MDI has submitted her resignation. This is maybe six months from when the most senior, at that point in time, juvenile lawyer submitted her resignation. We have had a huge turnover within a very short period of time. After I talked to Paul, I talked with another board member about isn't it a shame that we are losing the second senior attorney, actually to the same law firm that has taken our two most senior attorneys. And the other board member commented that it is actually good because the caseloads are so high that anyone who has been doing this juvenile work for, I think she had been there four or five years, needs to move on because it is so hard and the caseloads are too high. I bring that up to just say to all of you it is real life as far as the difficulties that at least the public defenders are having in retaining attorneys. There is some good news in that the Oregon State Bar is working on this issue and has put out a draft for a loan repayment assistance program for Oregon lawyers in the public sector. I think that will help a little bit. I agree that the House of Delegates is likely to pass this unanimously. I think it would help those of us who will be there – I am a member of the House of Delegates – to at least have some reaction that can be shared with the other delegates from the Commission, because this resolution would require the exertion of some resources in a very short period of time. If it passes – I think it is September 17 that we meet – the resolution currently reads that the coalition must issue a preliminary report by November 10. We are going to be submitting a friendly amendment to extend that a week, but it is an extremely short period of time. I guess what I would ask, as a House of Delegate member who probably will be addressing this issue, are their concerns on the Commission? Do you look forward to the opportunity of working with the Oregon State Bar and OCDLA on a plan wherein all three entities come in with open arms during budget hearings and say that this is what is needed; it is not just that greedy lawyers are needing more money.

203 J. Potter

Do you want a motion?

204 Chair Ellis

To put it in prospective, in my own view when the Commission was formed – whenever it was, six years ago – it was a difficult sell to say, “We formed the Commission to improve the system but, before you improve the system, pour more money into it.” Then we get to the next biennium and we hit an awful period in the state’s economy. It is an income tax-driven state and the income revenue was way down. It was all we could do to hold the line. This to me is a point in time when you have two things, really three things, coming together and it is sort of a sun, moon, and stars alignment opportunity. You have the state revenue picture that is very positive. Secondly, I think we have a lot a lot to say, and I think the Legislature is going to understand this system is much stronger. We have had a lot of hard work happening in the last several years that, to me, have tightened it up and improved the quality and made this system much more cohesive. Then you add to that this argument that we are now talking about, which is against the background of static rates for, by the time the biennium ends, 17 years. That is just a remarkable combination of facts. So I do think this is the year to make the move, and I think it is the year that has the best opportunity to make the move. Speaking just personally, yes, we are certainly willing to have a very cooperative mode. We have to be a little careful because we are a public entity. We are not going to cede our obligation to be objective and fair. In the sense that I think the objections outlined in the resolution, I didn't read anything in there that troubled me or that I didn't agree with. I think you can take all of this back and say the climate is very positive.

243 G. Hazarabedian

I wanted to make the comment I didn't make earlier that I meant to; and that is the talk about the fact that we can always find people who will do the work for whatever price is to be paid. One of the reasons that this is true is that the federal government has taken the position that any talk among contractors about refusing to work until a certain amount is paid is considered an antitrust violation, as it was in Washington State not too many years ago. I just want to throw that point out there. I think if there were not those restrictions on us talking amongst ourselves in the contractor community, the argument that there are people willing to take it for

whatever rate you pay might not be made quite as peacefully as it is made now. Nonetheless, those restrictions do exist and no one in the room is going to be breaking them. I just throw that out for consideration.

- 255 S. Gorham I just want to ditto that comment. We can't talk about it, but there is definitely unease in the provider community about continuing to do the work. Frankly, I didn't see the language in the resolution, but I think the dollar amounts are too low. I think, Mr. Chair, your dollar figures are much better, especially since, frankly, they are going to try and cut it down anyway. Going with what is the absolute minimum increase seems to not be an effective way of going to the Legislature. If you ask for \$60, they are going to give you \$50. If you ask for \$70, they are going to give you maybe \$60.
- 271 Chair Ellis If you ask for \$80, they will say that that is ridiculous.
- 271 S. Gorham So, if you ask for \$70, maybe they will give you something close to \$70. Those are my comments. I think you are getting to the point with your stars alignment. It is very hard to get people to do this at the rates that we have; very difficult.
- 276 A. Christian Just to clarify, Mr. Chair, since Steve hadn't seen the resolution: the resolution has no dollar figures in it.
- 279 Chair Ellis I would be interested in discussion within the Commission.
- 281 J. Stevens I think it sounds good, but I worry that the absolute budget measure will pass and we will have to fight with teachers for everything. There are a lot more school kids than lawyers. I am all for it and I am all for making the argument. But realistically, I would hate to think that we really think that we are going to get very far.
- 288 Chair Ellis Any other optimistic remarks?
- 288 M. Greenfield I would just comment that the number that we are talking about here, from the prospective of budget makers, is really pretty small.
- 292 Chair Ellis I haven't done the math, but my numbers would be a percentage on our current budget that is not radical.
- 295 K. Aylward Based on history, it is kind of radical. Last time we got \$175 million and now we are asking for \$225. That is a lot. That is 35 percent.
- 299 Chair Ellis It is only 24.2 on the piece that we are talking about.
- 300 C. Hazarbedian On the policy package.
- 301 Chair Ellis The equity package.
- 301 K. Aylward So, are you asking me how much our equity package has been in the past? You are just saying that the policy package portion of the budget is not huge. It is twelve percent more.
- 305 Chair Ellis There have been two numbers suggested on this hourly piece, which was \$60 for non-death penalty and \$85 for death penalty. My suggestion was \$70 non-death penalty and \$95 death penalty. Is there reaction within the Commission to one or the other, or some other combination?
- 313 C. Lazenby I agree with the comments that somebody made before me that did sound like a bit of an auction again. The higher you start in a reasonable range is better, so I do like your numbers better. I just want to go back to what Mike and I had both said in a different way, which is

that I have heard this for years and lived this for a few years. How can anybody work and live for \$40 or \$30 an hour? But as Mike put it just a minute ago, in the Legislature's experience, they deal with a broad range of issues and they just look at these things kaleidoscopically as they come by. And this issue is: "Yeah, we hear that, but people keep doing the work." I understand about the legal restrictions that are there. But until something other than reality becomes palpable to them, it is not going to allow this issue to compete with teachers and all the other pieces that are out there. Frankly, let's face it: you don't have a constituency in that building. Your clients don't have a constituency in that building. I have been involved in several processes where the solution was to make your clients pay for it. I just think that is a reality. We need to come to grips with this. But I agree with you that, as the economy improves, chances improve. As the lottery does a million and a million and half dollars a week –

- 336 P. Ozanne Off of our clients.
- 336 C. Lazenby I think you have got to continue to be wide-eyed and politically realistic about the nature of our chore.
- 343 Chief Justice De Muniz I want to say that I fully support the public defense community. I lived it as a young lawyer. The public defense community has carried the justice system on its back since I have been a lawyer, and before that. That reality needs to be ever present in these discussions, which unfortunately are similar to the ones I am having with regard to judicial compensation. One suggestion I might make is not to fall prey to the fact that the governor has already allocated 65 percent of the budget to education: it is to try to change the debate to say that there are these competing, equal priorities, as opposed to saying that we are taking something away from this. These are equal, competing priorities because, if the justice system is not fully funded, you can't provide restorative justice, as we found back in 2003. I think we have to develop that argument in much greater detail because that resonates with those people who, for example, hold themselves out as "my constituency is victims." When you explain to them that you are not representing victims when you do not fully fund a justice system, because those people cannot get restorative justice when you do that. Those are the kinds of arguments that we have to use to separate this part from saying that we are competing against the disinvestment in higher education and the failure to provide a stable funding system for K-12 education. All of those are laid at the Legislature's feet. I have been thinking about this 24 hours a day and there are lots of these problems. But I commend you for taking the initiative to stand up and pull this together. I will commit to you that, to the extent that I can do this, I will support the public defense community's efforts to do this because the state has to pay for these things.
- 381 Chair Ellis But you hope you are never asked the Sophie's choice question.
- 382 A. Christian But now he has the Commission, so he is not in that real life position that the former Chief Justice had, and thank you. I should tell you that when our committee most recently met we were talking about budget packages, and this type of thing and we really started talking about the fact that judges need increases in salaries. We haven't decided yet as far as district attorneys. I think in rural Oregon there are some real issues. I think, at least I am gravitating as one member of that committee, toward a system approach next session.
- 393 Chief Justice De Muniz Our civic education is so bad that I have received letters from citizens asking me to advocate on behalf of the district attorney's salary problems.
- 397 G. Hazarbedian Would it be appropriate to see if one of OCDLA's fiscal lobbyists, Bill Linden, has a comment on the numbers we are talking about?

- 400 B. Linden I would be happy to share some thoughts with you. I think there is a compelling case to be made on the merits why a significant adjustment is needed in compensation for contract lawyers, public defenders, hourly rate attorneys, and investigators – the whole gambit. I think that this session is as good a session to push that envelope as far as we can, as any that we have had in probably the last decade. One of the things I have been thinking about, as I listen to your discussion and as Chief Justice De Muniz approached this just a minute ago, no matter what numbers you settle on, when you add those to the mandated caseload that is included in your essential budget level, you are going to have a fairly significant increase. If you will remember back to the last session, Governor Kulongoski, whatever happens in November, he will be the one who rolls out the budget. The Governor cut your budget last biennium without specification, but he just cut it by \$11 million dollars.
- 422 Chair Ellis We remember.
- 423 B. Linden What we ended up doing was spending eight months getting that \$11 million back, and we never got to the discussions about systematic issues about compensation and under-compensation that we have had forever. I would urge the board to think about a way to do it, and all of us individually who have any access or connections to do it. We need to communicate to the Governor that our expectation is that there is not going to be an arbitrary cut to your essential budget level, and that there will be recognition of the validity of the request in the policy package that deals with compensation. I think the Commission could go so far as to express to the Governor its expectation that your budget as submitted is going to show up in December in his printed budget, and it is up to the Legislature then to sort through the policy choices. Don't lose track of that in your session. We don't want to spend another eight months in that building just trying to get you back to where you should have started to begin with.
- 449 Chair Ellis Help me understand the time. When does the budget go to the printer? In the federal government that is the drop dead date.
- 451 K. Aylward It is grimmer than that. The numbers have to be in the system by September 1, and I just open it up and drop in the \$24 million or \$29 million and I am done, because it needs to be audited by DAS. They look at all these figures and ask, "How did you get your \$20 million?" Then they can pass it on to the Governor and say it has all been audited. It is all done and now he has time to tinker and chop. We don't actually have to print our budget binders until early December.
- 462 Chair Ellis You need a number today.
- 462 K. Aylward Yes sir.
- 464 Chair Ellis Let me make a suggestion. My suggestion is the number you should include so the plug numbers under the equity piece would be \$24, 243,113. So that you understand how that number was derived, it was the \$6,211,000 for 003, the PD piece. It was \$15,415,636, which is your number using a \$70 non-death penalty and a \$95 death penalty.
- 482 K. Aylward That number is going to change because, if you go \$70 and \$95, I have got to do something for MCAD and YCD. Their caseloads will make that number \$17 million or something like that, which was why I was urging you not to look at total dollars.
- 487 Chair Ellis Apply that formula because I want to give you something that you can take home. Then the last would be \$2,616,474, which is the equivalent piece for the investigators.
- 495 C. Lazenby Mr. Chair, can I ask that the investigator piece be a separate piece and be subject to a separate vote. My wife is an investigator with Multnomah Defenders, and I am unclear as to whether or not I have an actual conflict of interest in voting on this.

- 501 K. Aylward This is only hourly paid investigators. I wouldn't affect employees of public defender offices.
- 502 C. Lazenby Okay.
- 504 Chair Ellis That is where I would like to see us go. I don't know whether others on the Commission are comfortable with that.
- 507 S. McCrea So do you want a motion? So moved. [John Potter seconded the motion.]
- 511 J. Brown If I could just insert one observation. I am totally mindful of the history. I am cautious or even uneasy about too much emphasis on the cost-of-living analysis that gets us to where we are for two reasons. One is I would not like it said in future sessions that we adjusted our cost-of-living basis last year, so that is what we are going to do this year. I don't want to be a part of that precedent. And second, we adhere to our commitment to adequate compensation whether it is by reference to parity, and we want to stay away from that term, but whatever just to maintain our flexibility. What we are talking about is the most effective system and that is just my own personal budget note on this analysis, and I do support the motion.
- 529 S. McCrea I agree with that. Since I have been quiet this whole meeting, now I'll put in my two cents worth. I think that is an excellent point and, in addition to all the things that the Chief Justice said, there are two things that I think you need to do when we go to the Legislature. One has already been said, in addition to the issue about the number of cases. The second one is we need to talk to the Legislature about the fact that we have changed the process. We have changed the structure. And I know the first one was that lawyers aren't willing to take the cases, and I think we need to add that anecdotally. I am happy to write a letter and say that I pulled my associate off of doing court-appointed cases because I can't afford to have him do it for \$40 an hour. Those things are happening as everyone has said. We need to have a mechanism to collect those and present them. Then secondly, you need to be able to educate the Legislature that yes, people used to do it for \$40 an hour, and part of it was because, and I don't know how to phrase it, but they were, for lack of a better term, free agents. There wasn't the oversight, there wasn't the professionalism. I don't mean to denigrate anyone, but we have instituted standards and expectations and quality control. We have much higher expectations and requirements now than we have had. We are changing the quality of the system overall and that is something the Legislature needs to appreciate. That benefit also justifies something closer to a market analysis.
- 565 K. Aylward This budget does not anticipate or include any funding for increasing juvenile dependency representation. I think Joe O'Leary at the meeting in June in Bend told you that there was a work group that was working on this,
- 569 Chair Ellis Except in the appellate area?
- 570 K. Aylward Our budget includes having four appellate juvenile dependency attorneys, but not for increasing rates for those.
- 575 Chief Justice There is an appellate work group on juvenile dependency with Judge Brewer. It is very active and it includes legislative representatives who are very supportive of an increase in an hourly rate. It is driven for completely different reasons – nothing to do with the reasons that we have talked about here. But you find your allies in different places and that work group is an important group and someone should be continuing to monitor them.
- 587 A. Christian There is also a trial-level juvenile dependency group with the same four legislators. I am on that group for OCDLA, and I am thrilled so far with what they are talking about at the last meeting, which was about a week and a half ago. Representative Schaufler was the only

legislator who was able to make it and his eyes just kept getting bigger and bigger as we discussed rates of pay and caseload. It was a valuable experience.

- 599 P. Ozanne Chief, in our judgment, we thought the momentum should be coming from those folks in the Legislature. We are there every minute of the day, and we are cooperative and encouraging. But we thought: let's not get crosswise with our main budget process; maybe we will get both forms of funding. Kathryn is actually providing some numbers for a meeting coming up with these legislators in that regard.
- 607 Chair Ellis There is a motion pending. All those in favor say "aye." **VOTE 6-0.**
- 611 J. Hennings I would like to provide some information. This is a chart that I showed Senator Schrader about a month ago. This shows our office's salary scale compared to the district attorney's scale. I intend at your next meeting to have a comparison that would include the Attorney General's scale and also LSD's scale, which is important. Senator Schrader took one look at this and said "You are falling further behind." In fact, we are not only falling further behind on the straight line projection; in four years, a starting attorney and an attorney at the top of the scale in my office will be paid less than the starting scale as a district attorney. This is because there has been no increase. I give you this and I will be providing more of a report, but I just thought this would be very interesting. What it shows is the entire scale. It isn't just the average of where people are. It actually shows the change in the scale and the fact that the district attorney's scale is longer than 10 years.
- 646 Chair Ellis Someone who is better at data processing than me needs to have someone sit down, with page four that Kathryn had and this document, and make sure they are consistent. They seem to be within a range of consistency, but I can't break it down.
- 653 J. Hennings An average is very, very different than what the entire scale.
- 655 Chair Ellis I think both documents are making the same point. We now will go into Executive Session. Thank you all for attending.

[Executive Session convened at 12:35 p.m.]

Attachment 2

PRELIMINARY DRAFT

(September 6, 2006)

OPDS's Final Report on Service Delivery in Clatsop County & PDSC's Service Delivery Plan for the County

Introduction

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

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004, 2005 and 2006, the Commission completed investigations of the local public defense systems in Benton, Lane, Lincoln, Linn, Multnomah, Marion, Klamath, Yamhill, Hood River, Wasco, Gilliam and Sherman Counties. It also developed Service Delivery Plans in each of those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report presents the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Clatsop County's public defense system. The next draft of this report will set forth the comments and discussions during PDSC's public meeting in Clatsop County, which will be held on Thursday, September 14, 2006 from 11:00 a.m. to 4:00 p.m. in the Clatsop County Courthouse in Astoria. The Commission has invited the judges, prosecutors, public defense contractors and other justice professionals in Clatsop County to attend that meeting and provide their input with regard to the condition of county's public defense system and how the delivery of public defense services in the county can be improved. The final version of this report will contain PDSC's service delivery plan for Clatsop County.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more

public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

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

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

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

Background and Context to the Service Delivery Planning Process

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

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to

accomplish this mission.

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the site teams visited contractors in Columbia, Jackson, Klamath, Multnomah and Umatilla Counties and, in 2006, teams have visited the juvenile contractors in Multnomah County and criminal and juvenile contractors in Linn, Lane and Lincoln Counties. In accordance with its Strategic Plan for 2003-05, PDSC has also developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys.

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

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

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

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

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

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

The Commission also has no interest in developing a one-size-fits-all model or template

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

for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's

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

While some of Oregon’s public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission’s expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office “infrastructure” than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

2. Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC’s RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively

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

³ *Id.*

unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for “succession” in the event that some of the consortium’s lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

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

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

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

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training

programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the

attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigations

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

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

This preliminary draft report is intended to provide a framework to guide the Commission's discussions about the condition of the public defense system and services in Clatsop County, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. The preliminary draft will also provide guidance to PDSC's guests and audience members at its September 14th meeting in Astoria, as well as the Commission's contractors, local public officials, county justice professionals and private citizens who were interested in this planning process, about the kind of information that will assist the Commission in improving the delivery of public defense services in Clatsop County.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in the judicial district's justice system is probably the single most important factor contributing to the quality of the final version of this report and PDSC's service delivery plan for Clatsop County. Accordingly, OPDS invites written comments from any interested public official or private citizen prior to the Commission's September 14th meeting in Astoria. Those comments should be mailed to:

Peter A. Ozanne
Executive Director
Office of Public Defense Services
1320 Capitol Street N.E., Suite 200
Salem, OR 97303

or e-mailed to:

peter.a.ozanne@opds.state.or.us

A Demographic Snapshot of Clatsop County⁴

Named after the Clatsop Indian Tribe, Clatsop County with a population of 36,000 is located on Oregon's rugged northwest coast. Incorporated cities in the county include Astoria, Cannon Beach, Gearhart, Seaside and Warrenton. The county's principal industries are fishing, lumber, and agriculture. About 30 percent of the land within Clatsop County belongs to the State of Oregon as part of Oregon's state forest system.

The Lewis and Clark Expedition wintered at Fort Clatsop in 1805-06. Astoria, the state's oldest city named after John Jacob Astor, was established as a fur trading post in 1811. On June 22, 1844, Clatsop County was created from the northern and western portions of the original Twality District. Until the creation of Vancouver County, Washington, Clatsop County extended north across the Columbia River. Provisional and territorial legislatures established Clatsop County's present boundaries in 1845 and 1853.

Before 1850, most of Clatsop County's government was located in Lexington, Oregon, a community located where Warrenton is now. As Astoria grew, it became the center of commerce and industry in the county. The county's residents chose Astoria as the county seat in 1854. The Port of Astoria was created in 1914 to support trade and commerce in Clatsop County.

Fort Stevens, located near the peninsula formed by the south shore of the Columbia River and the Pacific Ocean, was the only military installation in the continental United States that was attacked during World War II. A submarine from of the Imperial Japanese Navy fired 17 rounds at Fort Stevens on June 21, 1942 and escaped before the fort's guns could return fire. Damage to the fort was slight (reportedly a baseball backstop was destroyed and a power line severed).

Approximately 13 percent of Clatsop County's residents hold an undergraduate college degree and 6.5 percent have a graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent).⁵ Twenty-seven percent of the county's adult population is employed in management or professional positions, compared to the state's average of 33.1 percent. Compared to a statewide average of 26.3 percent, 29 percent of Clatsop County's residents over the age of 25 graduated from high school.

In 2000, Clatsop County had one of the lowest unemployment rates among Oregon's 36

⁴ The following information was taken from Clatsop County's official website, [Wikipedia](#) and data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's [Oregon: A Statistical Overview](#) (May 2002) and [Oregon: A Demographic Profile](#) (May 2003).

⁵ In comparison, the respective numbers in Yamhill County are 13.4 and 7.2 percent and, in Klamath County, they are 10.6 and 5.4 percent.

counties at 4 percent. Its per capita annual income was \$19,515, compared to a statewide average of \$20,940. The county had a relatively high poverty rate, however, at 13.2 percent, compared to an 11.6 percent rate in Oregon and a 12.4 percent rate in the United States. The teen pregnancy rate in the county is below average at 15.9 per 1,000 residents, compared with the statewide average of 16.7. Clatsop County's high school dropout rate was Oregon's 14th lowest over the past decade.

The diversity of Clatsop County's population is relatively low. Its non-white and Hispanic residents make up 9.2 percent of the county's population, compared to 16.5 percent for Oregon as a whole.

With juveniles (18 years old or younger) making up 24 percent of Clatsop County's total population, its "at risk" population (which tends to commit more criminal and juvenile offenses) equals the state average. Not surprisingly, its "index crime" rate is also equal to Oregon's at 50 index crimes per 1,000 residents (compared to the state's rate of 49.2);⁶ however, its juvenile arrest rate was the ninth highest in the state (at 75.6 per 1,000 residents compared to Oregon's average of 53).

In 2005, the public defense caseload in Clatsop County totaled 2,114 out of 171,850 cases in the state. That amounted to 1.2 percent of Oregon's public defense caseload in 2005.

OPDS's Preliminary Findings in Clatsop County

On August 24 and 25, 2006 John Potter and Peter Ozanne visited Clatsop County on behalf of OPDS to gather preliminary information for PDSC's September 14th meeting in the county. They interviewed both Circuit Court Judges, members of the court's staff, the District Attorney and the Sheriff, representatives of the county's juvenile department, the Citizens Review Board and the local office of the Department of Human Services, and the administrator of one of PDSC's public defense contractors.⁷

Six lawyers in two consortia contract with PDSC to provide public defense services in Clatsop County. Clatsop County Defenders Association (CCDA) is made up of four attorneys including its administrator, Kris Kaino. The second consortium is made up of Dawn McIntosh and Mary Ann Murk. Ms. Murk administers the consortium (the "Murk Consortium"). The public defense attorneys have between nine and 30 years of law practice experience and devote most of their time to public defense practice.

Both consortia pay their members each month based on the percentage of work they perform under the consortia's contracts each month, and the attorneys settle up with their consortia based on value of work at the end of their respective contracts. Kris Kaino

⁶ For the purposes of this statistic, "index crimes" are those crimes reported by the Oregon State Police as part of its Oregon Uniform Crime Reports, and include murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft, including auto theft, and arson. Oregon: A Statistical Overview at p. 122.

⁷ As of the date of this Preliminary Draft report, OPDS was unable to talk with the administrator of Clatsop County's other public defense contractor or management and staff of the county's community corrections department; however, like all the other persons in Clatsop County interviewed by OPDS, they have been invited to attend and speak at the Commission's September 14, 2006 meeting in Astoria.

assigns arraignment pickup days for both consortia. Based upon the experience of OPDS's Contract and Business Services Division (CBS), all the attorneys in both consortia work well together. There are minor variations in contract rates between CCDA and the Murk Consortium; however, both consortia are aware of the differences and apparently prefer this option because of the difference in their mix of cases.

Based upon its two days of in-person interviews and subsequent telephone interviews, OPDS found that virtually all of the justice officials and professionals in Clatsop County are generally quite satisfied with the operation of its public defense system and the quality of legal services delivered by that system. Although assessments of the skills and commitment of among the six lawyers who contract with PDSC varied, four attorneys received numerous compliments for their dedication and advocacy skills and none were considered less than competent.

Both attorneys in the Murk Consortium were singled out for their strong personal commitment and zealous advocacy on behalf of children in juvenile dependency cases. Not surprisingly, they receive most of the court appointments as counsel for children in the county's dependency cases. Most assessments of the performance of CCDA's attorneys in juvenile cases were less complimentary, including impressions that some of the attorneys' apparent commitment to their parent-clients in dependency cases did not equal their commitment to defendants in criminal cases and observations that several CCDA attorneys frequently fail to contact their clients or obtain pretrial discovery prior to their first appearance in delinquency cases. Because the Circuit Court seriously considers the recommendations of Clatsop County's CRB, most attorneys regularly attend the CRB's hearings; however, at least one of CCDA's attorneys apparently fails to attend most CRB hearings involving his clients.

One judge complimented the county's public defense attorneys for their willingness to participate on local policymaking bodies and contribute to court improvement projects.

Neither CCDA nor the Murk Consortium apparently has a board of directors, by-laws or formal quality assurance or disciplinary policies and procedures. Neither consortium's administrator was aware of a reason why Clatsop County has two consortia, other than the State of Oregon's desire in the past to promote competitive bidding among local public defense attorneys. According to the Circuit Court, when the conduct or performance of an individual attorney is called into question, judges take up the matter directly with that attorney. Representatives of other justice agencies in the county were unaware of any means to bring problems or complaints to the attention of the consortia or whether anyone in either consortium was responsible to handle problems and complaints.

During the course of its interviews, OPDS identified five significant concerns regarding the future of public defense in Clatsop County. First, the Circuit Court, in particular, is deeply concerned about the limited supply of qualified public defense attorneys in the county. Assuming that six defense attorneys can continue to competently handle a caseload

generated by a District Attorney's office with six or seven prosecuting attorneys,⁸ both judges in Clatsop County wonder what the court will do when one of those six attorneys leaves public defense practice.⁹ Apparently, no other attorneys in the county have expressed a willingness to engage in public defense practice and, due to the quality of the attorneys from outside Clatsop County who have been willing to take appointments in the past, the judges believe importing attorneys from other counties on a regular basis is not a feasible solution. Indeed, one of the Circuit Court's judges is so concerned about the impending shortage of public defense attorneys in the county that she traveled to the University of Oregon Law School to encourage recent graduates to enter law practice in Clatsop County and take court appointments.

Second, although the demands of public defense caseloads are a concern in most counties of the state, complaints by consortium attorneys and the District Attorney about the demands of Clatsop County's caseload seemed especially emphatic. The focus of these complaints is the speed with which the Circuit Court processes the criminal and juvenile cases on its docket, which the attorneys believe prevents them from properly evaluating, preparing and resolving many of their cases.¹⁰ While those attorneys expressed appreciation for the Circuit Court's efforts to maintain high standards of judicial administration, they feel that the level of Clatsop County's justice resources, including its supply of lawyers, cannot continue to support what they perceive as one of the fastest moving dockets in the state. Nearly all of the justice professionals with whom OPDS spoke also noted that handling of juvenile and criminal caseloads in Clatsop County is further complicated by variations in the practices and procedures in the two departments of the Circuit Court, which are due at least in part to a lack of communication between the county's judges on matters of judicial administration.

Third, another concern expressed to OPDS in Clatsop County, as well as throughout the state, is the rates paid under the county's public defense contracts. In particular, the attorneys and judges in the county reported what they believe is an unjustified variation in the rates attorneys are paid to handle juvenile dependency cases in Clatsop County compared to Multnomah County. The experience of the Juvenile Rights Project (JRP) in Clatsop County was cited during one of OPDS's interviews as evidence of this unfair disparity in contract rates. JRP at one time handled a juvenile dependency caseload in Clatsop County under contract with the state. According to the information OPDS gained from this interview, JRP chose not to seek renewal of its contract with the state because it could not afford to operate under the contract rates paid for that work in Clatsop County.

Fourth, OPDS is concerned about (1) an apparent absence of criminal defense attorneys in Clatsop County's early disposition program (EDP), (2) differing perceptions in the county

⁸ Clatsop County's District Attorney informed OPDS that his office will receive funding from the county for a seventh attorney in December, but he indicated that the county's commitment for this funding is limited to six months.

⁹ One consortium attorney is currently a candidate in a run-off election for the new Circuit Court Judge in Clatsop County. OPDS understands that other consortium attorneys may be considering retirement or significant changes in their law practice specialties.

¹⁰ Everyone who voiced this concern also expressed hope that the addition of a third judge in the Clatsop County Circuit Court will reduce the pressures of the court's docket.

about the reasons for this absence of defense attorneys, including perceptions of PDSC's lack of support for EDPs, and (3) the possibility in light of these perceptions that defense attorneys may be excluded from other specialty court programs in the county such as drug courts. One of the county's judges reported that defense attorneys do not participate in his department's EDP in part because a staff person at OPDS informed him that the agency refuses to provide financial support for the participation of lawyers in EDPs. The county's other judge noted that defense attorneys do not participate in the EDP because they have refused to do so for philosophical reasons. One of the consortium's administrators informed OPDS that defense attorneys feel ethically bound not to participate in Clatsop County's EDP because the District Attorney has refused to provide discovery before the court appearances of defendants who qualify for the EDP. The District Attorney, on the other hand, indicated that police reports are available for review in the courtroom at EDP proceedings and that defendants are given a week to consider the prosecution's settlement offer or consult with an attorney.

OPDS advised all of these individuals of (a) PDSC's support for EDPs, (b) the Commission's development of EDP guidelines in order to ensure the participation of defense attorneys in EDPs that is consistent with their legal and ethical obligations to their clients¹¹ and (c) PDSC's commitment to assist counties like Clatsop County in the development of quality, cost-efficient EDPs. Nevertheless, because the participation of defense attorneys apparently varies in the criminal drug courts administered by the two departments of the Clatsop County Circuit Court, and because the court is currently developing a new juvenile drug court, OPDS is concerned that the county might not avail itself of the Commission's assistance and support for specialty court programs like EDP and drug courts. As a result, Clatsop County may proceed to administer drug courts and continue to administer its EDP without the participation of defense attorneys.

Finally, as noted above, neither CCDA nor the Murk Consortium has adopted the kinds of organizational structures, programs or processes that PDSC generally recommends for consortia. This raises a concern that Clatsop County's public defense delivery system may not have the capacity to meet the future demands of public defense practice in the county.

OPDS's Recommendations for Further Inquiry at PDSC's September 14, 2006 Meeting in Astoria

In light of the foregoing concerns, OPDS recommends that PDSC focus its inquiries and discussion at the Commission's September 14th meeting in Astoria on the following five topics:

1. The supply of public defense attorneys in Clatsop County. OPDS recommends that PDSC discuss with the judges and lawyers in attendance at the Commission's September 14th meeting feasible options for increasing the supply of qualified public defense attorneys in Clatsop County. For example, in light of efforts by at least one judge in the county to recruit recent law school graduates into public

¹¹ A copy of PDSC's Early Disposition Guidelines is attached in Appendix A.

defense practice, the Commission might consider joining forces with Clatsop County and other similarly situated counties to establish formal law school recruitment teams. These teams could appear at Oregon's three law schools during the hiring season for the purpose of encouraging law students to consider public service positions in underserved areas of the state that offer unique opportunities for legal employment and quality of life.

2. The demands of Clatsop County's public defense caseload. With additional analysis and information from CBS's contract staff, such as comparative data on caseloads across the state, PDSC should inquire into whether the rate at which cases on Clatsop County's Circuit Court docket are processed is unusually high. If so, the Commission might also inquire into the prospects for relieving the pressure of the court's docket, such as the pending addition of another judge, and how PDSC and the Commission's contractors in Clatsop County can assist in relieving that pressure.
3. The contract rates for Clatsop County's consortia. With the benefit of further information from CBS on comparative contract rates, the Commission should discuss the experiences and perceptions of judges and lawyers in Clatsop County regarding (a) the unique challenges of public defense practice in the county, (b) how those challenges might compare with the challenges of public defense practice in counties with higher contract rates (such as Multnomah County) and (c) why the contract rates in Clatsop County should be equal or closer to counties with higher rates. If, in the opinion of PDSC, it appears possible that the contract rates in Clatsop County should be raised to match the rates in other counties, or it appears that further study of these rates and the rates in other counties is justified, the Commission should consider directing OPDS to conduct a study of contract rates in furtherance of PDSC's policy to establish more rational and predictable public defense contract rates in Oregon.¹²

OPDS's study should be designed to determine if more consistent rates can and should eventually be established across the state. Those rates might include standardized base case rates, with permissible limited variations that take into account local circumstances such as prosecutorial charging practices and the nature and extent of judicial proceedings within specific case categories. Depending on OPDS's assessment of the difficulty of this task and the Commission's assessment of its current priorities, the study could be designed as a pilot project affecting the contract rates in a limited number of counties or as a statewide study affecting the contract rates in every county in the state. In either case, the study should be designed to implement new contract rates or a new rate system for implementation in the affected counties during the formation of contracts in 2007.

¹² During the course of its discussions and deliberations over the past several years, the Commission has referred to this policy as the pursuit of an "administrative model" with relatively standardized contract rates largely determined in advance by PDSC, as opposed to the pursuit of a "market model" with variable contract rates that depend on the relative knowledge and negotiating skills of the parties and the supply and demand for lawyers in the relevant market (or county).

4. The participation of defense attorneys in Clatsop County's EDP and other specialty court programs. In developing guidelines for the design and operation of EDPs in consultation with the Oregon Criminal Defense Attorneys Association, the Oregon District Attorneys Association and the Chief Justice's Criminal Justice Advisory Committee, PDSC recognized that the interests of individual defendants and the taxpaying public can be served by the expeditious resolution of cases in which prosecutors offer relatively favorable dispositions or the opportunity to participate in rehabilitative corrections programs. The Commission also recognized, however, that EDPs or other specialty court programs, which lack the usual court processes of adjudication in favor of prompt resolutions or therapeutic objectives and which fail to provide access to legal counsel in the courtroom, present the risk that uncounseled defendants, especially with language or educational deficits, will be unable to fully understand the range of legal options available to them or the legal and personal consequences of their legal decisions.¹³ Consequently, PDSC's EDP guidelines were designed to promote the participation of defense counsel in these programs while preserving their advantage in terms of the expeditious resolution of case and cost savings.

OPDS urges the Commission, during the course of its discussions with judges and lawyers in Clatsop County on September 14th, to confirm its commitment to ensuring the participation of defense attorneys in the development and operation of EDPs and other specialty court programs. PDSC should also offer the assistance of OPDS, its Quality Assurance Task Force and local public defense attorneys to assist the Clatsop County Circuit Court in developing cost-efficient specialty court programs that are consistent with (a) the mission of the county's criminal and juvenile justice systems to ensure due process and promote public safety, (b) the rights of victims and public defense clients in the county and (c) the interests of the taxpaying public.

5. The organizational development of Clatsop County's consortia.

Like some relatively small, well-established consortia in other parts of the state that deliver public defense services to the general satisfaction of local courts, Clatsop County's consortia appear to operate primarily for the purposes of submitting contract proposals to PDSC and administering their contracts in accordance with CBS's contracting policies and procedures. Neither consortium appears to have adopted the organizational components that the Commission has recommended to other consortia in the state, such as a board of directors, a formal organizational structure, a complaint process, an attorney disciplinary process and training, mentoring, recruitment and quality assurance programs. As a result, Clatsop County's delivery system may not be capable of adapting to a future that will inevitably include population and caseload growth, personnel changes on the

¹³ The Clatsop County District Attorney did report that the presiding judge in the county's EDP is extraordinarily rigorous in advising uncounseled defendants of their legal rights and accepting waivers of those rights or guilty pleas.

Circuit Court,¹⁴ in the consortia and in the District Attorney's office,¹⁵ and changes in state and local justice and law enforcement policies.

During PDSC's September 14th meeting, OPDS recommends that the Commission inquire into the feasibility of and support for adopting some or all of the foregoing organizational features of consortia in Clatsop County. In accordance with PDSC's general policy of refraining from imposing organizational structures and processes that are inconsistent with the culture and local practices in a county, the Commission may wish to weigh the advantages of recommending changes in the organization and operation of Clatsop County's consortia against (a) the level of local satisfaction with the consortia's current operations and legal services, (b) the importance of first addressing the other concerns described above and (c) the current demands on the six attorneys who provide public defense services in the county.

The Results of PDSC's September 14, 2006 Meeting in Astoria

[The next draft of this report will contain a summary of the comments and discussions of the invited guests, audience members and the Commission at PDSC's September 14, 2006 meeting in Astoria and any findings and conclusions by the Commission at that meeting.]

PDSC's Service Delivery Plan for Clatsop County

[The final version of this report will set forth a Service Delivery Plan for Clatsop County, which contains the Commission's suggestions and recommendations to improve the delivery of public defense services in Clatsop County.]

¹⁴ Following the results of the November election, Clatsop County will have a third Circuit Court Judge.

¹⁵ Clatsop County will have an additional deputy district attorney in December, which may be a permanent addition to the District Attorney's office depending on a continuation of county funding.

Appendix A

The Public Defense Services Commission's Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs

In order to insure that Early Disposition Programs (EDPs) involving court-appointed attorneys compensated by the Public Defense Services Commission (PDSC) meet constitutional, statutory and ethical requirements, PDSC concludes that EDPs should comply with the following guidelines. These guidelines are intended to insure that clients of court-appointed attorneys who participate in EDPs are able to make knowing, intelligent, voluntary and attorney-assisted decisions whether to enter pleas of guilty and that court-appointed attorneys are able to provide meaningful counsel and assistance to those clients.

1. An EDP should insure that the program's operations and rules permit the establishment and maintenance of attorney/client relationships.

Commentary

Although EDPs offer defendants the opportunity for favorable dispositions of their pending criminal charges and the State of Oregon potential savings for its justice system, Oregon's Rules of Professional Conduct require defense attorneys who participate in EDPs to establish and maintain meaningful attorney/client relationships.

Oregon Rule of Professional Conduct 1.1, requires that "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.3 requires that "A lawyer shall act with reasonable diligence and promptness in representing a client and not neglect a legal matter entrusted to the lawyer."

2. An EDP should provide the opportunity for necessary pre-trial discovery, including adequate opportunity to review discovery material and investigate the facts of the case and the background and special conditions or circumstances of the defendant, such as residency status and mental conditions. Defendants participating in an EDP should be notified on the record that their attorney has not been afforded the time to conduct the type of investigation and legal research that attorneys normally conduct in preparation for trial.

Commentary

Article I, Section 11 of the Oregon Constitution provides, “In all criminal prosecutions, the accused shall have the right to be heard by himself and counsel...” This constitutional right to counsel would be meaningless without an adequate opportunity for counsel to inform himself or herself about the nature of the charges against the defendant, the factual and legal circumstance of the case and the background of the defendant.

The following Oregon Principles and Performance Standards for Counsel in Criminal Cases (the “Oregon Standards”) require defense attorneys to carefully review charging instruments, police reports, relevant background information with defendants. These Oregon Standards also require counsel to conduct necessary independent investigation or consultation with experts in appropriate circumstances before advising their clients concerning participation.

STANDARD 1.1 – Prerequisites for Representation

Counsel shall only accept an appointment or retainer if counsel is able to provide quality representation and diligent advocacy for the client.

STANDARD 1.2 – General Duties and Responsibilities of Counsel to Clients

Upon being retained or appointed by the court, counsel should contact the client as soon as practicable AND maintain regular contact thereafter. Counsel should endeavor to establish a relationship of trust and open communication with the client and should diligently advocate the client’s position within the bounds of the law and the Rules of Professional Responsibility.

STANDARD 1.3 – Role of Counsel

Counsel should seek the lawful objectives of the client and should not substitute counsel’s judgment for that of the client in those case decisions that are the responsibility of the client.

STANDARD 1.4 – Initial Client Interview

Counsel should conduct a client interview as soon as practicable after being retained or appointed by the court, in order to obtain information necessary to provide quality representation at the early stages of the case and to provide the client with information concerning counsel’s representation and the case proceedings.

STANDARD 2.5 – Initial Court Appearances

Counsel should preserve all of the client’s constitutional and statutory rights at initial court appearances.

STANDARD 2.6 – Independent Investigation

Counsel should promptly conduct an independent review and investigation of the case, including obtaining information, research and discovery necessary to prepare the case for trial or hearing.

3. An EDP should provide for adequate physical space to ensure necessary privacy and adequate time to conduct confidential consultations between clients and their attorneys.

4. An EDP should provide adequate time for defendants to make knowing, intelligent, voluntary and attorney-assisted decisions whether to enter pleas of guilty or whether to agree to civil compromises or diversion. Clients should be allowed a reasonable continuance to make their decisions in the event there is incomplete information or other compelling reasons to postpone entry of a plea, civil compromise or diversion agreement. Clients should be allowed to withdraw their pleas, petitions or agreements in an EDP within a reasonable period of time in extraordinary circumstances.

Commentary

The following Oregon Standards require that defense counsel with clients in Early Disposition Programs have adequate time and privacy to meet with their clients and carefully review the clients' rights, obligations and options. These standards, as well as applicable rules of law, require that defendants be given adequate time to consider their options, to knowingly and intelligently waive their rights and to withdraw guilty pleas or agreements to enter programs in appropriate circumstances.

STANDARD 2.7 – Pretrial Motions; Hearings Regarding Ability to Aid and Assist Counsel should research, prepare, file and argue appropriate pretrial motions whenever there is reason to believe the client is entitled to relief. Counsel should be prepared to provide quality representation and advocacy for the client at any hearings regarding the client's ability to aid and assist...

STANDARD 2.8 – Pretrial Negotiations and Admission Agreements
Counsel should:

1. with the consent of the client explore diversion and other informal and formal admission or disposition agreements with regard to the allegations;
2. fully explain to the client the rights that would be waived by a decision to enter into any admission or disposition agreement;
3. keep the client fully informed of the progress of the negotiations;
4. convey to the client any offers made by the prosecution and the advantages and disadvantages of accepting the offers;
5. continue to preserve the client's rights and prepare the defense notwithstanding ongoing negotiations; and
6. not enter into any admission or disposition agreement on behalf of the client without the client's authorization.

ORS 135.049(C) provides that every EDP must provide (i) written criteria for eligibility, (ii) victim notification and appearance, and (iii) a process to ensure representation and discovery.

5. An EDP should insure that attorney caseloads are sufficiently limited to provide for full and adequate legal representation of each client.

Commentary

Oregon Rule of Professional Conduct 1.1, requires that “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

6. An EDP should provide for alternative representation for a client eligible for an EDP where such representation would constitute a conflict of interest for the client’s original attorney.

Commentary

The following Oregon Rules of Professional Conduct forbid attorneys from representing clients when that representation involves a conflict of interest.

RULE 1.16 DECLINING OR TERMINATION REPRESENTATION

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the rules of professional conduct or other law

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client;
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibilities to another client, a former client or a third person or by a personal interest of the lawyer; or
- (3) the lawyer is related to another lawyer, as parent, child, sibling, spouse or domestic partner, in a matter adverse to a person whom the lawyer knows is represented by the other lawyer in the same matter.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not obligate the lawyer to contend for something on behalf of one client that the lawyer has a duty to oppose on behalf of another client; and
- (4) each affected client gives informed consent, confirmed in writing.

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political.

7. An EDP should not penalize clients or sanction their attorneys for acting in conformity with any of the foregoing standards.

NOTE: These guidelines will be accompanied by descriptions of at least two EDPs currently operating in the state that conform with these guidelines – one from a large, more populous judicial district and one from a small, less populous judicial district.

Attachment 3

- (3) There will always be a significant role for qualified consortia or private attorneys in Marion County to handle a major portion of the county's public defense caseload;⁸⁸ and
- (4) MCAD will be able to continue serving as a major public defense contractor in Marion County if the consortium's membership and management demonstrate to the satisfaction of PDSC that they (a) accept the Commission's role in overseeing the quality and cost-efficiency of its legal services, (b) are willing to address and resolve the problems identified throughout this report and (c) in particular, recognize that MCAD must strengthen and enforce its practices and procedures governing (i) the management, oversight and accountability of the consortium's lawyers with regard to their professional performance and conduct, (ii) the assignment of cases to those attorneys commensurate with their skills and experience and (iii) the recruitment, training, retention and removal of the consortium's members.

In accordance with these principles, PDSC adopts two components of a Service Delivery Plan for Marion County, including some specific details concerning implementation of the plan:

1. Establish a high-quality, cost-efficient public defender office in Marion County. PDSC intends to establish a public defender office in Marion County with (a) guidance, input and support from the Marion County community, (b) oversight by an engaged board of directors made up of local citizens and officials, (c) leadership by a highly qualified public defense manager, and (d) legal staff that includes approximately six to 10 full-time public defense lawyers. In order to ensure the success of this new office, the Commission is committed to involving Marion County's legal and justice communities, as well as the county's entire community, in the design, establishment and oversight of the office.

The size of the new public defender office's initial caseload should be proportionate to the number of lawyers and support staff who are employed by the office. The nature of the office's initial caseload, or its mix of cases, will depend on the skills and experience of the lawyers who are initially hired by the office.

Once a board of directors has been established and its members have been appointed,⁸⁹ PDSC recommends that the new board take the following steps in the developing the public defender office in order to ensure that the office delivers quality, cost-efficient legal services in Marion County and gains the support of the local community:

⁸⁸ National studies and experienced public defense managers confirm that approximately 20 percent or more of the caseload in a jurisdiction with a public defender office must be handled by private attorneys because of conflicts of interests and other considerations, such as the need for special legal experience and expertise.

⁸⁹ OPDS has recently formed a "Steering Committee" of prominent citizens, justice professionals and public officials in Marion County for the purposes of advising the Commission and OPDS on the establishment and membership of a community-based board of directors for the new public defender office. The Steering Committee will also provide the Commission with valuable guidance concerning a preliminary design for the office and effective approaches to establishing the office in the county.

- with the assistance of OPDS and its Contractor Advisory Group and Quality Assurance Task Force made up of experienced public defense managers and attorneys, develop a preliminary design for the office;
- present that design to the Commission for its review and comment;
- recruit a new manager, attorneys and support staff for the office using two possible approaches:
 - OPDS's regular Request for Proposals (RFP) process to solicit proposals for establishing and operating the office from groups of interested attorneys in Marion County;
 - a special RFP process for the identification and selection of a highly qualified public defense manager, which could include a request for a proposed design for the new office, as well as proposed plans to implement that design and to recruit attorneys and staff for the office.⁹⁰

PDSC will review and evaluate the operations of the new public defender office after its first 18 months of operation, taking into account the performance of the management and lawyers in the office and input from the office's Board of Directors, the Circuit Court and other key stakeholders in Marion County, in order to determine whether or not the office's current mission, operations and capacity should continue or be changed.

2. Provide MCAD with the opportunity to strengthen its management and operations over the coming year. Assuming MCAD and CBS can reach agreement on the terms and conditions of a new contract acceptable to PDSC during the current round of contract negotiations, the duration of that new contract shall be one year. This will provide MCAD with the opportunity to resolve the problems identified in this report and address the concerns of the Commission regarding the strength of the consortium's practices and procedures governing the management, oversight and accountability of its lawyers, the assignment of its cases, and the recruitment, training, retention and removal of its members. If MCAD addresses these problems and concerns to PDSC's satisfaction, then PDSC will consider a longer-term contract with MCAD consistent with this Service Delivery Plan.

PDSC requests MCAD to submit a report no later than August 1, 2006 containing a detailed description and documentation of the specific actions that the consortium has

⁹⁰ These two approaches are not necessarily mutually exclusive. The board of directors could decide to implement them at the same time in order to (a) promote openness in its process for establishing the office, (b) ensure community involvement and support for the office and (c) increase the chances of identifying the strongest manager, office design and staff of employees for the office. On the other hand, if the board identifies a qualified manager through the second approach, it could direct that manager to recruit and hire attorneys and establish an office in accordance with an office design and implementation and recruitment plans approved by the board.

undertaken to resolve the problems and concerns identified in this report. PDSC also requests MCAD to take the following steps and address the following points in the course of developing its report to the Commission:

- MCAD's management and Board of Directors should share this report and Service Delivery Plan, including the appendices hereto, with all of MCAD's members. They should also meet and confer with MCAD's members regarding the actions the Board proposes to take in response to this report and the Commission's Service Delivery Plan. Based on its informal contacts with members of MCAD during this planning process, OPDS informed the Commission that a significant number of MCAD's members might not be fully aware of (a) the Commission's deliberations and concerns regarding their consortium, (b) MCAD's presentations to the Commission on their behalf during this planning process, (c) the opportunity for MCAD to continue providing public defense services in Marion County and (d) the steps that must be taken to take advantage of that opportunity.
- In determining the actions it should take to address the Commission's concerns in this report and plan, MCAD should confer with OPDS's Contractor Advisory Group and Quality Assurance Task Force, as well as the administrators and boards of other consortia in the state, such as those in Clackamas, Klamath and Yamhill Counties. In order to ensure meaningful input from these groups and to take advantage of their experience and expertise, MCAD should present them with its specific proposals for change, rather than general requests for ideas and assistance.
- In preparing its 2006 report to PDSC, MCAD should update, reconsider and revise its responses to the written inquiries of OPDS and the Commission, which are contained in Appendices A and D of this report, in order to ensure that the Commission has current, accurate and complete information regarding its concerns about the management and operations of the consortium. MCAD corrected and clarified some of its initial responses to the Contractors' Site Visit Questionnaire in Appendix A. Some of its responses to PDSC's follow-up questions in Appendix D, however, are unclear or unresponsive.⁹¹
- During their presentations to PDSC at its July and August meetings in Salem and in their written submissions to the Commission, MCAD's representatives asserted that the Commission must provide the consortium with additional funds in order for the

⁹¹ For example, rather than explaining how MCAD can deal effectively with an apparent requirement in its procedures for binding arbitration in the event the consortium decides to sanction an underperforming member, MCAD proposed that PDSC "can make this process easier" by providing additional funding. Appendix D, p. 4. In response to widespread criticism of MCAD's attorney-of-the-day case assignment system and PDSC's express concerns about the effectiveness of that system and about MCAD's willingness to consider change in any form, MCAD asserted that "[u]nless there is a consensus that these changes [in its case assignment system] would bring about at least better service to the indigent defendant, why make them?" MCAD then argued, apparently in the alternative, that it should receive over \$123,000 in funds, like "Portland" purportedly receives for its case assignment system, without explaining how MCAD's system or issues are similar to Portland's or why changes in MCAD's current system should cost more money. *Id.* at 6.

consortium to address PDSC's concerns, such as establishing more rigorous mentoring and oversight programs for its lawyers. These requests for additional funding were not accompanied by specific program designs or proposals that would assure the Commission that the additional funds would be spent wisely or produce the desired results. In any event, MCAD must address the Commission's current concerns about the consortium's management and operations and assure the Commission that MCAD can better manage the resources that it already receives before PDSC will consider proposals for additional funding.

- Despite three full-time employees and \$70,000 devoted to a .70 FTE Executive Director, MCAD appears to be devoting too little attention to the evaluation, mentoring and oversight of its lawyers. Accordingly, MCAD's Board of Directors should consider the redeployment of the consortium's current staff resources to address this problem, including the reallocation of some of the funds now devoted to its Executive Director position to a new position responsible for the evaluation, training and mentoring of its lawyers.

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Executive Director

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September 1, 2006

Barnes Ellis
Chair
Public Defense Services Commission
1320 Capitol Street NE
Salem, Oregon 97301

Peter Ozanne
Executive Director
Office of Public Defense Services
1320 Capitol Street NE
Salem, Oregon 97301

Re: MCAD update

Gentlemen:

Thank you very much for permitting us the opportunity to update you on what MCAD has accomplished over the past year, to answer your concerns, and to provide up to date responses. We appreciate and share your concern for our operations. We also look forward to working with a Marion County Public Defender Office and its staff when it starts operation.

MCAD has provided continuous informal updates over the past year, and has provided two formal updates over the past several months regarding our progress in revamping our systems to meet your concerns. Over the past year, MCAD has adopted a Communications Plan, an Education Plan, and reorganized into Work Groups. A copy of the two plans and the Work Group reorganization are enclosed. We have also added three outside members to our Board of Directors and have attempted to resolve some quality issues.

The addition of the three outside Board members has been very positive. All three members bring different perspectives and knowledge to the Board. They have raised issues the other members of the Board had not thought of, and have helped us resolve them. One outside Board member has pointed up very real concerns as we attempt to enforce some of the quality issues that OPDS/PDSC brought to us last summer. Individual Board members are likely to be sued while trying to enforce attorney quality standards. Several years ago, a similar occurrence happened in Lane County, and while the lawsuit did not succeed, it had long lasting effects on Lane County's indigent defense service delivery. The litigation is being handled appropriately by MCAD's Directors and Officers insurance company, but depending on how plead, any litigation will expose a Board to potential damages. This is a very real concern when an organization or Board of Directors takes a quality assurance action.

Your report concerning Marion County on pages 36 to 38 asked us to address certain points in particular. First, MCAD did make available the 2005 OPDS/PDSC reports and service delivery plan in its entirety to all members of MCAD and urged them to read the reports. This report is being circulated to all MCAD members prior to its being

submitted to you.

Except for the Communication Plan (which was instituted immediately in July and August of 2005) all proposed changes to MCAD's operation have been circulated to the entire membership prior to their adoption with requests for comment. MCAD continues to have monthly membership meetings at which the membership is briefed on indigent defense developments and comments and suggestions are solicited. Almost all MCAD members were involved in the design of the work group reorganization.

Second, we have conferred with the Contractor Advisory Group and the Quality Assurance Task Force concerning operations and will continue to do so. We have also conferred with the consortia in Clackamas and Yamhill County. The Executive Director and present Board Chair are also members of the Consortium Advisory Group.

Third, we enclose revised Appendices A and D.

Fourth and fifth, we have established an improved mentoring and training process for new members of MCAD. In addition to requiring mentors for new members, members who desire to qualify for a more serious level of appointments (*e.g.* misdemeanor to lesser felonies) must have a mentor.

An attorney's mentor is assigned by the Executive Director in consultation with the Workgroup Leaders' Committee. The mentor comes from the same workgroup as the attorney being mentored, so in addition to an assigned mentor, the attorney has a readily available group of attorneys he or she can get assistance from.

Every member of MCAD must be a member of the Bar's Criminal Law Section and OCDLA and must attend at least one OCDLA CLE each year. At least one half of an attorney's required 45 CLE credits every three years must be related to criminal defense. MCAD will continue to sponsor our own CLEs at least twice a year, in addition to the training that occurs at the work group meetings and the monthly membership meetings.

While we firmly believe MCAD is saving the state money through its method of operations, we are not asking for additional funds for training at this time. We recognize and agree that we must demonstrate that our method of operation does provide consistently high quality representation. MCAD has, however, lost two experienced members recently because the hourly rate has remained static. Their ability to make an adequate income was jeopardized by the lack of any increase in the hourly rate since 2002.

MCAD must however, in our next contract, ask for modest increases to cover increased internal costs. As you know, MCAD's 2006 contract was exactly what our 2005 contract was, even though we have had an increase in our monthly rent. As you also know, MCAD's contracts in the past, have been contracts, where our exact internal costs have been reimbursed by OPDS/PDSC. MCAD has only been able to cover any internal increased costs, mainly if not exclusively, because we have had staff turnover, something that is not good for the organization and we hope has ended.

As training concerns and budgets throughout the State of Oregon indigent defense organizations are funded and increased by OPDS/PDSC, MCAD will ask to join in this benefit. This will ensure that our efforts to increase our quality representation continues.

We believe we are not only addressing the concerns expressed last year, but meeting the

challenges expressed, in progressive and innovative ways. The Board is finding the issues challenging and subject to a multitude of solutions. Finding and implementing the best solution for MCAD, in all of these areas, cannot be done instantaneously and some of the solutions, especially those that take consultation with the other components of the Marion County criminal justice system, will take more time.

Many of the ways MCAD has met this year's challenges are contained in the answers in Appendices A and D. Please let us know if we can provide any further information.

Sincerely yours,

Steven H. Gorham
Executive Director

Olcott Thompson
Board Chair

Enclosure

cc. PDSC members (w/encl)
MCAD members (w/o encl)

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Communication plan:

To ensure that clients, the Courts, MCAD, and others can be communicated with the following items are mandated for MCAD members as of September 1, 2005.

1. All members must have email and that email must be available to MCAD and the Court system for communication to the member. All members must check their email at least daily and read the communications from MCAD and the Courts. All members must sign up for and receive the "MCAD pond".
2. All members must have a telephonic communication system that both receives messages and informs the caller when the caller can expect a response. This telephonic communication system can be any of the following:
 - a. A person who answers the telephone in your office and can within ½ day normally communicate with the attorney with important messages. This means that the attorney communicates every ½ day with the office person for important time sensitive messages or the office person..
 - b. An answering service that can provide the same service described in a.
 - c. A voice mail system that is updated and checked daily. This means that the voice mail message must say something like, "Today is August 15th, I am in trial today. I will return my time sensitive messages by the middle of the day, August 16th."

If your voice mail system does not have the capability to do the above you will either have to check your voice mail at least every ½ day and return time sensitive messages or change your voice mail system.

There will be no more excuses for full voice mailboxes, or messages not returned to the Courts or MCAD.

3. The member must communicate with the MCAD office or the Court immediately (within the next ½ day) upon receiving a message from either the MCAD office or a Court.
4. If the MCAD member is going to be out of communication with their office for more than a day then this must be communicated to MCAD, so that if an emergency communication is necessary, MCAD can explain why and when the member will be able to communicate with the emergency caller.

Education Plan

Education and continuing education play a key role in the quality of legal representation that MCAD provides to indigent defendants. All MCAD attorneys, their clients and the legal system are best served when attorneys are up to date on the case law, legislative changes, court room techniques, ethics, client relations, public relations, bookkeeping and case management,

To meet the above goals all active members must be in compliance with the following:

1. Beginning September 1, 2006, all members must be members of Oregon Criminal Defense Lawyers Association. (Need based scholarships will be available through MCAD). Beginning January 1, 2007, all members must be members of the Oregon State Bar Criminal Law Section.
2. Active MCAD members must attend at least one OCDLA CLE each year. (Again, need based scholarships are available through OCLDA and can also be made available through MCAD).
3. All members must be current with their CLE requirements as set by the OSB - at least half of the required credits must be directly related to the lawyer's work in MCAD. Members must submit to MCAD a copy of what they turn into the bar regarding credits. Further, the Executive Director of MCAD or designee will have the authority to check on an annual basis to ensure that member are in compliance with credits pertinent to MCAD.
4. MCAD will procure OCDLA and other educational materials to add to it's library. All materials will be available for review by MCAD members at the MCAD office or other designated area.
5. All members must be compliant with the MCAD communication plan.
6. To supplement the information received from OCLDA and other CLE's MCAD, itself, annually will hold at least two "in-house" CLE's. Both dates will be published at the beginning of the year. Members must attend at least one of these CLEs.
7. As an educational aid MCAD will continue to:
 - a. Produce and distribute to all of it's members the Newsletter
 - b. Keep updated the MCAD library/website located at www.mcadlaw.com
 - c. Encourage members to share what they have recently learned with their work group.
8. Compliance with the Education Plan will be initially by the work group leader and ultimately by the Executive Director or designee.

**MARION COUNTY ASSOCIATION OF DEFENDERS, INC.
WORKGROUPS**

In order to assure the highest quality of representation of indigent criminal clients in Marion County, Oregon, the Marion County Association of Defenders, Ltd. (MCAD) is organized into workgroups as follows:

I) **WORKING GROUPS:**

- A) All MCAD members will participate in mandatory working groups.
- B) Working Groups will provide MCAD members with a forum for the regular periodic discussion of issues involving case handling, court scheduling, trial tactics, District Attorney strategies, client counseling issues, and other matters related to the overall improvement of the quality of criminal defense. Members will be encouraged to provide a supportive work environment within each working group, including assistance with special problems or issues as needed.
- C) The working groups will be created as follows:
 - i. The MCAD Board of Directors will create the Temporary Working Group Committee, (TWGC), to facilitate the creation of the working groups and working group leaders in accordance with this provision.
 - 1. Members of the TWGC will include: Gale Rieder, Ted Coran, Steve Gorham, Steve Krasik, Cott Thompson and Phil Swogger.
 - ii. MCAD members who have taken at least one (1) appointment date—felony or misdemeanor—within the last year from the date of enactment of this proposal, will be divided into three general categories as determined by the Temporary Working Group Committee.
 - iii. Members who do only PCR / HC cases will be placed into Category Four
 - iv. Members who do not fall into Categories #1-4 will be placed into Category Five.

- v. Members will be randomly assigned to a working group by selecting two (2) members from Categories #1-3, one (1) member from Category Four and one (1) member from Category Five subject to minor modification by the TWGC.
- vi. Members who are currently under an approved mentoring plan will be placed in the same group.
- vii. The ultimate number of working groups will be determined by the absolute numbers in each of the five categories
 - 1. Every effort will be made to assure that each working group is constituted with the 2-2-2-1-1 ratio.
 - 2. This ratio is intended to provide a mix of experience and knowledge within each working group in order to maximize the stated purpose of the working groups.
- viii. The working groups will meet at least twice (2x) monthly.
- ix. Attendance at the working group meetings is **mandatory**.
 - 1. Attendance by Category V members in all working group meetings is optional.
- x. A member's continued eligibility for the current case assignments will be predicated on the member's 100% unexcused attendance at the bi-monthly meetings of the working group.
 - 1. "Excused" attendance will be defined by CWGL to include, among other things, scheduled vacations and/or illnesses.
- xi. The final make-up of all working groups is subject to the approval of the TWGC.

D) Each working group will select a working group leader.

- i. The manner by which the working group leaders are selected will be determined by a vote of each working group.
- ii. The working group leader will be selected at the initial meeting of the working group.
- iii. Each working group leader must be approved by the TWGC.
- iv. Each individual working group shall determine its internal operation consistent with the stated purpose of the working group set out in paragraph 1B.
 1. This internal operation shall be subject to the approval of the CWGL.

E) Given the random selection process for the formation of the working groups, each member will have the following “trade” rights:

- i. The ability to “trade” groups if the member’s initial group is deemed unworkable.
- ii. A “trading period” will begin after the member wishing to “trade” has attended at least four (4) meetings of her or his initial working group.
- iii. “Trades” will be done with the facilitation of:
 1. The working group leaders of the groups involved, and;
 2. The working groups in question.
 3. The CWGL.
- iv. The process whereby the “trade” is accomplished will be the province of the entities described above in I(E)(iii).

F) Once all working groups have been constituted and approved, and all working group leaders have been selected and approved, the TWGC shall be disbanded.

II) **COMMITTEE OF WORKING GROUP LEADERS:**

- A) All working group leaders and the MCAD Executive Director will be members of the Committee of Working Group Leaders (CWGL).
- B) The CWGL shall meet at least once per month.
 - i. The working group leader or their designee must attend the monthly meetings of the CWGL.
- C) The CWGL will deal with common working group problems, procedures and issues and may recommend or mandate operational changes to each working group as necessary via each working group leader.
 - i. Problems not able to be resolved within the CWGL may be referred to the MCAD Board of Directors for appropriate resolution.
- D) The internal operation of the CWGL—as with the individual working group—will be determined by the members of the CWGL. The CWGL may or may not select a chairperson, but will select at least one member responsible for the documentation of all CWGL meetings.

III) **QUALITY ASSURANCE:**

Quality assurance within the working group model will include oversight of attorney performance, routine performance reviews, and appropriate response to quality complaints. The intent of this model is to provide the best quality representation to the attorney’s client as is possible under the circumstances.

Quality assurance within the working group model will involve three (3) levels of increasing consequences. The guiding principle is that the working group level is the best and most appropriate level to deal with all complaints.

A) Level One:

All complaints made from any source concerning a member of MCAD, (hereinafter referred to as the “complainee”) will initially be handled by the complainee’s working group. The working group will investigate, review and discuss all aspects of the complaint with the complainee and develop a specific and personalized “action plan” for the complainee. The action plan is intended to specifically address the complaint in an individualized manner for the complainee. The plan is intended to improve the

complainee's skill and ability to provide outstanding representation. The working group shall create the action plan upon the completion of all necessary and reasonable investigations into the specifics of the complaint. An action plan may include, depending on the veracity and severity of the complaint, an immediate referral to the CWGL. The working group will remain as the resource to help facilitate the complainee's ability to implement all Level One action plans.

[NOTE: All timelines indicated are maximum time limits; all efforts will be made to complete the delineated task(s) in shorter amounts of time.]

All action plans will follow the following outline:

- 1) The complainee's working group leader will assume bottom-line responsibility for the handling of the complaint. This will include:
 - a. Assuring that the proper amount of investigation into the particulars of the complaint is done;
 - b. Assuring that the complaining entity (the "complainor") is notified that the complaint has been received;
 - c. Assuring that the complainor is notified that an action plan has been formulated and is being implemented;
 - d. Assuring that the complainor is notified of the action plan's on-going progress and its ultimate resolution;
 - e. Documenting the entire complaint process—from identification of the complaint, description of the action plan, action plan progress and complaint resolution;
 - f. Assuring that the complainor has been notified of the resolution of the complaint.

- 2) All complaints are initially received by the Executive Director of MCAD, or designee, who, passes all complaints to the appropriate working group leader in writing.
 - a. In the event the MCAD Executive Director receives a complaint of the most serious nature, after consulting with the complainee's working group leader, the CWGL and the Chairperson of the MCAD Board of Directors, the MCAD Executive Director may suspend either partially or fully an MCAD member from receiving any further appointments until such time as the complainee satisfies the process for removing said suspension.

- i. This process for removing said suspension shall be created by the CWGL.
- 3) The complaintee is initially notified of the complaint by her or his working group leader in whatever manner has previously been agreed upon by the complaintee's working group.
- 4) The working group will be notified of the complaint by their working group leader.
- 5) The working group leader will notify the Committee of Working Group Leaders (CWGL) of the complaint at the earliest possible meeting of the CWGL.
- 6) The working group will formulate the action plan for the complaintee after no more than two (2) regular working group meetings following the meeting that the group first became aware of the complaint. This will cause the action plan to be formulated and implemented within one (1) month from the group's initial awareness of the complaint. Again, note that these timelines are outside maximum time limits.
- 7) The working group leader will then inform the CWGL of the action plan at the next meeting of the CWGL.
 - a. The CWGL may modify or override any Level One action plan presented to it by the working group leader and, if appropriate, assume immediate jurisdiction of the complaint, thereby elevating the complaint to Level Two procedures and consequences
 - i. Such action may be done only via a majority vote of the CWGL.
- 8) The working group will give the complaintee the next four (4) regular working group meetings to implement the action plan and make the changes necessary. The working group will monitor the complaintee's progress, give support to the complaintee, modify the action plan, if necessary to aid in positive progress and offer feedback to the complaintee. This will give the complaintee two (2) months to work her or his action plan and make the changes necessary. Again, note that these timelines are outside maximum time limits.
- 9) At the end of this period, the working group will make an assessment of the complaintee's progress. The working group

leader will report this assessment to the next meeting of the CWGL.

- i. If the report in #9 is positive, the complaint is deemed resolved; if the report is negative, the complaintee is referred to Level Two.

B. Level Two:

All complaints that are not resolved at Level One will be referred to the Committee of Working Group Leaders for further action.

- 1) The complaintee's working group leader will make a report to the CWGL, which will include the following:
 - a. A concise description of the original complaint
 - b. A complete description of the original action plan
 - c. A complete description of the steps / action taken or not taken by the complaintee vis a vis the original action plan
 - d. A recommendation from the working group to the CWGL as to the next course of action
- 2) At the same meeting as the report in #1, the CWGL will, in writing:
 - a. Re-state the original complaint
 - b. Place the complaintee on no more than three months probation.
 - c. Specify the terms of probation that must be addressed by the complaintee
 - i. These terms of probation may or may not include the recommendations of the working group;
 - ii. The terms of probation may include any provision, term or requirement deemed appropriate by the CWGL.
 - d. Assign a member of the CWGL who is not the complaintee's working group leader who will monitor and document the complaintee's progress while on probation, (hereinafter referred to as "probation monitor");
 - e. Notify the complaintee that referral to Level Three will occur if the complaintee does not successfully complete her or his period of probation.
- 3) The assigned probation monitor will notify the complaintee of the terms of her or his probation no later than two (2) days following the above meeting of the CWGL. Again note that these timelines are outside maximum time limits.

- 4) The probation monitor shall provide the CWGL with progress reports at each meeting of the CWGL and seek input as to adjustments, if necessary.
- 5) At the end of the three (3) month probation period, the probation monitor will report the status of the complaintee's probation to the next meeting of the CWGL. Again note that these timelines are outside maximum time limits.
 - i. If the report is positive, the complaintee is removed from probation and the complaint is resolved; if the report is negative, the complaintee is referred to Level Three.

C. Level Three:

All complaints not resolved at Level Two will be referred to the MCAD Executive Director for the imposition of an appropriate resolution.

- 1) The probation monitor will report to the MCAD Executive Director the status of the unresolved probation. This report will include:
 - a. The nature of the original complaint;
 - b. The terms of the complaintee's probation;
 - c. The reasons for the complaintee's failure to successfully complete her or his probation;
 - d. A recommendation from the CWGL as to an appropriate resolution of complaintee's probation.
- 2) The Executive Director will, within ten (10) days of receiving the report in #1, notify the complaintee, the complaintee's working group leader and members of the CWGL in writing that such a referral has occurred.
- 3) The complaintee will have ten (10) days from her or his receipt of this notification to submit her or his written input on the referral to the MCAD Executive Director.
- 4) The MCAD Executive Director will impose whatever resolution s/he deems appropriate within ten (10) days from her or his receipt of the written input referenced in #3 above, which may or may not incorporate any aspects of the CWGL's recommendation(s).

- a. The MCAD Executive Director will provide the complaintee and the complaintee's working group leader with a written description of the action taken.
 - b. The MCAD Executive Director must base the decision upon the information provided from the CWGL and the complaintee.
- 5) The complaintee may petition for the reconsideration of the decision of the MCAD Executive Director to the MCAD Board of Directors, but must do so in writing within fourteen (14) days of her or his receipt of the decision of the MCAD Executive Director referenced in #4 above.
- a. The MCAD Board of Directors will issue a decision concerning any petition within fourteen (14) days of its receipt.
 - i. All documentation created by this process as described above will constitute the entire record upon which the MCAD Board of Directors will base its decision.
 - ii. Review of petition by MCAD Board of Directors will be to determine whether the MCAD Executive Director acted in an arbitrary and/or capricious manner; if not, the action(s) of the MCAD Executive Director shall be sustained.

Appendix A: MCAD Answers to Questionnaire for Consortia Administrators and Boards

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

Yes. A copy of the current Articles of Incorporation and Bylaws are enclosed. The Attorney Manual attached to the 2005 report is being revised and brought current. Additionally, the Bylaws are being examined for internal consistency and consistency with the Articles of Incorporation and proposals for their revision will likely be made in the fall to coincide with the annual meeting.

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

Yes. The Board is the policy making body of MCAD as described in the Articles of Incorporation and Bylaws.

The current members of the Board are:

Olcott Thompson, Chair
Gale Rieder, Secretary
Steve Walls, Treasurer
Ted Coran
Jerry Frost, Marion County Circuit Court Presiding Judge appointment
Scott Howell
Tara Sinks
Phil Swogger
Jon Weiner
Mike Wise, Willamette University College of Law appointment

All board members are MCAD attorneys except Jerry Frost and Mike Wise. Currently the Marion County Bar position for a non MCAD member is vacant. The board is designed to be a nine person board, each position carries a three year term, and one third stand election each year. With the addition of three non MCAD members it was decided not to force any current members to resign, but rather, to have a slightly larger board for a couple of years while the MCAD elected members

decrease each year from three to two.

The board meets monthly and discusses policy matters for the consortium such as admission of new attorneys, as well as policy matters relating to the operation of the indigent criminal defense system in Marion County and its relationship with OPDS/PDSC.

There are presently no limits on the length of service either as a member or as board chair although they have been discussed in the past, particularly service as a member of the board. Term limits have not been enacted due to the difficulty of getting MCAD member attorneys willing to serve.

Three seats on the board are appointed positions. The Marion County Bar Association President, the Marion County Circuit Court Presiding Judge, and the Dean of the Willamette University College of Law each appoint one member to overlapping terms. The person appointed by the Marion County Bar Association President recently resigned because of liability concerns when MCAD takes a quality assurance action against one of its members.

3. How is the administrator of your consortium selected? Compensated? Evaluated?

The Executive Director is hired by the board and paid a salary representing .7 Full Time Equivalent (FTE). The board has evaluated the Executive Director's performance twice in the past. The Board is revising the job description for the Executive Director and once it is approved, yearly evaluations against the job description and goals set the preceding year will be conducted. The board chair will chair the evaluation committee comprised of non board members. The entire board will then receive the committee's report for appropriate action.

We are also completing a "succession plan" to ensure that operations will smoothly continue during times we do not have an Executive Director.

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

The OPDS/PDSC - MCAD contract calls for the Executive Director to spend .7 FTE on MCAD business. This is the formal paid limit to the time the Executive Director spends as Executive Director. In reality, the MCAD administrator position is a full time position. The Executive Director spends the time necessary to complete his duties. Recently, the

board chair and other MCAD members have also volunteered their time to help with what would be done by a full time administrator.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

MCAD was started in November of 1993. MCAD has had a single Executive Director since it has existed. In these 12 plus years there has not been a time where the Executive Director has not been available to handle administrative problems. The Executive Director has established an informal system for those few days when he has been unavailable to handle administrative demands. The office manager, the chair of the board, the chair of the fee review committee and others, who know the MCAD processes, have been called upon to meet MCAD's administrative demands.

MCAD is in the process of developing a more formalized system. We are awaiting the completion of the Executive Director job description and will then parcel out the various duties. MCAD's three full time office personnel primary responsibility is the processing and accountability of MCAD's billings. This system was established through the contract with the OPDS/PDSC indigent defense predecessor, and is maintained in its present form based on the current OPDS/PDSC contract. Any change in this process, or reallocation of employee resources cannot be done unilaterally, without a change in this contract.

6. What are the requirements for membership in the consortium?

A member of MCAD must be admitted to the Oregon State Bar and eligible to serve as appointed counsel in Oregon courts under the rules of the Office of Public Defense Services. He or she must also be a member of the Bar's Criminal Law Section and OCDLA and have an office in Marion County or West Salem.

7. What is the process for applying for membership?

Anyone interested in being a member of MCAD applies by submitting a letter of interest and resume to the Executive Director. The proposed member is interviewed by a board committee upon whose report the board acts.

8. How long has each of the attorneys been a part of the consortium?

. See the attached Roster.

9. To what extent do consortium attorneys specialize in criminal and juvenile defense? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

. Virtually all members of MCAD spend the vast majority of their time doing criminal and juvenile defense. Many members do both appointed and retained criminal defense. A number of MCAD members are also members of the Marion County Juvenile Consortium. There is no limit on the percentage of an attorney's practice that can be MCAD related.

10. How do you insure that new attorneys can become part of the consortium?

. Anyone interested in becoming a member of MCAD can apply for membership. The proposed member is interviewed by a committee and then the board decides whether to accept the attorney as a member.

We have primarily relied on word of mouth when we needed new members and we have added three members in the last three months. We have also advertised at the Oregon law schools and through local and state bar associations as well OCDLA for members, when necessary.

MCAD presently has two law clerks. One is a general MCAD law clerk and the other is assigned to a particular work group. The law clerk assigned to the work group is an extern in the Willamette Law School Externship program and receives academic credit for his law clerk work.

MCAD is considering "hiring" a law clerk for each work group, either by externship or payment. This way, members, who otherwise would not have enough work for a law clerk, will be able to join together and share a law clerk. It is hoped that each year at least six students will be exposed to the criminal defense system.

11. What materials and orientation are provided to new consortium members?

New members are provided with the Attorney Manual and the MCAD time and billing software program. They have a mentor as well as a work group available for assistance and training. The mentor and the work group are responsible for orientation as to the court house and local procedures.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

- . Work Groups are a mix of attorneys with varying levels of experience. Each less experienced attorney has the pooled wisdom of the other members of his/her work group to draw upon.

All new attorneys must have a mentor for at least one year. The mentor is a member of their work group and is assigned by the Executive Director in conjunction with the Work Group Leader Committee.

When asking to be approved for a new level of appointments the attorney must also have a mentor, again assigned by the Executive Director in conjunction with the Work Group Leader Committee.

In addition, Marion County is known for its cooperative informal system that insures that less experienced attorneys may call most of the Marion County Bar to ask more experienced attorneys for advice.

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

- . Cases are assigned using an attorney of the day system. Attorneys sign up for all appointments for a day for a category:

- Spanish speaking misdemeanors (generally Spanish speaking attorneys)
- All other misdemeanors
- Lesser felonies (per OPDS rules)
- All other felonies

Habeas corpus, post conviction, and support enforcement have their own separate rotating list with the court appointing the next attorney on the list.

Murder and aggravated murder have their own separate rotating lists with the court appointing one of the next three attorneys on the list.

Attorneys are only eligible for appointment commensurate with the level of cases for which they qualify under OPDS/PDSC rules. As the attorney gains experience and is able to qualify for a new level of cases they notify the Executive Director, complete the necessary paperwork, and the

Executive Director in conjunction with the Work Group Leader Committee assign the attorney a mentor, who after mentoring the new attorney for a minimum of six months reports to the Executive Director whether the attorney is actually qualified for the new level.

MCAD is in the process of studying whether this is the best system for assigning attorneys. The study has been delayed due to the fire last November in the Marion County Courthouse. At present, the Marion County Courts and MCAD have determined that the attorney to be appointed should be present at the client's first appearance for purposes of coordinating future appearances with the court's requirements and communicating with the client.

In cases where the Court may have doubts of an attorney's qualification to be appointed to a particular case, MCAD is flexible and the Court does and should appoint the best qualified attorney.

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

For misdemeanors and felonies the attorney to be appointed is in court at the time of the appointment. At times an attorney will stand in for the appointed attorney who will notify the appointed attorney the same day.

For habeas corpus and post conviction the appointed attorney is notified when he/she receives a copy of the order appointing them in the mail, usually with a copy of the Petition. This can be a day or two after the appointment depending on when the court staff processes the paperwork.

For support enforcement the attorney is either in court or the court notifies the appointed attorney by telephone the same day as the appointment.

For murder and aggravated murder the Executive Director notifies the court who the available attorneys are and after the court appoints an attorney notifies the attorney, in almost all cases, the same day as the appointment and in almost all cases before the client's first appearance. The attorney appointed is almost always in court at the client's first appearance.

Attorneys routinely meet with clients within the time frames set forth in the contract with PDSC.

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

- . Yes. Sometimes because of the attorney of the day system and the desire of the court not to appoint attorneys who are not personally present, this does not happen. Generally once an attorney is appointed to represent a client, he or she will receive all cases involving that client as long as there is an active case. If a client picks up a new charge while being represented by a particular attorney the already appointed attorney is usually appointed for the new charge or is substituted in for the attorney recently appointed. The exceptions are when the existing attorney is not qualified to handle the new charge, then all cases, including the ones an attorney is already appointed on are generally given to a new attorney or when the Court is not aware that the defendant currently has a MCAD attorney and thus appoints another attorney.

If the client failed to appear after a case was scheduled for trial the court is supposed to appoint the prior attorney but frequently does not because the court is not aware of the previously appointed attorney.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

- . Because of MCAD's structure, there are virtually no system conflict of interest cases. Thus conflicts are limited to individual attorney conflicts.

Each attorney is responsible for their own conflict checking. As soon as a conflict is identified a case is reassigned. Attorneys are expected to check conflicts as soon as possible after they are appointed and as they get discovery and other information from the district attorney's office. With the help of the district attorney's office co-defendant conflicts are usually identified before appointment.

17. Do consortium members meet regularly as a group? If so, how frequently?

- . MCAD has monthly membership meetings, the third Thursday of each month attended by a majority of MCAD members each month. Each work group also meets at least twice a month. Work group meetings are

mandatory. There is also each year a mandatory member meeting.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

- . MCAD has its own email list (the MCAD pond) as well as a newsletter that is published every other week and disseminated through the email list. MCAD's central office is also visited at least weekly by most members where important information is distributed. MCAD also has a website to help communicate with its members: www.mcadlaw.com

19. Is there a mechanism for sharing research or forms?

- . The MCAD website, www.mcadlaw.com, has a collection of forms. Research and forms are shared within work groups and between individual attorneys and through the email list.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

- . There is no formal monitoring of case loads. Through the review of bills there is some, post acceptance of appointment, monitoring. MCAD is currently examining the issue of case loads as we examine the way clients are assigned.

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation?

- . If anyone expresses a concern about an attorney, that concern is relayed to the attorney's work group which has the initial responsibility to address the concern. If the concern is not remedied at the work group level, the Work Group Leader Committee imposes a remedy and if that is not successful, the Executive Director resolves the issue with the member having the ability to have the Board of Directors review the action of the Executive Director.

Each work group is responsible for working with its members to ensure all members of the work group are providing quality representation.

MCAD is currently working on a method to provide annual evaluations of members.

Every member of each work group is responsible for assisting the other members of their work group and helping them provide quality representation. Members waiting in the courtroom watch other members and provide them with pointers and assistance as needed. In particular, MCAD members are not shy in advising other members in best practice procedures.

In addition, informal methods of quality assurance have been developed over the years in MCAD. The Executive Director is always available to the Courts, clients and others who wish to express concerns about an attorney's representation. The Executive Director refers these concerns to the attorney and the attorney's workgroup and monitors any quality assurance measures taken to alleviate valid concerns.

22. How do you address problems of underperformance by attorneys?

- . Under performance is addressed through work groups and the Executive Director. See 21, above.

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law- or trial practice-related CLE credits per year?

- . MCAD provides at least two CLEs for attorneys each year. Each year every MCAD member must attend at least one of the MCAD CLEs as well as at least one OCDLA-sponsored CLE. Additionally, at least one-half of the OSB required CLE credits must be in the area of criminal defense.

24. Are attorneys required to report disciplinary actions by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

- . MCAD attorneys are required to report bar disciplinary action to MCAD. Disciplinary actions are referred to the attorney's work group to decide what action needs to be taken. According to the February 2, 2006 letter from OPDS, 17 MCAD attorneys have received some form of disciplinary action from the bar. Individual discipline by the bar occurred under many circumstances but it should be noted that MCAD's practice includes post conviction relief appointments, an acknowledged difficult area of practice with proportionally high complaints to the bar.

Attached are copies of the Certificates of Attorney Qualifications showing disciplinary action by the bar.

25. What is the consortium's process for handling complaints from judges? From clients? From others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

- . Complaints are addressed through work groups. All complaints and concerns about attorneys are routed through the Executive Director to ensure they are properly recorded and handled. In the past and currently, concerns and complaints from clients, judges, prosecutors and other individuals have all been reported to the Executive Director. The Executive Director then refers them to the member's work group. He is generally known as the person to whom a complaint should be addressed.

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

- . Every MCAD attorney knows how to access interpreters as needed. There are 6 to 10 qualified Spanish interpreters in regular use by MCAD attorneys. MCAD has conducted Immigration CLEs in the past and expect to have them in the future. In cases where the appointed attorney needs specialized immigration advice, MCAD has both a formal and informal relationship with immigration attorneys to help with these issues. Formal expert advice has been and can be gotten through the EEA/NRE process.

27. Do you have a system in place which allows clients to evaluate the quality of services received from consortium attorneys?

- . No. MCAD is designing such a process.

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

- . Absolutely. MCAD's Executive Director and members are involved in all policy making bodies in our criminal justice system that will allow such participation. Drug Court, Courthouse Security Committee, Annex Procedure Committee, Marion County's Domestic Violence Council, and planning for the new Mental Health Court amongst others, have all been systematized committees that MCAD is formally involved with. Where it is not currently allowed, MCAD is knocking at their door asking to be

involved.

**29. What are some of the things your consortium does especially well?
Please describe.**

- . MCAD is very flexible and resilient. This is shown, not only by our ability to adapt to the many changes brought about by the November 2005 Marion County Courthouse fire, but also our response to the OPDS/PDSC service delivery plan process.

The vast majority of our members provide excellent, high quality, representation to their clients. All our services are efficient and cost effective.

**30. Are there any areas in which you think improvement is needed?
Please describe.**

- . MCAD is continuing to ensure the provision of consistent high quality representation and refining our system for handling underperforming attorneys who need assistance.

MCAD needs to continue to make sure MCAD itself is efficiently run with well documented policies and procedures as well as a well functioning Board of Directors.

AMENDED ARTICLES OF INCORPORATION

Marion County Association of Defenders, Ltd. (MCAD)

The undersigned natural persons of the age of eighteen years or more acting as incorporators under the Oregon Nonprofit Corporation Act, adopt the following Articles of Incorporation:

ARTICLE I

The name of this corporation is Marion County Association of Defenders, Limited, and its duration shall be perpetual.

ARTICLE II

The corporation is a public benefit corporation.

ARTICLE III

The address of the corporation's initial registered office and the initial registered agent at the same location are:

Steven H. Gorham
341 State Street
Salem, Oregon 97301

ARTICLE IV

The alternate corporate mailing address shall be that of the principal office; notice may be mailed to that address until the principal office has been designated in its annual report.

ARTICLE V

The names and addresses of the incorporators are:

Steven H. Gorham, 341 State Street, Salem, Oregon 97301
Steven L. Krasik, 341 State Street, Salem, Oregon 97301
Lee H. Peterson, 494 State Street, Suite 210, Salem, Oregon 97301

ARTICLE VI

This corporation shall have members.

ARTICLE VII

Upon dissolution of the corporation, after payment of all liabilities, remaining assets, if any, shall be disposed of exclusively to organizations organized and operated exclusively for charitable, educational, religious or scientific purposes which are qualified as exempt organizations under the Internal Revenue Code, Section 501(c)(3) or the corresponding provision of any future code as the Board of Directors shall determine.

Any such assets not so disposed of shall be disposed of by the Circuit Court of the State of Oregon for the County of Marion, to such organizations as said Court shall determine which are organized and operated exclusively for the purposes described in the next preceding paragraph of this Article VII.

ARTICLE VIII

There will be nine (9) initial Directors who will be elected at the incorporation meeting.

ARTICLE IX

The purpose for which this corporation is organized is to provide legal counsel and representation to persons certified by the State of Oregon to be indigent and to qualify for Court-appointed legal representation under the laws of this State and/or the Constitution of the United States. Additionally, this corporation is organized to engage any other lawful activities; provided, however, a substantial portion of this corporation's activities shall not be for profit nor for political purposes.

This corporation is organized exclusively for charitable or educational purposes within the meaning of Section 501(c)(3) of the internal revenue code or the corresponding provision of any future such code.

ARTICLE X

This corporation shall be governed by the Board of Directors in accordance with the Bylaws and the Oregon Nonprofit Corporation Act, as the same exists or may hereinafter be amended.

ARTICLE XI

The Corporation's Board of Directors shall consist of eleven (11) directors during calendar year 2006, ten (10) directors during calendar year 2007, and nine (9) directors thereafter. . Each Director shall serve a term of three years and for a period thereafter until such time as that Director's successor has been appointed or elected. Six directors shall be elected by members at large, two each year, with each active member having one vote per vacancy. Votes may not be pooled nor is cumulative voting permitted.

One director shall be appointed by the Marion Coutny Bar Association. That director's

first term shall begin January 1, 2006. and the initial term shall be for one year. Thereafter the term shall be for three years. One director shall be appointed by the Willamette Univeristy College of Law. That director's first term shall begin January 1, 2006, and the initial term shall be for two years. Thereafter the term shall be for three years. One director shall be appointed by the judges of the Marion County Circuit Court who shall not be a member of the judiciary. That director's first term shall beging January 1, 2006.

In 2005, 2006 and 2007 only two of the then existing three Board of Directors positions shall be elected by the MCAD membership.

Directors shall be elected by a majority of votes cast for that specific vacancy. Provided, however, where more than two candidates are offered for a single vacancy, a plurality of votes may be used to eliminate all candidates until there are two candidates remaining after which a majority shall be required to elect the successful candidate.

The executive Director may be removed for cause by vote of two-thirds of the membership.

ARTICLE XII

No part of the net earnings of the corporation shall inure to the benefit of, or be distributed to its directors, trustees, officers, of other persons, except that the corporation shall be authorized and empowered to provide reasonable compensation for the services rendered and to make payments and distributions in furtherance of the purposes set forth in Article IX.

No substantial part of the activities of the corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation. The corporation shall not participate in or intervene in (including the propagation or distribution of statements) any political campaign on behalf of or in opposition to any candidate for public office.

Notwithstanding any other provision of these Articles, the corporation shall not carry on any activities not permitted to be carried on

- (a) by a corporation exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law, or
- (b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law.

ARTICLE XIII

The corporation shall indemnify each of its directors and uncompensated officers to the

fullest extent permissible under the Oregon Nonprofit Corporation Act, as the same exists or may hereafter be amended, against expense, liability, and loss (including, without limitation, attorney fees) incurred or suffered by such person by reason of or arising from the fact that such person is or was a director or officer of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise, and such indemnification shall continue as to a person who has ceased to be a director, officer, partner, trustee, employee, or agent and shall inure to the benefit of the person's heirs, executors, and administrators. The corporation may, by act of the Board of Directors, provide indemnification to employees and agents of the corporation who are not directors or uncompensated officers with the same scope and effect as the indemnification provided in this Article XIII to such uncompensated officers. The indemnification provided in this Article shall not be exclusive of any other rights to which any such person may be entitled under any statute, bylaw, regulation, resolution, or otherwise.

ARTICLE XIV

To the fullest extent permitted under the Oregon Nonprofit Corporation Act, as it now exists or may hereafter be amended, a director, or uncompensated officer of the corporation shall not be liable to the corporation for monetary damages for conduct as a director or uncompensated office. The repeal of or amendment to this Article XIV shall not adversely affect any rights or protection of a director or uncompensated officer of the corporation existing at the time of such repeal or amendment.

ARTICLE XV

These Articles of Incorporation shall be amended only by an affirmative vote of two-thirds of the active membership.

The undersigned incorporators declare under the penalty of perjury that they have examined the foregoing and to the best of their knowledge and belief, it is true, correct, and complete.

**CORPORATE BYLAWS
Of
MARION COUNTY ASSOCIATION OF DEFENDERS, LTD.**

ARTICLE I. OFFICES

The principal office of the corporation in the State of Oregon shall be located in the City of Salem, County of Marion.

The registered office of the corporation required by Oregon Nonprofit Corporation Act to be maintained in the State of Oregon may be, but need not be, identical with the principal office of the corporation, and the address of the registered office may be changed from time to time by the Board of Directors.

ARTICLE II. BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by its Board of Directors.

Section 2. Number, Tenure, and Qualifications. The number of directors of the corporation shall be eleven during calendar year 2006, ten during calendar year 2007, and nine thereafter. Each director shall hold office for the term stated in the Articles of Incorporation or until the director's death, resignation, or removal from office in the manner hereinafter provided.

Section 3. Regular Meetings. A regular annual meeting of the Board of Directors shall be held without other notice than this bylaw on the third Tuesday in October at 9:00 a.m. at the principal office of the corporation, unless said meeting is reset by the Board.

Section 4. Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Executive Director, the Chairperson, or any three directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place for holding any special meeting of the Board of Directors called by them.

Section 5. Notice; Waiver. Notice of any special meeting shall be given at least 48 hours prior thereto by written notice delivered personally or mailed to each director at the director's business address. If mailed, such notice shall be deemed to be delivered 48 hours after it is deposited in the United States mail so addressed, with postage prepaid. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. The attendance of a director at a meeting shall constitute a waiver of notice of such meeting, except where a director objects at the beginning of the meeting or promptly upon arrival to holding the meeting or transacting business at the meeting because the meeting is not lawfully called or convened and does not thereafter vote for or assent to any action taken at the meeting. A written waiver of notice of a meeting signed by the director or directors entitled to such notice, whether before or after the time stated therein, which specifies the meeting for which notice is waived and which is filed with the minutes or corporate records, shall be equivalent to the giving of such notices.

Section 6. Quorum. A majority of the number of directors fixed by Section 2 of this Article II shall constitute a quorum for the transaction of business at any

meeting of the Board of Directors, but, if less than such majority is present at a meeting, a majority of the directors present may adjourn the meeting from time to time without further notice.

Section 7. Manner of Acting. Except to the extent a greater number is required by law, the articles of incorporation, or elsewhere in these bylaws, the act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. Vacancies. Any vacancy created by reason of term expiration shall be filled in accordance with the articles of incorporation. Any vacancy occurring by reason of death, resignation, or removal shall be filled by the Board of Directors. Such director shall be appointed for the unexpired term of the predecessor in office. Any directorship to be filled by reason of any increase in the number of directors shall be filled by the affirmative vote of a majority of the directors present at any meeting, even though less than a quorum of the Board is present at such meeting. The Board of Directors, by the vote of a majority of the directors then in office, may declare vacant the office of a director who fails to attend two out of four consecutive meetings of the Board and who, prior to such meetings, shall have failed to notify the Executive Director or the Secretary of the director's inability to attend and the reasons thereof.

Section 9. Removal of Directors. A director may be removed at a meeting expressly called for that purpose by a two-thirds vote of the membership.

Section 10. Action by Directors without Meeting. Any action required to be taken at a meeting of the directors, or any other action which may be taken at a meeting of the directors, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the directors, and such consents are included in the minutes or filed with the corporate records reflecting the action taken.

Section 11. Telephonic Meetings. Meetings of the Board of Directors, or of any committee designated by the Board of Directors, may be held by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other and such participation shall constitute presence in person at the meeting.

ARTICLE III. OFFICERS

Section 1. Number. There shall be four officers: The Chairperson of the Board of Directors, the Executive Director, the Secretary and the Treasurer.

Section 2. Appointments, Elections, and Terms of Office.

- (a) The Chairperson of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (b) The Treasurer of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (c) The Secretary of the corporation shall be elected from among and by the Board of Directors for a term of one year.
- (d) The Executive Director of the corporation shall be appointed by the Board of Directors for a term which shall last as long as the Executive Director's employment as executive director.

Section 3. Removal. Any officer or Executive Director elected or appointed by the Board of Directors may be removed by the Board of Directors whenever in its judgment the best interest of the corporation would be served thereby.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 5. Chairperson of the Board. The Chairperson of the Board shall preside over meetings of the Board of Directors.

Section 6. Executive Director.

(a) The Executive Director shall be the principal executive officer of the corporation and, subject to the control of the Board of Directors, shall in general supervise and control all the business and affairs of the corporation. The executive director may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, any contracts or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these bylaws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or executed; and in general the Executive Director shall perform all duties incident to the office of Executive Director and such other duties as may be prescribed by the Board of Directors from time to time.

(b) The Board of Directors shall establish a written position description for the position of Executive Director. The Board of Directors shall also establish a written list of criteria for evaluating the performance of the Executive Director. The Board of Directors shall evaluate the performance of the Executive Director on a yearly basis in writing. The position description, criteria and evaluations shall be available upon request for inspection by any member.

Section 7. Secretary. The Secretary shall:

(a) keep the minutes of the Board of Directors meetings in one or more books provided for that purpose;

(b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law;

(c) be custodian of the corporate records; and

(d) in general, perform all duties incident to the office of Secretary and such other duties as from time to time may be assigned to him or her by the Board of Directors.

Section 8. Treasurer. The Treasurer shall:

(a) have charge and custody of and be responsible for all funds of the corporation, receive and give receipts for monies due and payable to the corporation from any source whatsoever, and deposit all such monies in the name of the corporation in such banks, trust companies, or other depositories as shall be selected in accordance with the provisions of Article V of the bylaws; and

(b) in general, perform all duties incident to the office of Treasurer and such other duties as from time to time may be assigned by the Board of Directors.

Section 9. Salaries. Neither the Chairperson of the Board nor the other directors shall receive any salary for the work they do on the Board, but nothing in these bylaws shall preclude any director from serving the corporation in another capacity and receiving compensation for these services.

ARTICLE IV. MEMBERS

Section 1. Voting. Each active member shall have one vote.

Section 2. Members. Initial membership shall be limited to those persons listed on a membership roster dated November 2, 1993, subscribed by Steven H. Gorham as amended at the initial corporate meeting of November 2, 1993.

Section 3. Admission to Membership.

(1) Persons other than those identified in Article IV, Section 2 wishing to become members must:

(a) be eligible to serve as appointed counsel in an Oregon Court under current rules of the Public Defense Services Commission/Office of Public Defense Services.

(b) serve a probationary period of one year;

(c) after receiving input from the active membership, receive a majority vote of the Board of Directors voting in the election for new members.

(2) Membership will be open periodically upon a majority vote of the Board of Directors.

Section 4. Membership meetings.

(1) General meetings of members shall be held the third Tuesday of each month at the Marion County courthouse.

(2) Special meetings of the membership may be called by the Chairperson, the Executive Director or by petition of ten active members.

(3) Annual meetings of the membership shall be held each year in October or November to vote on any vacant Board of Director position(s) and on any other appropriate matters.

(4) A simple majority of members of the active membership shall constitute a quorum for the transaction of business at any meeting of the members.

An active member of MCAD is as a member who has taken an appointment through MCAD in the past six months or is presently appointed counsel for a case he or she was appointed to through MCAD.

ARTICLE V. CONTRACTS, LOANS, CHECKS, AND DEPOSITS

Section 1. Contracts. The Board of Directors may authorize any officer or officers, agent or agents, to enter into any contract or execute and deliver any instrument in the name of and on behalf of the corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the corporation and no evidence of indebtedness shall be issued in its name unless authorized by a resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the corporation shall be signed by such officer or officers, agent or agents, of the corporation and in such manner as shall from time to time be determined by resolution of the Board of Directors.

Section 4. Deposits. All funds of the corporation not otherwise employed shall be deposited from time to time to the credit of the corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

ARTICLE VI. AMENDMENTS

These bylaws or any portion hereof may be amended by the active membership by a two-thirds vote of those members present conducted at a meeting where the notice to all members of the meeting contains the proposed bylaw amendment.

ACTIVE ROSTER

8/31/2006

Year of MCAD Admission	OFFICE #	LAST	FIRST	OFFICE ADDRESS	CITY	ZIP	EMAIL ADDRESS
1999	503 371-8606	AIKEN	JANE	520 STATE ST	SALEM	97301	JANEAIKENATTY@AOL.COM
1993	503 363-9158	BOCCI	CHRIS	1415 LIBERTY ST SE	SALEM	97302	C.BOCCI@COMCAST.NET
1993	503 370-7745	BOSTWICK	TOM	825 LIBERTY ST NE	SALEM	97301	TBOSTWIC@WVI.COM
2002	503 391-6774	BOTTA	ROBERT	161 HIGH ST SE STE #218	SALEM	97301	BOTRO9@AOL.COM
1993	503 585-1933	BROWNLEE	MARK	341 STATE ST	SALEM	97301	SNEEZYESQ@HOTMAIL.COM
1993	503 585-2450	BURT	FRED	429 COURT ST NE	SALEM	97301	CLAFARGE@LAFKY.COM
1999	503 362-2674	CAMACHO	RUDY	679 COTTAGE ST NE	SALEM	97301	TIPPY@TELEPORT.COM
2005	503 363-9158	CARL	WILLIAM	1415 LIBERTY ST SE	SALEM	97302	WCARL69@MSN.COM
2005	503 364-9400	CARROLL	DANIEL	PO BOX 4025	SALEM	97302	DMCARROLL-ATTY@QWEST.NET
2002	503 364-6734	COLE	LOIS	1820 COMMERCIAL ST SE	SALEM	97302	LOIS708@YAHOO.COM
1999	503 581-7305	CORAN	TED	189 LIBERTY ST NE STE #203	SALEM	97301	TEDCORAN@EARTHLINK.NET
1993	503 585-3351	COWAN	RICHARD	PO BOX 965	SALEM	97308	RLCOWAN@PORTLAND.QUIK.COM
1993	503 588-8113	DIXON	CATHERINE	341 STATE ST	SALEM	97301	EXPAT81@WMCONNECT.COM
1993	503 399-7098	EDWARDS	JAY	388 STATE ST	SALEM	97301	JAYEDWARDSISIN@YAHOO.COM
2002	503-362-1601	FAGAN	MICHAEL	388 STATE ST STE#475	SALEM	97301	COME2WIN@NETSCAPE.COM
1993	503 588-1723	GEIGER	MARK	317 COURT ST NE STE #211	SALEM	97301	MGEIGER@CYPERIS.NET
1993	503 364-6494	GORHAM	STEVEN	341 STATE ST	SALEM	97301	GRUMPY@TELEPORT.COM
1993	503 371-1700	GREFENSON	NOEL	1415 LIBERTY ST SE	SALEM	97302	NGREFENSON@AOL.COM
1993	503 378-0405	HABEKOST	MARTIN	PO BOX 725	SALEM	97308	HABEKOST@PORTLAND.QUIK.COM
2004	503 588-3088	HANLON	S.DELANEY	1250 CANNON STREET SE	SALEM	97302	DELANEY_HANLON@YAHOO.COM
2000	503 375-7738	HAYES	KEITH	PO BOX 982	SALEM	97308	ROCKHAYES@COMCAST.NET
1993	503 399-7430	HELLEWELL	RONALD	1596 LIBERTY ST SE #202	SALEM	97302	RHILLEWELL@AOL.COM
2002	503 585-5590	HENDRICK	KEVIN	PO BOX 7078	SALEM	97303	RKH56OR@YAHOO.COM
1993	503 363-8959	HOLSTEDT	BROOKE	PO BOX 3018	SALEM	97302	BHOLSTEDT@AOL.COM
2000	503 585-2450	HOWELL	SCOTT	429 COURT ST NE	SALEM	97301	HOWELLLEGAL@YAHOO.COM
1993	503 588-2687	JONES	JEFFREY	1840 WEST NOB HILL SE	SALEM	97302	ATTYJONES@AOL.COM
1993	503 362-4442	KRASIK	STEVEN	341 STATE ST	SALEM	97301	KRASIK@TELEPORT.COM
1993	503 588-3088	KUHNS	DAVID	1250 CANNON STREET SE	SALEM	97302	DAVIDBKUHNS@COMCAST.NET
1993	503 581-4832	LIPTON	STEPHEN	161 HIGH ST SE STE #242	SALEM	97301	SALIPTON@COMCAST.NET
1993	503 859-3800	LULAY	PATRICIA	PO BOX 607	LYONS	97358	JURISDOCTOR@PEOPLEPC.COM
2004	503 391-0281	MARTINEZ	LUIS	187 HIGH ST NE #201	SALEM	97301	LUISAMARTINEZ02@HOTMAIL.COM
2003	503 365-8800	MOONEY	GINGER	388 STATE ST STE #700	SALEM	97302	DUNLAPG@QWEST.NET
1999	503 375-6278	OBERT	MARK	189 LIBERTY ST NE STE #201	SALEM	97301	MARKGOBERT@AOL.COM

ACTIVE ROSTER

8/31/2006

Year of MCAD Admission	OFFICE #	LAST	FIRST	OFFICE ADDRESS	CITY	ZIP	EMAIL ADDRESS
1993	503 375-9920	PARTRIDGE	LINDSAY	PO BOX 4195	SALEM	97302	PARTRIDGELAW@MSN.COM
2006	503 587-8800	PEREZ	JENNIFER	388 STATE ST STE #570	SALEM	97301	ATTYJENPEREZ@MSN.COM
2002	503 361-7600	POTTER	ANA	687 COURT ST NE	SALEM	97301	ANA_POTTER1@MSN.COM
1994	503 363-7334	PRICE	GEORGE	317 COURT ST NE STE #203	SALEM	97301	GEORGE@PRICE-PRICE.COM
1993	503 581-0227	REYNOLDS	LINDA	161 HIGH ST SE STE #240	SALEM	97301	LJRABOGADA@MSN.COM
1993	503 315-7353	RIEDER	GALE	350 MISSION ST SE STE #201	SALEM	97302	RIEDERLAWOFFICE@TELEPORT.COM
1993	503 371-4084	ROCKWELL	CRAIG	PO BOX 389	SALEM	97308	ROCKCRR@OPEN.ORG
2005	503 378-7529	SALINAS	VADA	270 COTTAGE ST NE	SALEM	97301	VS-LAW@COMCAST.NET
1993	503 371-3222	SETO	LESTER	520 STATE ST	SALEM	97301	LESETO@AOL.COM
2002	503 361-2449	SIMRIN	ANDY	180 COMMERCIAL NE STE #8	SALEM	97301	SIMRIN@WVI.COM
2000	503 363-5588	SINKS	TAHRA	PO BOX 1114	SALEM	97308	TSINKS@COMCAST.NET
2006	503 362-5660	STEIN	DEBBE	161 HIGH STREET SE STE#220	SALEM	97301	HOTPOTATO59@HOTMAIL.COM
1993	503 363-6625	STORKEL	JOHN	1415 LIBERTY ST SE	SALEM	97302	OCEANPOET@COMCAST.NET
1993	503 399-8404	SWOGGER	PHILLIP	PO BOX 2105	SALEM	97308	SHEBORAWK@COMCAST.NET
1999	503 391-7664	TAYLOR	SUZANNE	2711 12TH STREET SE	SALEM	97302	SALEMLAWDOG@YAHOO.COM
1993	503 581-6881	THOMPSON	OLCOTT	PO BOX 1062	SALEM	97308	OLCOTT@OPEN.ORG
1993	503 588-3088	TODD	WALTER	1250 CANNON STREET SE	SALEM	97302	WJTODD97301@YAHOO.COM
2004	503 365-8800	VAN NESS	JAMES	388 STATE ST STE #700	SALEM	97302	VANNESS@QWEST.NET
1993	503 588-8053	VANDERMAY	MONTY	388 STATE ST STE #340	SALEM	97301	MONTY@VANDERMAYLAWFIRM.COM
1999	503 981-9276	VELA	ALBINO	1537 N. PACIFIC HWY	WDBRN	97071	ALBINOVELA@EARTHLINK.NET
2004	503-365-0072	WALL	JIM	PO BOX 2245	SALEM	97308	JPW71180@YAHOO.COM
2002	503 391-4777	WALLS	STEVEN	868 COMMERCIAL ST NE	SALEM	97301	STEVEN_WALLS@HOTMAIL.COM
2005	503 391-0281	WARNER	WESTLEY	187 HIGH ST NE #201	SALEM	97301	WARNERWES@HOTMAIL.COM
2000	503 399-7001	WEINER	JON	189 LIBERTY ST NE STE #206	SALEM	97301	JONHWEINER@AOL.COM
2006	503 399-2400	WREN	DANIEL	494 STATE ST STE#440	SALEM	97301	DWREN_LAW@YAHOO.COM

Appendix D

- **Describe specifically the current allocation of management authority and responsibility among MCAD's Board of Directors, Executive Director and members, including decisions to (a) add and remove members, (b) establish and implement qualification standards and practice requirements for MCAD's members, and (c) sanction members for substandard performance or misconduct?**

The Board of Directors is responsible for the policies of MCAD within the confines of the Articles of Incorporation, the Bylaws, and Oregon law. The members elect six of the nine members of the board and are encouraged to serve on board committees and voice their concerns and comments on all aspects of what MCAD does. The Executive Director is charged with carrying out the policies of the board and running the corporation on a daily basis.

- a) The Board of Directors has the ultimate authority to add and remove members. It is the only body that can add members. The Executive Director as well as the Workgroup Leaders Committee can suspend members. The Executive Director can terminate membership. Decisions of the Executive Director and the Workgroup Leaders Committee are reviewable by the board.
- b) The board establishes qualification standards and practice requirements. The Executive Director implements those standards and monitors compliance with them.
- c) An individual's work group, the Workgroup Leaders Committee, and the Executive Director all monitor the quality of member's representation, work to improve the quality of everyone's representation, and, ultimately, when necessary, impose sanctions for substandard performance and misconduct.

- **To what extent do the written materials that MCAD has submitted to OPDS and PDSC accurately reflect the current allocation of management authority and responsibility within MCAD, as opposed to the aspirations of MCAD's current management to move the consortium away from past practices to a new management and governance structure? More specifically, MCAD revised its Attorney Manual on July 13, 2005, one day before it submitted its original materials to OPDS for PDSC's July meeting. What significant changes were made in the July 13, 2004 version**

of MCAD's Attorney Manual and to what extent do those changes reflect the consortium's current practices?

The materials submitted with this 2006 report accurately reflect the policies and procedures of MCAD. The Attorney Manual is currently being revised to reflect the changes in the structure of MCAD since mid-2005. We are waiting to complete this next revision for a sufficient period of time to pass so we know that work groups are effective and the revision of the attorney assignment process. The date on the Attorney Manual submitted in 2005 reflects the date of the when the then latest edits of the revisions were incorporated into the manual.

- **The materials that MCAD originally submitted to OPDS and PDSC contain references to MCAD's mentoring program "described in the Attorney Manual." The Attorney Manual, however, does not contain such a description. At PDSC's meeting on July 28, MCAD submitted a detailed written description of its mentoring program, but it does not appear to have been adopted yet by the consortium's Board of Directors. If the program has in fact been adopted by the Board, why did the Board chose to encourage "mentees," including new members and members on probation, to select their own mentors (albeit with the approval of MCAD's Quality Assurance Committee), rather than directing MCAD's management to assign mentors to mentees? How many members are currently participating as mentees and mentors? Among the mentors, how many mentees have been assigned to each mentor?**

The MCAD mentor system has mentors assigned by the Executive Director. At present there are nine (9) pairs of mentors and mentees. Seven (7) mentees are new members and members who are attempting to qualify for a new level of appointments and two are members with quality concerns. Two mentors have two mentees. Both are mentoring a new member and a member who is qualifying for an increase to lesser felonies. One mentored the existing member when she was a new member.

A mentoring program has been in effect since MCAD's first year. At the time that the Executive Director wrote the mentor program in 1993-1994, there were few formal mentor/mentee programs available in Oregon and elsewhere to use as an example. The Executive Director did extensive research into the few programs that did exist, and attempted to take the best from these programs and put them into the MCAD mentoring program. The original mentoring program, like most, if not all of MCAD's original procedures, were established after a collaborative

process, agreed to and negotiated by MCAD, then Statewide Indigent Defense, and the then Presiding Judge of the Marion County Court system.

- **MCAD's Executive Director appears to have taken the position in his presentation to the Commission on July 28 that the quality of an attorney's professional performance is impossible to determine, or that such a determination is so subjective that it depends on (a) who is making the determination or (b) unreliable judgments about a lawyer's individual personality traits. OPDS submits that this view of service quality is inconsistent with the concept of law practice as a profession with recognized standards and practices, and is irreconcilable with MCAD's position that it administers a systematic and meaningful quality assurance process. MCAD should be given an opportunity at the Commission's August 11 meeting to explain or clarify its views on this subject.**

We agree that in general the quality of a lawyer's work is possible to measure. While quality cannot be objectively measured, there are certain standards and practices below which an attorney must not fall.

MCAD's history is that it has consistently sought to, and has improved its quality assurance process as new and better processes have been suggested. For example after the July 2005 Commission meeting, MCAD took immediate steps to improve the quality of its representation.

- **With regard to a key component of MCAD's quality assurance process – i.e., procedures to sanction attorneys for substandard performance or misconduct that cannot otherwise be remedied – MCAD's Executive Director spoke to the Commission at its July 28 meeting with apparent pride and conviction regarding the due process MCAD affords its members who face such sanctions. In his view, MCAD's elaborate due process procedures serve as the alternative to “a pre-autocratic system where attorneys got blackballed because someone in the system did not like them or because of their personality quirks.” OPDS observes in response, first, that it has failed to detect such a “pre-autocratic system” among Marion County's current circuit court judges, at least to the extent that the risk of abuse of judicial discretion so far outweighs the risk of attorney underperformance that it calls for procedural protections for MCAD members that appear to exceed the rights of civil service employees. Second, OPDS finds it hard to imagine**

how busy lawyers serving in MCAD's management positions are able to easily undertake or efficiently negotiate their way through such a sanctioning process, which apparently includes various levels of appeal and rights to binding arbitration. Finally, can't MCAD establish some middle ground involving a more workable sanctioning and removal process for underperforming members that falls somewhere in between the extremes of full-blown due process and autocratic decision-making?

The 2005 system of ensuring quality relied on complaints and sanctions for not providing quality representation. The system was developed when MCAD came into existence and was based on the procedures in the Oregon State Bar's disciplinary process. Such a system was developed due to the history in Marion County of some judges essentially black balling some attorneys.

Our present work group system, relies on cooperative work within a work group to assist attorneys before complaints are even made, to become better attorneys. When a complaint is made, or a concern raised, the work group attempts to help the "offending" attorney remedy the issue by becoming a better attorney. Sanctions are reserved for issues that cannot be resolved through the work group process, issues that the attorney refuses to remedy, or are so severe that immediate action is necessary.

- **Three judges expressed their opinions concerning the quality of public defense services in Marion County at PDSC's July 28 meeting in Salem, and OPDS has solicited the opinions of at least seven other judges on the subject. Moreover, there was considerable discussion between MCAD's representatives and Commission members on July 28 about views on the quality of lawyering by judges past and present. OPDS is confident that everyone would agree that judges' opinions about the performance and ability of lawyers is but one factor, albeit an important one, in the determination of a public defense attorney's skills, abilities and quality of performance. Indeed, one of the reasons for establishing an independent commission like PDSC was to avoid placing the authority for determining the qualifications and eligibility of attorneys for court-appointments solely in the hands of judges before whom those attorneys will appear. OPDS has detected no interest on the part of any judge in Marion County to regain that authority. Nevertheless, in light of the foregoing actions and discussions, as well as MCAD's description of its commendable responsiveness to judge's**

complaints about the consortium’s attorneys, an observer might conclude that the primary or exclusive “trip wire” for MCAD to initiate investigations into its lawyers’ potential underperformance or misconduct is a judge’s complaint. What other systematic processes or indicators does MCAD employ, including, for example, periodic surveys of judges, prosecutors, defense attorneys and MCAD members and periodic courtroom observations or peer reports, to detect problems with its attorneys’ performance or conduct?

Unfortunately, much of what triggers a review of an attorney’s work is a complaint or a concern expressed by a judge, a colleague, a prosecutor, or a client. There is insufficient person power to monitor everyone’s work at all times. Some monitoring is done by the Executive Director. Other monitoring is done by work groups of their members.

MCAD is working on developing an annual evaluation process. We have contacted other consortia, including San Mateo County, California, and the general answer we get on how evaluations are done, is the Executive Director reviews an attorney’s work and makes a decision. The processes do not appear to have any definitive standards, but are more of, “I know bad work when I see it.”

MCAD did attempt two judicial surveys last year and both were met with some resistance, the second with much more than the first. The idea of a survey of prosecutors and colleagues is being discussed as well as a method to engage the Marion County judiciary in regular effective evaluations.

- **During its meeting with some of MCAD’s directors, as well as the Commission’s meeting on July 28, OPDS did not detect much enthusiasm on MCAD’s part for changes in its long-established organizational structure and operations. Is MCAD considering, or is it willing to consider, any changes in its current organization or operations? For example, the MCAD Board members who OPDS met with did not see the need for adding any outside directors with business experience or political acumen. Is that the official position of MCAD? MCAD has noted that the membership on its Board of Directors has remained the same for some time. Has MCAD weighed the advantages of greater participation and support by its attorney members and the new ideas that might be generated by more frequent turnover in the membership of its Board of Directors?**

As noted in the answers to Appendix A, MCAD now has two outside

members of the MCAD Board of Directors and has an opening for a third outside board member. The present board, in addition to the three outside members, has two other brand new board members and a third member who was a member of the board some years ago. New members of the board are always welcome. The problem has been getting members willing to volunteer their time to be board members. Given the current liability issues that may become an even greater challenge.

A member does not have to be a board member to be able to participate in board meetings. MCAD members are encouraged to and do attend board meetings and join in board discussions.

- **Many judges and prosecutors in Marion County and some members of MCAD are critical of the consortium’s “Attorney of the Day” process of assigning cases to attorneys, including MCAD’s attorney qualifications for case assignments based solely or primarily on crime classifications such as “felony” and misdemeanor.” This criticism is based on the fact that MCAD’s case assignment process results in (a) wide variations in the number of cases assigned to individual attorneys and (b) the assignment of cases to attorneys who are unsuited to handle them by virtue of skill, training or experience. MCAD’s Executive Director pointed out that he makes changes in individual case assignments when specific circumstances or complaints by judges indicate the need for a change. Mr. Gorham estimated, however, that such a change occurs “12 times a year out of 80,000 cases.” What changes, if any, is MCAD willing to make to this cases assignment process? If changes will be considered, how will the decision to implement the changes be made (e.g., by majority vote of the Board of Directors; by majority vote of the membership)?**

As indicated in the answers in Appendix A, MCAD is examining the attorney appointment system. Once we develop what we believe is a viable system, MCAD will talk to the judges and the prosecutors about the proposed change. Any proposed change will likely be ultimately decided by the Board of Directors after considerable input from the MCAD membership, the other components of the Marion County criminal justice system.

- **The public comments and discussions at PDSC’s July 28 meeting revealed a concern for the level of specialization and amount of public defense work preformed by MCAD’s attorneys. Although MCAD’s active roster of attorneys apparently numbers between 50 and 55, there was much**

discussion and many questions about a “core group” of somewhere between 20 and 30 attorneys who specialize in criminal defense law and handle most of MCAD’s caseload. OPDS requests MCAD to provide the Commission with a written inventory of its active members and their caseloads, including the number of hours each member billed for work performed for MCAD during the last twelve months.

A list of the then current members of MCAD was provided in September of 2005. The list that is provided as an answer to question 8 of Appendix A shows our current active membership. Similarly a listing of hours billed for July 1, 2004 to June 30, 2005, was provided last September.

Because MCAD pays attorneys after the work for a client is completed, the number of hours any attorney worked on MCAD cases in any recent month is unknown to MCAD. It only becomes known after the attorney has billed all the work completed for a client.

- **During the Commission’s July 28 meeting, MCAD’s Executive Director estimated that, due to efficient administrative practices and close-oversight of attorney billings, MCAD saves PDSC at least \$300,000 annually in administrative costs, attorney fees and non-routine expenses. OPDS requests MCAD to provide the Commission with a written description of that analysis and breakdown of those cost estimates.**

MCAD has previously provided this analysis to OPDS and after discussions, OPDS appears to agree with MCAD’s analysis. While MCAD provides a very cost efficient representation of clients, MCAD also recognizes that cost is not the only concern of the stakeholders in criminal defense. Quality and other issues must also be addressed. The reality is that comparing MCAD’s cost per defendant cycle with any case counting defense cycle contract that OPDS currently has, MCAD costs less.

- **MCAD requested PDSC during its July 28 meeting to return this \$300,000 in estimated savings for the purposes of improving MCAD’s operations and the quality of its services. MCAD indicated that it would reduce the size of its membership and retain a higher proportion of full-time criminal law specialists, without explaining why \$300,000 in funds would be necessary to accomplish that result. MCAD should provide the Commission with an explanation of why those funds are necessary to implement its proposed**

changes, as well as any alternative plans it may be considering for the use of those funds.

See following answer.

- **At the July 28 meeting, MCAD also requested that the Commission remit \$100,000 of the \$300,000 in annual estimated savings to hire a full-time attorney to train and supervise MCAD's lawyers. This request raises at least two issues that MCAD should address at PDSC's August 11 meeting or in subsequent written materials that it provides to the Commission. First, does MCAD need a full-time trainer? For example, how many lawyers will that trainer train and supervise at any one time? Does MCAD believe that all of its lawyers will require training and, if so, what kind of training? Second, MCAD's request for a full-time trainer calls for an inventory of its current staff and their deployment. Mr. Gorham indicated to the Commission that MCAD employs three part-time and three full-time employees, including 70 percent of his time at just under \$70,000 per year. How much staff time is devoted to the administration of MCAD's operations and its contract with PDSC, as opposed to monitoring, training and supervising the consortium's attorneys. More specifically, what proportion the Executive Director's position is allocated to these functions, and how many hours per week does Mr. Gorham devote to his own public defense and retained caseload?**

If OPDS/PDSC were to increase the amount it pays MCAD, the rates to attorneys could be increased, thereby helping retain experienced attorneys who are starting to leave due to the stagnation in rates. By increasing attorney compensation, attorneys could devote more time to training of themselves and others, while still making an adequate income.

It appears from the early responses regarding work groups that they are functioning as designed. A group of MCAD attorneys that contains very experienced criminal defense attorneys, moderately experienced criminal defense attorneys and lesser experienced criminal defense attorneys who are helping and training each other be better criminal defense attorneys.

- **In many of the counties in which it has conducted investigations as part of PDSC's service delivery planning process, OPDS has encountered law firms and consortia in which one, two or a handful of underperforming lawyers –**

lawyers who observers and stakeholders in the justice system consistently observe should not be practicing criminal law – have compromised the general reputation of the law firm or consortium and its members and affected prevailing perceptions of the quality of the services of those organizations and their lawyers. The inability or unwillingness of law firms and other legal joint ventures to address the substandard performance of its members is certainly not unique to criminal law practice or the delivery of public defense services. Nevertheless, OPDS has found it necessary to encourage and assist some law firms or consortia in the difficult process of removing such underperforming attorneys. Without exception, while the process was painful, the benefits in terms of improved reputations and perceptions of quality, not to mention the protection of clients, have justified the effort. Based on its investigations in Marion County, OPDS concludes that MCAD has a small number of lawyers that are compromising the reputation of the consortium and its members, perceptions of the quality of their legal services and the interests of their clients. Does MCAD recognize the possibility that OPDS’s conclusion may be accurate? If so, what does the consortium plan to do about it? What processes and procedures will MCAD employ in the event that it reaches the same conclusion as OPDS?

OPDS’ conclusion that there are some MCAD members who are compromising its reputation is correct.

We have suspended two members because of quality concerns, both of whom have now sued MCAD because of the suspension, contending, among other things that once OPDS approved them to do certain types of cases MCAD had no power to stop them from handling those cases.

In response to those shared concerns MCAD has reorganized into workgroups to improve the quality of representation by all its attorneys.

- **MCAD’s process of admitting new members to the consortium remains unclear to OPDS. The four board members indicated that they recently interviewed and hired several new attorneys pursuant to a relatively new formal hiring process. They explained this process as beginning with an interested attorney’s letter of inquiry, followed by an interview with the Executive Director and members of the board, and concluding with a vote of the Board of Directors to grant or deny the applicant’s admission to the**

consortium. This process appears to be memorialized in MCAD's Attorney Manual as follows: "New members must be voted in by a majority of the Board of Directors." MCAD does not appear to have any formal policies or procedures to actively recruit qualified candidates for membership, in addition to responding to the applications of interested lawyers. Several past and present MCAD members whom OPDS has spoken with indicate that MCAD's admission process has historically been quite informal, based upon a candidate's personal contacts with consortium members and the assessment of a candidate's qualifications by the most influential members of MCAD.

MCAD has been fortunate, except for a few exceptions in its history, to have had sufficient membership and lack of turnover in membership avoiding the need to advertise for new members. MCAD's membership has been filled mainly through word of mouth. When in the past this has not supplied sufficient membership, MCAD advertised for new membership through the Oregon Law Schools, Oregon State Bar and Oregon Newspapers.

MCAD for years has had the same "hiring" process. Attorneys have inquired as to how to become a member. MCAD requests a cover letter and resume from the prospective member. The Chair of the Board, a MCAD member, and the Executive Director interview the prospective member. The Executive Director reports as to an investigation of the prospective members qualifications and references and the "hiring" committee makes a recommendation to the "hiring body". Originally this "hiring body" was the membership. Several years ago the "hiring body" changed to the Board of Directors.

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): JANE Aiken
2. Date admitted to Oregon State Bar: 1980
3. Oregon State Bar number: 80010
4. Number of years and location(s) of legal practice in Oregon: 25 yrs +
 locations: Coos Co (DA office) - 80-81 Benton Co (DA office) 82-84
 Marion Co (DA office) 81-82 Marion/Benton Co - private practice
 84-85
 Marion Co - cont'd to present
5. Number of years and location(s) of legal practice outside Oregon:
 0
6. What percentage of your present practice involves handling criminal cases? juvenile cases? 50-60% Criminal; NA juvenile
7. What percentage of your present practice involves handling public defense cases?
 45-50% NA.
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.)
 80-81 - Coos Co. DDA - mostly adult misd. - but a few felons
 extensive juvenile - covered: dependency/delinquency
 mental health/civil commitment/ Grand Jury + witness
 81-82 Marion Co - District Ct - misd.
 82-84 - Benton Co - DDA - adult misd & felony assault; juvenile
 dependency & delinquency; (over)
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.)
 80-81 - Judges Jones, Nevins, Barron (Coos Co); Poole (Douglas Co.)
 81-82 - Judges West, Beck, Barlow; (Marion Co)
 82-84 - Judges Knight, Gardner, Dickerson (Benton Co)
 84 - present: All Marion Co Judges; Polk Co - Avera, Horner, humphreys
 (many other Judges throughout counties mentioned above.)
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.)
 80-81 - Judge Ruth Barron - Coos Co.
 82-84 - Judge Ref. Jean Evanshewski (Benton)
 Judges Knight & Gardner

8. (Cont'd) During '80-'81 - I served as a special prosecutor in Douglas Co. - primarily trying DWI cases - mostly jury trials, but one or two bench trials, as well.

1984 to present - Criminal defense, (retained & Ct appointed)
+ civil practice - mostly divorce / custody related
but also some personal injury matters
as well.

Cases - based primarily in Marion Co, but
also appeared in Union, Benton, Douglas, Lincoln
Polk, Yambill, Washington, Clackamas & Multnomah Counties. Also,
Hood River Co.

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?

I am a member of OCCLA. I attended CLE's w/ OCCLA - Dec. 2/3, 2005 (Orders in the Court)
MCAO CLE - 10/21/03 - Fingerprint/forensic (1) NACDL - 8/05 - 7 hrs. Conf.
MCAO CLE - 12/12/03 - Immigration Law & Crim. ~~Other - 3 hrs~~
I am sure there are others I attended, but did not rec "credits" for.

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.

John Wilson - Marion Co. Circuit Court any other Marion Co. Circuit Court
Susan Tripp - " " " " Ct Judge could provide input
Joseph Guimond " " " " as well; (However these five have
James Rhodes " " " " Also, Wm. Horner most experience (H. of cases)
Tom Hart " " " " Polk Co; Judge Hutchelberry, Lincoln Co.

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.

State v. Fleunoy - OSC-44497 - resulted in not guilty others, if needed.
State v. Kaha, - OYC-57425 - guilty) consolidated for trial
Peter OYC-40728 - ")

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

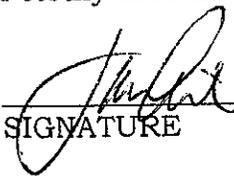
No

15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion. I accepted a letter of admonition in a civil matter in approximately 1985. I believe that is all.

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.

Donald Sager - filed & lost appeals & post conviction at state level; however he did receive a successful post conviction at the federal level - many years ago. Tony Bernstein was his atty.

I certify that the above information is true and complete.


SIGNATURE

12/7/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): **ROBERT E. BOTTA**
2. Date admitted to Oregon State Bar: **4/00**
3. Oregon State Bar number: **00027**
4. Number of years and location(s) of legal practice in Oregon:
5 years - Marion Co Polk Co Yamhill Co Linn Co Benton Co
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? **CRIM 85% JUV 10%**
7. What percentage of your present practice involves handling public defense cases?
85%
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.)
CRIM Defense, Trial, Jury Trial, All levels of FELONIES (except CAPITAL CRIMES) AND MISDEMEANORS, Juvenile Case, Termination, Dependency, Custody
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.)
Judge Leutenen, Judge Horner, Judge Avera (Polk) 2000-PRE. Judges, TRIPP, Octava, Norblad, Sumard, Rhoades, Jover, Burton, Leggett Wilson, Hart (Marion) 2000-Present
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.)
Judge Leutenen, Horner, Avera (Polk) 2000-~~2000~~ present

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?

ATTEND CLE's on Juvenile, Indian Affairs,
Tribal Court esser.
Att & CLE's on Crim Law,

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.

Judge Luckman (Polk Co) Crim & Juv
Gale Reeder (Marion Co) - Crim
Judge Sumner (Mar Co) Crim

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.

State v. Quismundo OJC 51745
State v. Pomelow OJC 48725

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

No

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

Yes - Truthfulness to Court -
Case 04-85

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.

No

I certify that the above information is true and complete.


SIGNATURE

9/20/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): *Mark W. Brownlee*
2. Date admitted to Oregon State Bar: *1988*
3. Oregon State Bar number: *BB164*
4. Number of years and location(s) of legal practice in Oregon: *17*
5. Number of years and location(s) of legal practice outside Oregon: *0*
6. What percentage of your present practice involves handling criminal cases? juvenile cases? *100% criminal*
7. What percentage of your present practice involves handling public defense cases?
95%
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.)
Seventeen yrs criminal defense work, ranging from misdemeanors through work on capital murder matters. Cases handled probably number in the thousands
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.)
Primarily Marion County Circuit Court with all judges, with the exception of Judge Dickey. This is over the entire period that I have practiced.
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.)
Frankly, it's been awhile since I've practiced in juvenile courts. The last matter I dealt with there was resolved with a simple meeting with a DA

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?

Member OCOLA - Attended LEC's re Death Penalty State & Federal Practice; Participated in CLE courses - Immigration Law, DWI Seminar and OCOLA Seminar on Mental Health Issues in Juvenile + Criminal Law

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.

Hon. John Wilson, Marion County Courthouse P.O. Box 12869
Salem, OR 97309

Hon. Albin W. Norblad, Marion County Courthouse P.O. Box 12869
Salem, OR 97309

Gale M. Riedel, 350 Mission St SE #201, Salem, OR 97302

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.

Burman, Jerry; Marion County 04 C 48443

Carranza, R.; Marion County 04 C 43630

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

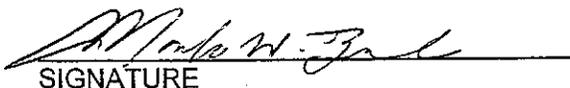
no

15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion. *yes. UNLAWFUL OF SPECIFIC OR INVOLVED. IT WAS ON POST-CONVICTION MATTER FOR NEGLECTING TO FILE MOTION FOR SUMMARY JUDGMENT. I DO NOT KNOW THE SPECIFIC RULE VIOLATION.*

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.

NOT THAT I AM AWARE OF.

I certify that the above information is true and complete.


SIGNATURE

11-16-05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): C. FREDERICK BURT
2. Date admitted to Oregon State Bar: 1983
3. Oregon State Bar number: 83024
4. Number of years and location(s) of legal practice in Oregon:
22+ YEARS SALEM, OR
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
CRIMINAL 100% JUVENILE 1%
7. What percentage of your present practice involves handling public defense cases?
98%
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.)
Practised criminal Law 22 YEARS
Qualified to and have handled all levels of crimes
up to Aggravated Murder
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.)
MARION COUNTY = 22 YEARS
ALL JUDGES PAST AND CURRENT
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.)
Abenethy - ~~1980~~ 2004
NORBCAD - ?

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?

ALL MY CLE CREDITS HAVE BEEN USED FOR CRIMINAL LAW PRESENTATIONS. I HAVE ATTENDED ALL MCAD SEMINARS AND HAVE REVIEWED THE INVESTIGATION SEMINAR MATERIALS FROM SPRING 2004.

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.

KEVIN T. CAFFKY, 429 COURT ST. NE. SALEM, OR
DON. JOHN B. WILSON, MARION COUNTY COURTHOUSE, 100 HIGH STREET, SALEM OR
NEIL F. LATHAM, 388 STATE ST., SUITE 1000, SALEM OR.

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.

STATE V. SHEREE CARTER, MARION COUNTY, OJC-550517
STATE V. EDWARD BOYER, MARION COUNTY, OJC-52017

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

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

I RECEIVED A PRIVATE LETTER OF ADMONITION AT LEAST 10 YEARS AGO AND I DO NOT KNOW THE CLIENTS NAME ..

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.

NOT THAT I KNOW OF

I certify that the above information is true and complete.

P. Ludwick Burt
SIGNATURE

12/9/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): **DANIEL M. CARROLL**
2. Date admitted to Oregon State Bar: **1992**
3. Oregon State Bar number: **#92252**
4. Number of years and location(s) of legal practice in Oregon: **13 years, all based in Salem, Marion County.**

5. Number of years and location(s) of legal practice outside Oregon: **None.**

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

73% are direct criminal cases, and the remaining 27% are post-conviction matters.

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

96% of my cases

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

I practiced in the then-District Court and the Circuit Court of Marion County for five years handling a variety of case types, most of which were criminal cases. As one of the original members of MCAD, nearly all of my criminal cases during this time were court-appointed and most were paid through the consortium. I joined the State Public Defender's Office (now Legal Services Division of the Office of Public Defense Services [OPDS]) in 1998 and practiced there until the end of May, 2005. My appellate caseload at OPDS involved both misdemeanor and felony cases, as well as judicial review of orders from the Board of Parole and Post-Prison Supervision. Since leaving OPDS, I have limited my practice to criminal matters and post-conviction relief cases.

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

At this time, I presently appear before most of the judges on the Circuit Court here in Marion County. I have not appeared before Judge Pamela Abernethy because she is currently assigned to the juvenile court docket and I do not accept appointments in juvenile cases. I also had been regularly appearing before the Oregon Court of Appeals while practicing with OPDS, and have argued three cases to the Oregon Supreme Court as well.

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

I contributed the chapter on "Setting Aside Conviction or Record of Arrest" to the 2005 edition of OSB's *Criminal Law* CLE manual, and also co-authored the chapter on "Parole and Post-Prison Supervision."

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

Hon. Terry A. Leggett, Marion County Courthouse, PO Box 12869, Salem, OR 97309

Hon. Joseph V. Ochoa, Marion County Courthouse, PO Box 12869, Salem, OR 97309

Jane Aiken, Attorney at Law, 520 State Street, Salem, OR 97301

12. 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.

None – the bulk of my practice during that time has been at the appellate level.

13. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

No.

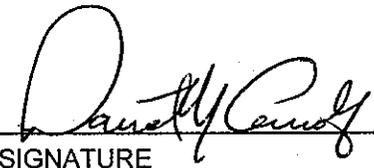
14. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

In 2003, the State Professional Responsibility Board issued a letter of admonition after it concluded that I violated DR 5-101(A) by representing my wife in a child-support proceeding without fully complying with the consent and disclosure requirements of DR 10-101(B).

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

Not to my knowledge.

I certify that the above information is true and complete.


SIGNATURE

11/14/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): Theodore C. Coran
2. Date admitted to Oregon State Bar: 1982
3. Oregon State Bar number: 82226
4. Number of years and location(s) of legal practice in Oregon:
23 years
5. Number of years and location(s) of legal practice outside Oregon:
~~0~~
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
Criminal cases = 98% ; juvenile cases = ~~0~~
7. What percentage of your present practice involves handling public defense cases?
~ 75%
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.)
That's all I do. Criminal trials, etc.
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.)
all criminal judges in Marion, Polk & Yamhill counties
from ~ 2000 → present.
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.)
~~0~~

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?

As per normal CLE requirements.

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.

Judge Joseph Guimond
Judge Joseph Ochoa
Judge John Wilson
Judge Terrey Leggart } Marion Co.

Judge Cal Tichenor } Yavapai Co.
Judge John Collins }

Judge Douglas Beck - Mult. Co.
Judge Nancy Campbell - Wash. Co.

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.

Marion Co. Clarence Williams OSC 44266

Marion Co. Ramon Rangel-Chaparro OAC 43100

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

Yes. meritless complaint out of Yavapai Co.

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

Yes. twice. public reprimands (2000-)

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.

No.

I certify that the above information is true and complete.

SIGNATURE

DATE

11/30/05.

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): *Richard L. Cowan*
2. Date admitted to Oregon State Bar: *1977*
3. Oregon State Bar number: *77146*
4. Number of years and location(s) of legal practice in Oregon:
28 years all in Salem, OR
5. Number of years and location(s) of legal practice outside Oregon:
none
6. What percentage of your present practice involves handling criminal cases? juvenile cases? *52% 1%*
7. What percentage of your present practice involves handling public defense cases?:
3%
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.)
started as deputy DA in 1977. Have been a full time criminal law practitioner ever since.
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.)
All Marion County Judges since 1977
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.)
occasional juvenile cases from 1977 to present before all juvenile judge we have had in Marion County

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?

Apr 2, 05 - 18th Annual Contemporary issues in Criminal Justice - uscourthouse
PCR 2005

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.

Judge Wilson Judge Ochoa Judge Leggett
Judge Lipscomb Judge Hart Judge Guimond
Judge Rhoades Judge Norblad

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.

I have not tried a criminal case to a jury in the last two years.

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

No.

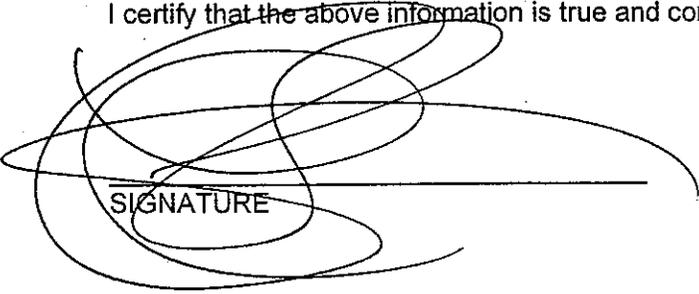
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

Yes 1980(?) I received a letter of reprimand for contact with a ~~respected~~ party who was also a personal acquaintance.

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.

no

I certify that the above information is true and complete.


SIGNATURE

9/20/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): CATHERINE DIXON
2. Date admitted to Oregon State Bar: NOV. 1990
3. Oregon State Bar number: 90480
4. Number of years and location(s) of legal practice in Oregon:
15
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
100%
7. What percentage of your present practice involves handling public defense cases?
95%
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.)
15 yrs all case types - multiple legal issues. Probably 30 jury trials per year. Murder qualified but have yet to fly solo. Currently have 8 M-11 cases, many major felonies, minor fel and misde.
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.) All circuit judges except Judge Dickey appear in front of most on a weekly basis either at Court House or annex in 1990 - 2005
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.) Did juvenile for 2 yrs at beginning 1990-92. Appeared before Judge Haas

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?

As required by the Oregon State Bar
(approx 45 hrs per 3 year period)

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.

Judge John Wilson 100 High St Salem
Sarah Morris, DDA Meun G. DA's office

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.

Meun G 05C43924 Ascencio Galindo. Counsel
July trial before Judge Rhodes Aug 2005 -
guilty

July 28 Counsel Robert Smith Judge Burton A acquittal

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

Donald Buyson complained I didn't remind
him of his trial date

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

Ricky Washington letter of admonition (missed
deadline)
Public reprimand failure to cooperate w/ bar

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.

Not that I am aware of

I certify that the above information is true and complete.

Catherine Dixon
SIGNATURE

11.28.05
DATE

* 90 day suspension - failure to cooperate
w/bar. All resolved by stipulation.

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): *Mark Geiger*
2. Date admitted to Oregon State Bar: *1984*
3. Oregon State Bar number: *84047*
4. Number of years and location(s) of legal practice in Oregon:
22 ; Salem, OR
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
95% Criminal 5% juvenile
7. What percentage of your present practice involves handling public defense cases?
95%
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.)
Lead and co-counsel in capital murder, "regular" murder, all felonies, misdemeanors, all trial level work and related appellate work
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.)
Judge Workblad - Marion County - last 20 years
Judge Grinstead - " " - since he took bench
Judge Wilson - " " - last 15 years
Judge Ochoa - Marion County - last 8 years
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.)
None, regularly

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?

I order OCOLA tapes and listen to them, I subscribe to OCOLA's criminal law newsletter and comply with the bar's MCLE requirements.

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.

Judge Joseph Brimard - Marion County Courthouse
Judge John Wilson - " " "
Judge Terry Leggett - " " "

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.

I haven't tried a case to a jury in probably four or five years. I've had several bench trials. I did a Blakely penalty phase with a jury this year but that doesn't really qualify. My caseload is largely comprised of post conviction.

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

no

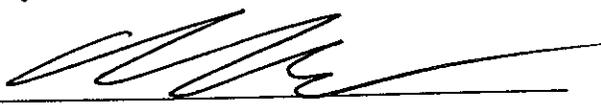
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

yes - there's a letter of admonition in my file. I mistakenly destroyed a client's 911 (tape) and a public reprimand re two clients - one was a Balfour brief in which I failed to notify the client of the result and the other was a failure to adequately communicate with a client - I think the bar termed it "neglect of a legal matter."

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.

no

I certify that the above information is true and complete.



SIGNATURE

11/22/05

DATE

Case No. 02-83
sent

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): Steven H. Gorham
2. Date admitted to Oregon State Bar: 1975
3. Oregon State Bar number: 75-136
4. Number of years and location(s) of legal practice in Oregon: 30 years, Salem, Oregon
5. Number of years and location(s) of legal practice outside Oregon: None
6. What percentage of your present practice involves handling criminal cases? juvenile cases?

95% if you include all types of indigent defense work. Criminal, Post Conviction, Habeas corpus, mental commitments, PSRB cases, contempt and appeals of these type of cases including appeals of juvenile and termination of parental rights cases.

I do not currently do juvenile trial level cases.

I also administer MCAD

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

95% of the cases that I do.

I also administer MCAD

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.)

All of the cases described in Number 6, I have done since 1976, 29 years. I have done death penalty trial level cases to the least serious type criminal case. In my first couple of years of work I did trial level juvenile cases. I have done a multitude of civil commitment trial level cases. I was the first an exclusive attorney appointed in PSRB cases after it first started in 1978. After my exclusive work, I was one of three attorneys to practice in front of the PSRB on a court appointed basis for several years.

I have done all types of Court appointed appellate work including strait criminal appeals, post conviction, habeas corpus, mental commitment, termination of parental rights and juvenile appeals. I have done aggravated murder appeals and death penalty post conviction appeals.

Over the years I have done hundreds of appeals.

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.)

I have appeared in the Marion County Circuit Court regularly for 30 years. Recently that is Judges Guimond, Ochoa, Leggert, Rhoades, Graves, Tripp, Wilson.

Oregon Court of Appeals

Oregon Supreme Court

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.)

None

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?

Almost all if not all of my CLE's have been in the Criminal Law area mostly conducted by OCDLA and the criminal law section of the Oregon State Bar.

I am a lifetime member of OCDLA.

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.

Judge Guimond, Marion County Circuit Court
Judge Lipscomb, Marion County Circuit Court
Judge Rhoades, Marion County Circuit Court
Judge Tripp, Marion County Circuit Court
Judge Lipscomb, Marion County Circuit Court
Steve Krasik, Attorney at Law
Dick Cowan, Attorney at Law

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.

Because of my administration of MCAD my last jury trial was State v Zalme, Marion County No. 97C20459 where Mr. Zalme was accused of Aggravated Murder Death Penalty and we were successful in Mr. Zalme not receiving the death penalty.

I am currently lead counsel in State v Haugen, Marion County No. 04C46224 which is an Aggravated Murder Death Penalty case which is currently set for a jury trial in February of 2006.

Over the past 29 years I have tried trial level misdemeanors, felonies, murder, aggravated murder and death penalty cases to juries as well as post conviction, habeas corpus, contempt and civil commitment cases to the Court.

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

No.

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

Yes . On August 7, 2003, I received a reprimand in the consolidated case of In Re: Complaint as to the Conduct of Steven H. Gorham case numbers 01-81, 01-120 and 03-27. While agreeing to this

reprimand, I would note that no client was harmed by my actions in the cases that I represented them in.

Although I am not sure that they are currently considered a violation by the Bar at this time, I did receive an admonition letter in 1977 in case number 77-25 and another in 1990 in case number 90-37.

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.

No.

I certify that the above information is true and complete.



SIGNATURE

12/6/05

DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): KEITH L. HAYES

2. Date admitted to Oregon State Bar: 9/00

3. Oregon State Bar number: 90295

4. Number of years and location(s) of legal practice in Oregon:
15 yrs - Monmouth + Yamhill Co. (primarily)

5. Number of years and location(s) of legal practice outside Oregon:
NONE

6. What percentage of your present practice involves handling criminal cases? juvenile cases? 65%

7. What percentage of your present practice involves handling public defense cases?
55%

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.)
In Or. law - 11 yrs - approx 100 present - Criminal
- Yamhill Co. - 11 yrs - Harris, Collins, Stone, Tidmore, Mitchell
- Monmouth Co. - primarily '00 - present - all annex judges
- all criminal judges downtown

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.)
All pre-trial and trial matters. Bench and jury trials.
From misdemeanor through felony - including M-1 and
att. murder, I.E., DWS, DWI, A-4, A-3, A-2, PAS, DES, MCS,
ATT. MURDER, COMP. MURDER, SEX AB, RAPE, ARSON, POWI, H+R.

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.)
NONE

page 2

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?

OCDLA-MEMBER
CJO-MEMBER- CALAW SECTION
OCDLA- SEX CRIMES SEMINAR 12/04
OSB- SECTION 103 CASES 4/05

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.

JUDGE COLLINI, WASHINGTON COUNTY COURTHOUSE
JUDGE OCHOA, MARION COUNTY COURTHOUSE
JUDGE TICHONIA, WASHINGTON COUNTY COURTHOUSE
JUDGE BRATTON, MARION COUNTY COURTHOUSE

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.

STATE V WARMAN OSC40718 MARION
STATE V KUSEK OSC44011 MARION

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

YES. RE: DELAY, REGARDING FEE DISPUTE.
PENDING RESPONDING

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

YES. RE: MCDOWELL NEGLIGENCE OR LEGAL MATTER
FOR MISSING DEADLINE-

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.

NO.

I certify that the above information is true and complete.

Keith L Hayes
SIGNATURE

12/12/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): Ronald M. Hellewell
2. Date admitted to Oregon State Bar: 1983
3. Oregon State Bar number: 83231
4. Number of years and location(s) of legal practice in Oregon:
22 years, Salem
5. Number of years and location(s) of legal practice outside Oregon:
None
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
Criminal 80%
7. What percentage of your present practice involves handling public defense cases?
80%
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.)
22 years
all felonies, except murder,
and all misdemeanors
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.)
All Marion County courts and judges since 1983;
Salem Municipal Court since 1983;
East Marion County Justice Court since 1990;
Occasional appearances in Polk, Linn, Clatsop, Clackamas
and other counties
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?

Child Abuse Reporting CLE
Criminal Law CLE
Ethics CLE
DUI & DRE CLE
Constitutional Law CLE

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.

Hon. John Wilson
Courthouse
Salem, OR 97301

Hon. Susan Tripp
Courthouse
Salem, OR 97301

Gary Gardner
2654 Commercial SE
Salem OR 97302

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.

Marion County	OSC. 40202	St. vs. Alvarez	5-14-05	
"	"	ROC. 54754	St vs. Reyes	6-28-05

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

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

Yes
SL 54407B 3-14-07 failure to carry out a contract of employment
neglect of legal matter

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. NO

I certify that the above information is true and complete.


SIGNATURE

Nov. 15, 2005
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): R. Kevin Hendrick
2. Date admitted to Oregon State Bar: 02/91
3. Oregon State Bar number: 91056
4. Number of years and location(s) of legal practice in Oregon: 14.5 years @ 4 locations
5. Number of years and location(s) of legal practice outside Oregon: 0 years @ 0 locations
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
Criminal Case: On a yearly basis, it varies from approximately 20% to 40%. Juvenile: Usually 0%
7. What percentage of your present practice involves handling public defense cases?
On a yearly basis, it varies from approximately 20% to 40%.
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.)
Court Appointed Counsel: 1991 - 1993. Dallas Municipal Court. Defense Counsel for misdemeanors, violations and PV's.
Court Appointed Counsel: 1991 - 1993. Polk County Circuit Court. Defense counsel for misdemeanors and PV's.
Court Appointed Counsel: 1991 - 1999. Salem Municipal Court. Defense Counsel for misdemeanors, violations and PV's.
Assistant Monmouth City Attorney: 1993 - 2000. Prosecution of misdemeanors, violations and PV's.
Assistant Dallas City Attorney: 1997 - 2000. Prosecution of misdemeanors, violations and PV's.
Salem Municipal Pro Tem Judge: 2000 - 2002. Misdemeanors, violations and PV's. City Code Infractions.
Private Practice Criminal Defense. 1991 - 2005. Defense counsel for felonies, misdemeanors, violations and PV's.
MCAD Criminal Defense. 2001 - 2005. Defense counsel for felonies, misdemeanors and PV's.
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.)
With the exceptions of Judge Barber, Judge Abernathy, Judge Dickey and Judge Lipscomb, all of the Marion County Circuit Court Judges, from 1991 to the present.
With the exception of Judge Horner, all of the Polk County Circuit Court Judges, from 1991 to the present.
Hon. Mark A Bliven, Dallas Municipal Court Judge. 1991 - 2000.
Hon. Mark A Bliven, Monmouth Municipal Court Judge. 1991 - 2000.
Hon. Frank Gruber, Salem Municipal Court Judge. 1991 - 2000.

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.)
- None
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?
- CLE: Evidence: Basics to Cutting Edge. 6.25 hours
CLE: Establishing and Enhancing Your Trial techniques. 6.75 hours
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.
- Hon. John B. Wilson, Marion County Circuit Court Judge
Hon. Joseph C. Guimond, Marion County Circuit Court Judge
Hon. Joseph V. Ochoa, Marion County Circuit Court Judge
Hon. Mark A Bliven, Dallas / Monmouth Municipal Court Judge.
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.
- All cases in the past 2 years have either been resolved, went to a bench trial, or the defendant opted to not proceed on the day of trial, with the jury pool waiting to be called upstairs to commence trial.
14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.
- No.
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.
- Yes. Please see September, 2005, Oregon State Bar Bulletin for written discipline stipulation.
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.
- No.

I certify that the above information is true and complete.


SIGNATURE

12/1/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): SCOTT HOWELL
2. Date admitted to Oregon State Bar: 1999
3. Oregon State Bar number: 99285
4. Number of years and location(s) of legal practice in Oregon:
6 - MARION COUNTY
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
CRIMINAL 85%
JUVENILE 10%

7. What percentage of your present practice involves handling public defense cases?
90%

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.)

I HAVE PRACTICED CRIMINAL LAW FOR SIX YEARS THIS INCLUDES 5 YEARS OF MAJOR FELONY REPRESENTATION. I ALSO PRACTICE JUVENILE DEPENDENCY, DELINQUENCY + TERMINATION CASES. I HAVE PRACTICED INDIGENT DEFENSE SINCE 2000.

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.)

CHARLES LUUKKINEN, FRED AVERA, WILLIAM HORNEN - POICK 2001 - Present
DALLAS, OREGON

ALL JUDGES IN MARION COUNTY CIRCUIT COURT, 1999 - Present

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.)

POICK COUNTY - JUDGES LUUKKINEN, AVERA + HORNEN
2001 - Present

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?

Member OCLJA - Reviewed & Listen to
CLE Tapes on Jury Selection, CROSS EXAMINATION
& weekly meeting w/ fellow MCAO members

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.

Judge John Wilson, 100 High Street Salem Oregon
Judge Thomas Hart, 100 High Street, Salem Oregon
Steven Walls, 868 Commercial St NE Salem 97301

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.

STATE V. Alan Robo, 04P
STATE V. Rusby ~~04P~~ OSC 40903

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO.

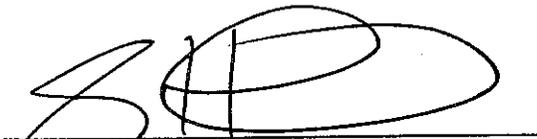
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

Letter of ADMONITION in 2005.
Failed to timely Return client documents in DOMESTIC
RELATIONS case

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.

NO

I certify that the above information is true and complete.


SIGNATURE

11/28/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): **JEFFREY M. JONES**
2. Date admitted to Oregon State Bar: **1989**
3. Oregon State Bar number: **89274**
4. Number of years and location(s) of legal practice in Oregon: **16 years at same location, 1840 W. NDB Hill SE SALEM, OR 97302**
5. Number of years and location(s) of legal practice outside Oregon: **NONE**
6. What percentage of your present practice involves handling criminal cases? juvenile cases? **80% CRIMINAL
20% JUVENILE**
7. What percentage of your present practice involves handling public defense cases? **50%**
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.)
**PRACTICED CRIMINAL LAW FOR 16 YEARS
CRIMINAL LAW INCLUDES MAJOR FELONIES, MURDER, BULLY MEASURES, CRIMES (SEX ABUSE, RAPE, ROBBERY, ASSAULT, KIDNAPPING, SEX CRIMES)
JUVENILE LAW IS MAINLY SEX CRIMES ALLEGATIONS**
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.) **MARION COUNTY CIRCUIT FOR 16 YEARS, SALEM, OR
HAVE APPEARED BEFORE ALL JUDGES SITTING ON BENCH FOR LAST 16 YEARS.
POLK County - 16 years, NORNER, LUKKEMEN, AUVERA - all judges ON THE BENCH OVER LAST 16 YEARS**
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.) **MARION COUNTY, SALEM - LAST 16 YEARS MOST RECENTLY JUDGES CHAMBERSE & LEGGERT AND ALL OTHERS OVER LAST 16 YEARS**

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?

Completed 935 general hours
13 Ethics
1 Child Abuse and
8.75 Elimination of bias/diversity

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.

Judge John Wilson, Marion County Courthouse, 100 High St NE Salem
Judge James Rhoades - same address
Walter Todd, attorney, 835 Liberty St NE, Salem 97301

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 ~~as~~ counsel within the last two years.

~~St. v Carleton Eugene Hayes, Marion Cty 03C 57991~~
Judge Hart; July 04; not guilty
St. v Danny Ray Eubank, Linn Cty; 04081908; April 05
not guilty.

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

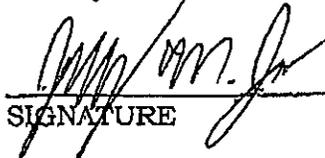
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

NO, well may have been. I received stipulation for public reprimand in 1999. Don't know what # assigned to case.

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.

NO

I certify that the above information is true and complete.


SIGNATURE

11/18/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

- 1. Name (please print): DAVID B. Kuhns
- 2. Date admitted to Oregon State Bar: 9-19-1986
- 3. Oregon State Bar number: 86226
- 4. Number of years and location(s) of legal practice in Oregon:
19 years, all in Salem, OR
- 5. Number of years and location(s) of legal practice outside Oregon:
none
- 6. What percentage of your present practice involves handling criminal cases? juvenile cases?
95% Criminal
1% Juvenile
- 7. What percentage of your present practice involves handling public defense cases?
90%
- 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.)
I have practiced Criminal law for 19 years. I have handled all types of cases including major felonies and homicides.

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.)

Hon. T. Leggett - Marion Circuit	} ALL For Several years up to The Present
Hon. J. Wilson - Marion Circuit	
Hon. J. Ochoa - Marion Circuit	
Hon. D. Hartke - Tillamook Circuit	

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.)

I do not regularly appear in Juvenile Cases.

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?

I am a member of MCOA and OCLDA. I am a member of The OSB Criminal Law Section. I have attended CLEs, including 2004 OCLDA Search and Seizure Seminar

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.

Hon. JOHN B. Wilson; Marion Circuit Court; 100 High St. NE, Salem, OR 97301

Hon. Joseph Guimond; Same as above

WALTER TODD, Attorney, 835 Liberty St NE; Salem, OR 97301

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.

STATE V. Easley, Marion Circ,	3/5/2004	04C-40218
STATE V. Barza, Marion Circ,	10/14/2004	04C-44100
STATE V. VARNUM, Marion Circ,	2/7/2005	04C-49797
STATE V. Hylton, Marion Circ,	2/15/2005	04C-51746

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

None Known

15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion. Stipulated Discipline in 1993 — Case 92-133

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.

Not That I am aware of.

I certify that the above information is true and complete.


SIGNATURE

9-21-05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): STEPHEN A. LIPON
2. Date admitted to Oregon State Bar: 9-14-84
3. Oregon State Bar number: 84277
4. Number of years and location(s) of legal practice in Oregon:
21
5. Number of years and location(s) of legal practice outside Oregon:
not - 0 -
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
criminal (and criminal related) - at least 95%
juvenile - zero
7. What percentage of your present practice involves handling public defense cases?
70% - 80%
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.)
criminal - trial level work - well over 100 jury trials and countless evidentiary hearings - all defense; numerous 8m11 jury trials
21 years
all levels of criminal cases - misdemeanor to murder and everything in between
20 years of postconviction experience
18 years experience with Parole Board cases - many of the significant appellate cases concerning Board issues involved my clients whom I represented at the hearings in question.
Gervais Municipal Court Judge - since 1995 - mostly traffic but expands skill and expertise in traffic stop 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.)
I have appeared before every judge on the bench in Marion County, Linn County and Polk County since 1984. Regularly in Linn County to date, not so regular in Polk County in recent years
Woodburn Municipal Court through 1989 - Zyryanoff & Salter Municipal Court regularly until about 3 years ago
Thompson, then Gruber
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.)
none regularly

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?

OCJLA - New Legislation - Sept 2003
GCJLA - Search & Seizure - Sept 2004

Municipal Judges Assn and
conferences in Sept 04 and March 05 (with presentations
on traffic and criminal matters which bear on
search and seizure issues)

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.

M. Chapin Milbank - PO Box 13687 Salem OR 97309

Judge John Wilson } Marion County Circuit Court

Judge Joseph Guinand

Richard D. Lee - 161 High St SE, Suite 2A2, Salem OR

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.

State v Herbert Ray Johnson, Jr. - 05C46599 - Marion Co.
State v Tilde Ovalle Flores 04CA4500

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

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

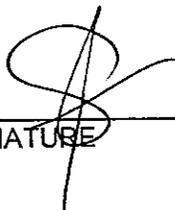
Nov. 1993 - letter of admonition for neglect of legal duty.

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.

NO

I certify that the above information is true and complete.

SIGNATURE



DATE

9.29.05

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): *Mark Obeck*
2. Date admitted to Oregon State Bar: *1996*
3. Oregon State Bar number: *96380*
4. Number of years and location(s) of legal practice in Oregon:
9
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
criminal
juvenile
7. What percentage of your present practice involves handling public defense cases?
9
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.)
Done all types of cases but for murder over 9 yrs
Done all juvenile dependency delinquency & termination cases for same amount time
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.)
Marion & Polk Co. all judges
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.)
Polk Co. all judges
Marion Co. - sporadically

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?

gone to counsel

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.

all in Polk Co.

all criminal judges in Marion Co.

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.

State v. Fernando Moreno - Lopez 04C-41121 Marion

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

no

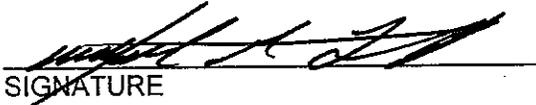
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

Yes In re Obert see opinion (2004)

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.

Yes Marion Co. Paul Lipscomb judge State v. Elias Olszewy

I certify that the above information is true and complete.


SIGNATURE

9/23/05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): *Velda Rogers*
2. Date admitted to Oregon State Bar: *1983*
3. Oregon State Bar number: *83356*
4. Number of years and location(s) of legal practice in Oregon:
22+
primarily Marion City
5. Number of years and location(s) of legal practice outside Oregon:
0
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
90-95 Criminal
0 Juvenile
7. What percentage of your present practice involves handling public defense cases?
90-95
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.)
22+ years - have worked as City Atty, Special Asst. A.S., DA & private practice doing cases at all levels
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.)
Judge Wilson *Judge Heimond*
Judge Gheoa *Judge Norblad*
Judge Burton *Judge Leggett*
Judge Hart *Various referees*
Judge Rhodes
1983 to present
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?

*Extensive CLE involvement including putting together & supervising CLE presentation
attended 84 hrs.*

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.

*Judge Guimond }
Judge Norblad } Marion County Circuit Court
Judge Wilson }
Judge Eggett }*

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.

Multiple bench trials

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

No

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

*Yes - client complained about not getting copy of discovery
Letter of reprimand - informal*

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.

Not that I know of.

I certify that the above information is true and complete.

V. Rogers

SIGNATURE

9/20/05

DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): *Lester Seto*
2. Date admitted to Oregon State Bar: *1979*
3. Oregon State Bar number: *79108*
4. Number of years and location(s) of legal practice in Oregon:
26
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?
90%
7. What percentage of your present practice involves handling public defense cases?
90%
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.)
26 years represented clients on everything but capital murder
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.)
*Marion Co Circuit Court 1979 -
all judges*
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?

I completed 42.75 hours in CLE's in the last 2 years.

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.

John Wilson Marion Co Courthouse Salem
Terry Leggett Marion Co Courthouse Salem
Joseph Gummard Marion Co Courthouse Salem

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.

State v Lux	05C45907	Marion
State v Soto	04C53386	Marion

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

no

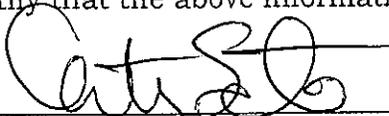
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.

yes
failed to file briefs in Court of Appeals 16 DB Rpt 10 (2002)
failed to send copies of file to client

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.

no

I certify that the above information is true and complete.


SIGNATURE

12-7-05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): **John E. Storkel**
2. Date admitted to Oregon State Bar: **April 19, 1985**
3. Oregon State Bar number: **85087**
4. Number of years and location(s) of legal practice in Oregon:
APPROXIMATELY 20 YEARS - MARION COUNTY
5. Number of years and location(s) of legal practice outside Oregon:
NONE
6. What percentage of your present practice involves handling criminal cases? juvenile cases? **APPROXIMATELY 98%**
7. What percentage of your present practice involves handling public defense cases?
97% APPROXIMATELY
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.)
I have handled almost all types of major felony cases. In addition I have handled many murder cases which have gone to trial. I have had and am handling multiple death penalty and non-death penalty aggravated murder cases 3 ADIT
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.) **CONVICTION CASES .**
JUDGE WILSON - JUDGE NORBLAD
JUDGE HART - MARION CTY - 1985 - 2005
JUDGE GUIMOND
JUDGE BARBER
ROUGH APPROXIMATION
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.)
HAVE ONLY HANDLED JUVENILE CASES ONCE IN A WHILE -

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?

- 2-18-04 ETHICS AND BAR DISCIPLINE - FEDERAL PUBLIC DEFENDER
- 3-17-04 ETHICS AND BAR DISCIPLINE - FEDERAL PUBLIC DEFENDER
- 7-8-04 BLAKELY V. WASHINGTON - FEDERAL PUBLIC DEFENDER
- 11-17-04 - INVESTIGATION ISSUES FOR ATTORNEYS 11-17-04 -
- 12-9-04 - REPRESENTING MEXICAN NATIONALS - MEXICAN CONSULATE -
- 3-11-05 - POST CONVICTION RELIEF - OCPA

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.

- JUDGE JOSEPH C. GUINALON
- JUDGE RICHARD D. BARBER
- JUDGE JOHN B. WILSON

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.

- MARION COUNTY - 02C47839 - JUDGE RICHARD D. BARBER
- TRIAL - OCT 2003 - MURDER CASE -

JUDGE BURTON MARION COUNTY - 02C54455 - ROSA CHIPRES MS. NOV 04 OR DEC

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

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

YES - IN RE STORIKEL 16 D.B. REPORTER 2002
02-12 02-11 NEWCOMB CANNELL - NOT ALL MATERIALS FILED IN POST MISSED PETITION FOR REVIEW FILING CONVICTION

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.

NO -

I certify that the above information is true and complete.

John E. Storikel -
SIGNATURE

11-15-05
DATE

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print): **OLCOTT THOMPSON**
2. Date admitted to Oregon State Bar: **1982**
3. Oregon State Bar number: **82409**
4. Number of years and location(s) of legal practice in Oregon:
23 - SALEM, OREGON
5. Number of years and location(s) of legal practice outside Oregon:
**SINCE 1984 - ALSO ADMITTED IN ~~MARION~~ WASHINGTON
OFFICE HAS REMAINED IN SALEM, OREGON**
6. What percentage of your present practice involves handling criminal cases? juvenile cases?
**CRIMINAL - 50%
POST CONVICTION - 45%**
7. What percentage of your present practice involves handling public defense cases?
95%
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.)
**CRIMINAL LAW SINCE ADMISSION IN 1982
HAVE HANDLED ALL CHARGES EXCEPT CAPITAL MURDER
HAVE DONE POST CONVICTION SINCE 1987
DID HABEAS CORPUS AND APPEALS - CRIMINAL, POST CONVICTION, HABEAS
CORPUS - FOR ABOUT 5-10 YEARS, NO LONGER DOING THEM**
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.) **ALL MARION COUNTY JUDGES EXCEPT JUDGE ABERNETT
ALL YEARS SINCE ADMITTED**
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.)
NINE

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?

10+ HOURS EACH YEAR - CRIMINAL LAW RELATED CLES

MEMBER - OREGON STATE BAR CRIM LAW SECTION

OCOLA

NACDL

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.

STEPHEN DINGLE
DEPUTY DISTRICT ATTORNEY
PO BOX 14500
SALEM OR 97309

JUDGE JOHN B WILSON
MARION COUNTY CIRCUIT COURT
PO BOX 12869
SALEM OR 97309

JUDGE JOSEPH V. OCTOY
MARION COUNTY
CIRCUIT COURT
PO BOX 12869
SALEM, OR
97309

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.

MARION COUNTY - OSC-70577
STATE V ROBINSON

MARION COUNTY - OYC-48668
STATE V WHITE

14. Are there any Oregon State Bar complaints pending against you? If yes, please explain.

NO

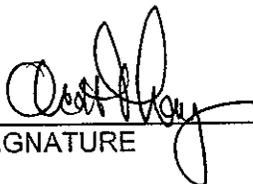
15. Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion. YES - SEE ATTACHED

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.

NOT AS FAR AS I KNOW

I certify that the above information is true and complete.

SIGNATURE



DATE

11/14/05



'FREE'

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- Secretary of State (UCC filings) (IRS tax liens) (Agricultural liens)
- Fish and Wildlife PUC
- Builders Board
- Department of Motor Vehicles
- County Assessors
- Department of Veterans Affairs
- Bankruptcy Court
- Check Central
- Marine Board
- Contractors Bonding Board

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3. Select the records you wish to see.

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(503) 246-8252

D. OLCOTT THOMPSON

Six-month suspension (five months stayed pending two-year probation)

By order dated July 23, 1991, the Oregon Supreme Court accepted a stipulation for discipline whereby D. Olcott Thompson accepted a six-month suspension, five months of which are to be stayed pending a two-year probation. This discipline resulted from violations of DR 1-102(A)(3) (conduct involving dishonesty, fraud, deceit or misrepresentation) and DR 6-101(B) (neglect of a legal matter).

Thompson represented a client on a criminal appeal pending in the 9th Circuit. Although Thompson filed the notice of appeal and ordered the transcript of the proceedings, he did not file a brief or otherwise take further action to pursue the appeal on behalf of his client. The appeal was eventually dismissed for failure to comply with the procedural rules. Thompson received notice of the dismissal order but did not communicate its substance to his client. Instead, he wrote to his client and advised that the appeal had been unsuccessful. The language of Thompson's letter to his client implied that the appeal had been decided on its merits. Thompson also led the lawyers in his firm to believe that the appeal had been decided on its merits after he had filed a brief.

As part of the stipulation, Thompson explained that he was unfamiliar with the 9th Circuit procedural rules and felt that he was unable to obtain assistance from the other attorneys in his firm. After missing one appellate deadline, he felt paralyzed and was unsure whom to ask for guidance.

The stipulation for discipline provides for a two-year supervised probation to monitor Thompson's caseload management. ■



Note: More than 11,000 attorneys are eligible to practice law in Oregon. Some of them share the same name or a similar names. All discipline reports should be read carefully for names, addresses and bar numbers.

MICHAEL REDDEN
OSB #80350
Portland
Public reprimand

Pursuant to a stipulation for discipline approved by the disciplinary board on May 17, 2001, Michael Redden was reprimanded for violation of DR 5-101(A) (self-interest conflict) and DR 5-105(E) (current client conflict).

A husband and wife retained a lawyer to represent them in a Chapter 13 bankruptcy case. The clients also retained Redden to litigate the clients' significant tax liabilities with the tax authorities in the bankruptcy court. The tax authorities filed motions to dismiss the Chapter 13 case, alleging that the clients had failed to disclose assets. Redden was not involved in the preparation of the clients' bankruptcy petition and schedules. The court granted the motion and dismissed the bankruptcy case. Thereafter, Redden told the clients that he could no longer represent them.

Redden instructed his associate to prepare and file involuntary Chapter 7 bankruptcy petitions against his former clients. Redden was the petitioning creditor. The former clients owed fees to Redden from the previous representation. Redden thought if he could litigate the tax liability, the former clients would then have the funds to pay him. Redden filed the involuntary bankruptcy petitions with the court. Redden's interests were in actual conflict with his former clients.

The court notified Redden's former clients that they were required to file

answers to the petitions and schedules. They did not have a new lawyer. The former clients sought help from Redden and his associate. Redden and his associate told the former clients that they could not represent them and to obtain new counsel. The former clients continued to call. Redden instructed his associate to prepare drafts of answers and schedules for the former clients in the involuntary bankruptcy case he had filed against them. Redden reviewed and approved the documents before they were sent to the clients, with instructions about how to file the documents.

Redden was admitted to practice in 1980. He had no prior record of discipline.

D. OLCOTT THOMPSON
OSB #82409
Salem
Four-month suspension

On June 21, 2001, the disciplinary board approved a stipulation for discipline, effective July 21, 2001, suspending Salem lawyer D. Olcott Thompson from the practice of law for four months.

In one matter, Thompson represented a client in a post-conviction relief proceeding. The court denied relief and Thompson agreed to appeal. He thereafter failed to timely appeal the decision and failed to respond to his client's reminders to pursue the appeal. Thompson's failure to act and failure to communicate with his client violated DR 6-101(B) (neglect of a legal matter).

In another matter, Thompson was appointed to represent a client in a civil rights claim. He advised his client to concede defendant's motion for summary judgment. He further advised his client that once the matter was dismissed, he would file a new complaint. The matter was dismissed

by the court, but Thompson failed to file a new complaint or otherwise pursue the matter, and failed to communicate with his client about the status of the matter. Thompson's failure to act and failure to communicate with his client violated DR 6-101(B) (neglect of a legal matter). In this same matter, Thompson also failed to respond to inquiries from Disciplinary Counsel's Office and the local professional responsibility committee member assigned to investigate the matter, in violation of DR 1-103(C) (failure to cooperate with bar investigation).

LOUIS A. FERREIRA
OSB #90560
Vancouver, Wash.
Public reprimand

On July 18, 2001, the Oregon Supreme Court issued an order reprimanding Vancouver lawyer Louis A. Ferreira. Ferreira was censured in the state of Washington in May 2001, and the Oregon order was entered pursuant to Oregon's reciprocal discipline rule, BR 3.5.

Ferreira represented husband and wife in claims against the developer, builder and engineer who were involved in the construction of the couple's home. Ferreira thereafter undertook to represent two neighbors of the original clients in similar claims. Ferreira did not obtain conflict of interest waivers from his clients or explain how recovered proceeds would be disbursed. He deferred to husband, who was employed in Ferreira's law firm, to administer the contribution of attorney fees from, and the distribution of proceeds to, the neighbor clients.

Ultimately, there was some recovery on the claims. These funds were credited to the original clients, but not the neighbor clients. At about this same time, Ferreira determined that the in-

Attachment 4

DRAFT

(August 7, 2006)

OFFICE OF PUBLIC DEFENSE SERVICES REPORT TO THE PUBLIC DEFENSE SERVICES COMMISSION

Critical Issues in the Delivery of Public Defense Services in Juvenile Dependency Cases

As the Public Defense Services Commission (PDSC) observed in its Strategic Plan for 2005-07, the Commission has made improvement in the quality of public defense services in juvenile cases a top priority:

Reports of the Oregon State Bar's indigent defense task forces identified the need to improve the quality of juvenile defense services across the state.¹ The quality of defense representation in juvenile and family law cases is critical to the health and safety of Oregon's communities. Therefore, PDSC has made the improvement of juvenile public defense services one of its highest priorities.

In accordance with this priority, the Commission authorized its administrative agency, the Office of Public Defense Services (OPDS), to establish a Quality Assurance Task Force and support the Task Force's development of a contractor site visit process to evaluate and improve the operations and services of public defense contractors across the state, including contractors specializing in juvenile legal services. As of the date of this report, site visit teams have evaluated the operations and services of 20 juvenile defense contractors.

In order to gain further perspective on the quality of public defense services in Oregon's juvenile dependency cases, PDSC held its May 11, 2006 meeting at the juvenile detention facility and courthouse in Portland.² In the course of that meeting, the Commission heard from five legal experts on the challenges facing public defense attorneys in their representation of parents and children in dependency cases.³

¹ See Indigent Defense Task Force IIIb Report (January 12, 2001) ("Task Force IIIb Report"); Indigent Defense Task Force III Report (May 22, 2000) ("Task Force III Report"); Indigent Defense Task Force II Report: Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Commitment Cases (September 25, 1996) (Task Force II Report").

² PDSC plans to hear from legal experts in the delivery of public defense services in juvenile delinquency cases at its August 10, 2006 meeting in Salem.

³ A transcript of the relevant portions of PDSC's May 11, 2006 meeting is attached in Appendix A. The background reading material submitted to the Commission in preparation for its May 11, 2006 meeting – excerpts from the Report of the Oregon Judicial Department's Juvenile Court Improvement Project, "Child Abuse and Neglect Case Processing in Oregon's Courts: 2003-2004 Assessment" – is attached in Appendix B.

This report is based on general findings and conclusions of the State Bar's task force on indigent defense,⁴ reports of OPDS's site visit teams, the experiences of OPDS's staff and the testimony of PDSC's guests at its May 11, 2006 meeting. Based upon those sources of information, OPDS has identified six critical issues in the delivery of public defense services in juvenile dependency cases:

- unacceptable variations in the quality of legal services;
- excessive caseloads;
- the appointment of counsel for multiple parties;
- variations in juvenile court procedures and practices across the state;
- the need for specialty training in dependency law practice; and
- delays in dependency appeals.

Five Critical Issues

1. Unacceptable variations in the quality of legal services in juvenile dependency cases.

Following its investigation of public defense services in juvenile dependency cases in 1996, the Oregon State Bar's Indigent Defense Task Force emphasized the importance of quality in the delivery of legal services in juvenile dependency cases:

At stake for children is their liberty, their right to membership in their family of origin and their right to be safe, healthy and protected. At stake for parents is their right to raise their children as they think best without state interference, and ultimately, the absolute and final termination of their parental rights.⁵

Unfortunately, the following assessment of the quality of those services by the Bar's Indigent Defense Task Force in 2001 is still timely and accurate:

Throughout the state, concern for the quality of representation in certain kinds of cases is voiced. Juvenile court representation is widely viewed as an area in which representation is often

⁴ See note 1, above.

⁵ Task Force II Report, Ch. 3.

inadequate. Parents in dependency actions who face possible termination of their parental rights are viewed as routinely receiving some of the poorest representation.⁶

OPDS's contractor site visit teams have consistently noted that, although many dedicated juvenile lawyers across the state provide excellent legal services to both parents and children, there are far too many lawyers who lack the necessary interest, commitment, skills or training to deliver adequate legal services in dependency cases. Among the shortcomings in legal representation regularly reported to the site visit teams, as well as to OPDS's staff, are failures of juvenile dependency lawyers to (a) communicate with clients upon appointment in dependency cases and throughout those cases,⁷ (b) attend or adequately prepare for shelter and detention hearings or subsequent hearings in which the interests of dependency clients are significantly affected, (c) zealously represent the interests of clients in those hearings, (d) prepare and argue motions having the potential to advance clients' interests, (e) conduct adequate investigations, including home visits and psychological evaluations, or explore settlement options and (f) familiarize themselves with relevant treatment and rehabilitation programs or other potential dispositions.

OPDS and its contractor site visit teams have found these types of problems in the quality of dependency representation to be particularly acute in less populous areas of the state, where there is already an overall shortage of lawyers, as well as a shortage of lawyers qualified to provide public defense services.

⁶ Task Force IIIb Report, p. 8.

⁷ See e.g., Oregon Judicial Department's Juvenile Court Improvement Project, "Child Abuse and Neglect Case Processing in Oregon's Courts: 2003-2004 Assessment," in Appendix B:

[Juvenile court] participants [in the study counties] routinely expressed concern about attorneys delaying contact with adult clients until shortly before scheduled court appearances and rarely contacting child clients. Reassessment team members observed attorneys in court and CRB reviews who appeared to be meeting their clients for the first time or for the first time since the last court appearance, validating reports from juvenile court participants. Thirty percent of respondents to the statewide survey reported that they believe that attorneys only rarely or occasionally (less than 35% of the time) contact clients before the day of a court appearance. ... Attorney contact with child clients was also concerning. ... The reassessment team surveyed foster parents statewide about contact by attorneys for children in their care. About half of those responding indicated that the court-appointed counsel rarely (less than 5% of the time) called within one week of appointment and only 9% indicated that counsel usually (more than 75% of the time) made contact within the first week after appointment. Similarly, about half of those responding indicated that court-appointed counsel rarely met the children in the home of the foster parent before they went to court for the first time, while 13% reported that the attorneys usually meet the children in the home prior to the first court appearance. 37% of court participants statewide reported that they believed that attorneys for children visited their clients in their homes rarely or occasionally.

Nevertheless, even in urban centers of the state where most of Oregon's lawyers practice, juvenile courts frequently report to PDSC and OPDS that once they have appointed juvenile law specialists from the Commission's local contractors in a multi-party dependency case, these courts are unable to find qualified juvenile lawyers on their appointment lists who are capable of competently representing the remaining parties in the case.⁸

OPDS concludes that, after years of insufficient state funding for public defense and attorney compensation that has failed to keep up with inflation or roughly approximated compensation rates in the private market for attorneys, the law of supply and demand is finally taking its toll. As the price or compensation for public defense services has dropped in relation to compensation for other legal services, the supply of competent lawyers willing and able to accept court appointments, in general, and juvenile court appointments, in particular, has fallen substantially behind the demand for such services. As a result, lawyers willing to accept court appointments in juvenile dependency cases at the rates of compensation PDSC is able to offer are increasingly unable to handle these cases competently. As one presiding juvenile court judge put it:

. . . [W]e fall back on a list of lawyers who are willing to be appointed at \$40 an hour and, guess what: the ones who are willing to do this aren't very good.⁹

Moreover, according to the findings of OPDS's site visit teams, lawyers who are good are increasingly taking more cases than they can competently handle in order to generate sufficient revenue to produce a living wage for themselves or their colleagues. As a result, even competent lawyers cannot investigate and prepare their cases as they should, or attend the increasing number of formal and informal hearings that juvenile courts and the Department of Human Services (DHS) are holding in dependency cases.

2. Excessive juvenile dependency caseloads. OPDS recently estimated that, on average, Oregon's public defense attorneys handle caseloads that are 130 percent greater than the caseloads recommended by PDSC in its Request for Proposals from prospective contractors. Based on the reports of OPDS's contractor site visit teams and OPDS's familiarity with PDSC's contracts, the average caseloads of juvenile dependency attorneys may even be greater than 130 percent of PDSC's recommended caseload.¹⁰ One contractor site visit team reported the inevitable consequences of such excessive dependency caseloads, even for a contractor that was well-regarded in the county, as follows:

⁸ See *e.g.*, Appendix A, p. 8.

⁹ *Id.*

¹⁰ PDSC's Request for Proposals recommends an annual caseload of 250 juvenile cases (delinquency and dependency) for an individual attorney.

The attorneys are overtaxed; they are often double and triple booked. Often they have not met their clients before court; they sometimes fail to appear for pretrial conferences or come unprepared. Some improvement has been noted with the addition of new associates. . . .

. . . [P]eople with caseloads of 200 cases cannot be doing a good job; they don't attend the [necessary] meetings and aren't there to advocate at critical times.¹¹

Even if attorneys choose to limit themselves to the dependency caseloads recommended by PDSC, a dependency case today is far different from a dependency case when these caseload standards were first established more than 10 years ago. As a result, the demands of dependency caseloads have increased substantially and the capacity of dependency attorneys to handle the same size caseloads has decreased substantially.¹² Juvenile judges have added formal hearings to the dependency court process and now set multiple review hearings to monitor the progress of children and parents subject to the jurisdiction of those courts. DHS has added informal family decision and team decision meetings to the process, which affect the interests of dependency clients and call for the presence of legal counsel. Citizen Review Boards serve the function of “foster care review boards” in accordance with federal mandates, sometimes issuing reports to the juvenile courts that influence the status of dependency cases and create the need for an attorney’s participation.¹³

¹¹ In order to ensure the cooperation and support of the public defense community, PDSC has agreed to preserve the confidentiality of the reports of OPDS’s contractor site visit teams and limit the reports’ distribution to the head of the contractor’s office and to OPDS’s Quality Assurance Task Force and management.

¹² A senior attorney at the Juvenile Rights Project made this point during PDSC May 11, 2006 meeting:

. . . We have too much work to continue to do the high quality work that we expect from ourselves and our staff. Particularly with people like myself and Ingrid [Swenson] and others who have done this work for a long time, we started . . . when caseloads were lower. So I have expectations of my staff about how they are going to handle a case when I had less cases. The amount of research I was able to do, the amount of collateral issues I was able to address, the amount of times I was able to advise someone – all of those things we are just not able to do in the same way now. Appendix A, p. 11.

¹³ Multnomah County’s Presiding Juvenile Court Judge described some of these developments to PDSC:

. . . [O]ne of the things we initiated several years ago is a second shelter hearing, which is held for a variety of purposes and not in every case. . . . [W]e are holding these second shelter hearings in about 25 percent of the cases. Another thing that we started doing many, many years before was a pretrial settlement conference in every dependency case. . . . The family decision meetings and team decision meetings are internal, problematic meetings that [DHS] case workers and facilitators run in most cases. The judge is involved, though it is not a judicial proceeding.

After receiving reports on these developments during PDSC's May 11, 2006 meeting, the Commission's Chair observed:

. . . [J]ust to get a sense of the scope of the problem of lawyers trying to do what they are being asked to do; a single case typically involves at least nine, and could be quite a bit more appearances.¹⁴

In addition, new federal mandates under the 1997 Adoption and Safe Families Act have established timelines to reduce children's time in foster care and expedite permanent placements. As a result, even more demands have been added to a dependency case and to the caseloads of Oregon's already overworked dependency attorneys.¹⁵

Finally, dependency cases last a long time and require an attorney's continuing attention:

. . . [I]n adult criminal court, by and large, once the case is tried and you have a conviction rather than an acquittal, the lawyer's work is basically done. . . . In dependency cases, . . . these . . . cases go on constantly. That is where the bulk of the work is in dependency cases. After the adjudication, they literally last years.¹⁶

3. The appointment of counsel for multiple parties in dependency cases. Financially eligible families have rights to court-appointed attorneys in dependency cases; however, those rights are not absolute. Parents are entitled to be represented by an attorney when "the nature of the proceedings and due

* * * * *

. . . In the interim between the initial appearance and the actual trial, we set what is called a best interest hearing, and that is set with the original judge in the case. The real purpose of that best interest hearing is to talk very frankly with the parent about the probable outcome of the case. . . . That is also a time-consuming process for the attorneys, particularly the attorney who is representing the parents.

. . . After adjudication, the law requires that cases be reviewed by the Citizens Review Board. . . . One of the issues, of course, is how many of these different things do you have to do, and what are the minimum standards for effective, zealous representation of your client . . . Appendix A, pp. 5-7.

The juvenile court judges in Klamath County advised PDSC of their belief that Klamath County had one of the highest rates of dependency review hearings in the state. Although they expressed concern for the effects on the caseloads of court-appointed counsel in their county and on the state's public defense budget, these judges believe that these costs are justified because multiple review hearings promote the best interests of children and families. "OPDS's Report to the Public Defense Commission on Service Delivery in Klamath County" (November 2005), p.8.

¹⁴ Appendix A, p. 7.

¹⁵ Appendix B, p.3; Appendix A, p. 2.

¹⁶ *Id.* at 14.

process so require;” children are entitled to legal counsel whenever a request is made or upon the court’s own motion.¹⁷

There are usually multiple parties in dependency cases:

. . . It is not uncommon to have a family with four or five children, with one mother and four or five fathers. . . .¹⁸

Consequently, numerous court-appointed counsel are frequently required to handle these cases. For example, according to the Chief Family Law Judge in Multnomah County:

. . . [I]t is absolutely unheard of in Multnomah County for two parents to have the same attorney. . . . We appoint attorneys for children in dependency cases automatically.¹⁹

This presents two challenges for PDSC. First, the Commission and OPDS must ensure the presence of numerous qualified legal counsel in dependency cases, frequently on short notice, from a shrinking supply of lawyers with the expertise to handle these cases. As PDSC’s Chair observed:

From our point of view, this is a real challenge because you are looking at as many as three lawyers per case or more, three to four times of day [in Multnomah County], with . . . the hope that the lawyer gets identified to the client soon enough to at least read the case work-up and maybe meet the clients²⁰

Second, the need for a relatively large number of legal counsel in dependency cases increases the chances of conflicts of interest. Moreover, an experienced juvenile attorney pointed out to the Commission that the nature of dependency cases makes those chances even greater:

I think there is something inherent in the dependency process that causes conflicts to arise later. Partially, it is discovering a conflict that preexisted the appointment, but there is something unique about the dependency process where the lawyers are continued from hearing to hearing. There is really no cessation of the case for quite some time, so conflicts arise. . . .

* * * * *

¹⁷ ORS 419B.205 (1); ORS 419B.195 (1); Appendix B, p. 17.

¹⁸ Appendix A, p. 5.

¹⁹ Appendix A, p. 2. Generally speaking, juvenile judges in Multnomah County do not appoint separate counsel for children in dependency cases. *Id.* at 4.

²⁰ *Id.*

. . . By the very nature of the system, we have a number of children with multiple, emotional or behavioral disturbances who are placed close together in the same location and bad things happen. These are bad things between two clients of the same firm.²¹

4. The need for specialty training in juvenile dependency law practice. The following observation by the Oregon State Bar's Task Force on Indigent Defense in 1996 regarding the expertise required to represent parties in dependency cases is even truer today than it was 10 years ago:

Practice in juvenile dependency cases is unique and challenging, requiring continual training to assure the best legal representation of clients. Juvenile dependency cases may be as different and varied as the children and families involved in them.²²

An experienced juvenile dependency attorney who appeared before PDSC on May 11, 2006 presented the Commission with a clear picture of the knowledge and skills necessary to practice this specialty:

Dependency law is really statutory, where we have the juvenile code that tells you what the bases for jurisdiction are and what you must prove for the state to intervene into the family. The codes tell you that and it tells you the stages of the proceeding. But there are so many other areas of the law, including federal statutes that we need to incorporate every single day, which fund foster care and set requirements on the court. It has multiple meanings and connotations that you have to know about if you are practicing in this area. For example, in this state, if you are related to the child who is placed up for foster care, you may or may not be able to receive funds, and that is based on federal statute. If you are a juvenile court lawyer, you need to know what that says. If you have a client in alcohol and drug treatment, you need to know the law under Title 19 of the Social Security Act. Even if you understand them, you probably aren't going to get that client in alcohol and drug treatment in the time set by the federal statute. We also have federal statutes that regulate how we do business when an Indian child is involved. We were talking about the possible parties. You have mom, you have dad, you have the children, you have the tribe; and there are CASAs or special advocates and other family members who might intervene. So you have a hearing where you might have eight different representatives that are governed by not only the juvenile codes, which is relatively manageable, but multiple federal statutes in areas that are related, but not specific to child welfare. We also have the relationship between juvenile

²¹ *Id.* at 9.

²² Task Force II Report, Ch. 3.

dependency work and domestic relations law. You have the Interstate Compact and Placement of Children laws. You would think that if you were appearing in front of Judge Welch [in Multnomah County] with two parents who are in jail, and the child needed placement with an aunt in Vancouver[, Washington], you are home free. Not so; not so at all. It is far more complicated. There is a vast amount of information that each of us needs to know. If we don't know it, we at least need to know that it is out there to look for.²³

The response to this presentation by PDSC's Chair framed the issue:

How is some poor law-trained person on the appointment list going to know all this?

The answer to that question is, of course, specialty training.

²³ Appendix A, pp. 11-12. See also OSB's Task Force IIIb Report, "Conclusions, Goals and Recommendations."

In addition to knowledge of criminal law and juvenile court procedure, counsel in delinquency cases must understand the developmental needs of children and be familiar with community resources. Frequently, a child has been the victim of abuse, poverty, and neglect, and has drug and alcohol problems. In delinquency cases, it becomes important for counsel to understand child development issues that may directly impact the child's understanding of the court proceedings, ability to remember and identify witnesses and evidence, and competency to waive constitutional warnings concerning admissions or confessions. Sustained efforts at pretrial release for children require more knowledge of community programming for the child and the family than is generally necessary for adults. Finally, children in crisis have difficulty in forming relationships with strangers; the staff turnover that can plague small contract offices is often particularly damaging to the quality of a child's representation.

Unlike other areas of representation, dependency cases in juvenile court have a tendency to go on for years, requiring lawyers to get involved in many details of their clients personal lives, and often involve repeated court appearances. As challenging as they are, these cases are likely to become even more of a financial burden on appointed lawyers, given the duration of cases and the current trend to consolidate juvenile cases with criminal matters and domestic matters involving the same family. Lawyers appointed on juvenile matters should have, as most do, experience in criminal trial practice. Few, unfortunately, have any experience in domestic relations. Whatever the efficiencies to the court or the families involved, consolidation of case types presents a significant additional challenge to the lawyers' ability to provide competent representation. If the courts expect appointed lawyers to handle consolidated dependency, termination, criminal and domestic relations matters, practitioners must be adequately trained, insured, and paid.

At PDSC's direction, OPDS has taken steps to address the need for specialty training for juvenile dependency lawyers.²⁴ In collaboration with the Oregon Judicial Department's Juvenile Court Improvement Project (JCIP), OPDS has participated in the development of a Juvenile Training Academy, which is offering specialty training programs for dependency attorneys across the state

5. Delays in dependency appeals. As in other areas of the law, the appellate process ensures fairness in juvenile dependency cases. While appellate lawyers need time to brief and argue their clients' cases, appeals should not unduly delay dispositions that have powerful impacts on the well-being of children and families. Not surprisingly, numerous commentators and organizations across the country have called for practices and procedures to expedite appeals in a field of law where the interests of children and families are at stake.

In September 2005, Oregon sent a delegation headed by Court of Appeals Chief Judge David Brewer to the Pew Commission's Justice for Children Summit, which identified reform of the appellate system for dependency appeals as a priority. JCIP's 2004 report, *Child Abuse and Neglect Case Processing in Oregon's Courts: 2003-2004 Assessment*, had found that Oregon's expedited appellate process is no longer a best practice and recommended that the Court of Appeals convene a workgroup to develop strategies to expedite filing and briefing of dependency appeals. Following further findings and recommendation by JCIP's staff regarding appellate court practices in dependency appeals, Judge Brewer and the Chief Justice established a Work Group on Juvenile Court Case Disposition Time Improvement (the "Dependency Appeals Work Group") to examine JCIP's research, findings and recommendations and to develop proposals to expedite juvenile dependency appeals. OPDS has two representatives on the Dependency Appeals Work Group.

Among the proposals approved by that Work Group are OPDS's proposals to (1) process notices of appeals and requests for transcripts in the same manner as the criminal appeals are processed by OPDS and (2) handle dependency

²⁴ In addition, OPDS staff assisted in the revision of the bar's performance standards for representation in juvenile cases, and participates in the planning of CLE trainings for juvenile lawyers by the Oregon Criminal Defense Lawyers Association, the Juvenile Law Section of the Oregon State Bar and the Juvenile Law Training Academy. OPDS has also provided financial support for the preparation, publication and distribution of the JRP Reader – a periodic publication that includes topical information for juvenile court practitioners. OPDS is working with other interested groups and individuals to explore the creation of a resource center for juvenile lawyers that would include a web site, a brief bank, access to legal expertise and other support.

OPDS staff also serves on the Juvenile Code Revision Workgroup of the Oregon Law Commission. The workgroup, chaired by Senator Kate Brown, has been working for several legislative sessions to revise the juvenile code to clarify the law for the benefit of both practitioners and the public, to improve the law, and to codify good practices and procedures in order to bring some uniformity to practice throughout the state.

appeals by additional specialist appellate lawyers in OPDS's Legal Services Division. Those two proposals are attached in Appendix C.

Three Conclusions

Based upon the sources described above and PDSC's previous deliberations, OPDS has identified the following three finding or conclusions for the Commission's consideration with regard to the foregoing issues:

1. Adequate state funding for public defense is essential to improving the quality of legal services in juvenile dependency cases in order to (a) retain and recruit qualified attorneys and (b) reduce the excessive dependency caseloads of currently qualified attorneys.

The State Bar's Task Force on Indigent Defense has repeatedly emphasized this point in reports over the past decade:

The theme that arose again and again, throughout our many interviews, was that funding is the key to fulfilling the state's obligation to provide adequate representation to people charged with crimes or facing other serious restrictions of their liberties. Although some mechanisms exist for promoting high quality indigent defense services, those mechanisms are dependent, finally, on a provider organization's ability to fund them. Supervision and training require time, and that time can only be provided when adequate funding is available. Perhaps most importantly, based on the responses we received from participants across the criminal justice spectrum, sufficient funding must be available to adequately staff provider organizations so that caseloads do not overwhelm the ability of individual attorneys to perform necessary services.²⁵

In recognition of this reality, as well as the currently shrinking supply of qualified lawyers to handle juvenile dependency cases, PDSC has decided to highlight the importance of adequately funded public defense services for the continuing operation of the juvenile dependency system and the well-being of Oregon's children and families during its presentations before the 2007 legislature.

2. Increases in public defense funding for juvenile dependency cases must be accompanied by new or expanded specialty training programs.

To ensure that the legislature's increased funding of public defense services in dependency cases improves the quality of those services, PDSC should design new specialty training programs, or expand the training programs already under development by JCIP and OPDS. These programs should be designed to

²⁵ Task Force III Report, "Summary."

increase the skills of current dependency attorneys that PDSC has retained with increased state funding and to develop the skills of new dependency attorneys that PDSC has recruited with that funding.

3. In accordance with OPDS's proposals to the Dependency Appeals Work Group, PDSC should propose a Budget Policy Package to the 2007 legislature that funds additional specialist appellate attorneys at OPDS's Legal Services Division to handle dependency appeals more efficiently and effectively.

PDSC has already reached this conclusion. At its June 15, 2006 meeting in Bend, the Commission approved OPDS's proposal for a 2007-09 Budget Policy Package to add four juvenile appellate lawyers to the Legal Services Division's staff. That proposal is attached in Appendix C.

Appendix A

PUBLIC DEFENSE SERVICES COMMISSION

EXCERPTS FROM THE
UNOFFICIAL MEETING TRANSCRIPT

May 11, 2006 Meeting

Multnomah County Juvenile Justice Complex
(Donald E. Long Center)
Courtroom No. 2
1401 N.E. 68th Avenue
Portland, Oregon

MEMBERS PRESENT: Barnes Ellis
Jim Brown
Mike Greenfield
Chip Lazenby
Janet Stevens (by phone)

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Peter Gartlan
Ingrid Swenson
Laura Anson

[Tape 1, Side A]

011 I. Swenson I would like to make a very brief introduction before Judge Welch makes her comments. I wanted to mention that this is the first of two meetings that the Commission is going to devote to a discussion on juvenile court practice. There are a lot of good reasons why the Commission might want to focus its attention on the juvenile court practice, one of which is the importance and gravity of the work that juvenile court practitioners are involved in by representing children. Another is that this practice represents, at the trial court level, approximately 25 percent of public defense practice.

There have been a number of studies conducted by different bodies, the State Bar for one and the Juvenile Court Improvement Project for another, which have found deficiencies in the quality of representation for public defense clients across the state. For all those reasons, we wanted to spend some time talking about what the practice is about. Today, the focus is on dependency cases. In June, we will talk a little bit more about dependency but also about delinquency. The goal of the presentation this morning is to let you know more about the practice, how the court works and some of the important elements involved in the practice. Also, we are going to talk about some of the challenges that are faced by the practitioners. We have a panel of experts, and I'm sure you have met them all by now, but I will make a brief introduction of them. Judge Elizabeth Welch has been a family court judge in Multnomah County since 1989. She has been the Chief Judge since 1993. She serves on many boards, commissions and task forces. I think the most remarkable thing that practitioners say about her is that she has been able to bring together the entire juvenile court community, and not to just process the cases but to improve the practice. Leslie Harris is a professor at the University of Oregon Law School. She is the co-author of two books and has published numerous articles on juvenile law. She currently serves on a number of task forces relating to improvement of juvenile court practice. She recently chaired the site team

evaluation here in Multnomah County to evaluate juvenile public defense contractors. She has also taught many of the practitioners who are here. Angela Sherbo has been a legal aid and public defense attorney for almost 30 years. She has been with the Juvenile Rights Project for more than 20 years and currently serves as the senior supervising attorney in that office. She has briefed and argued many of the key cases in the juvenile jurisprudence in Oregon. Lindsay Partridge is also here and will you join us. Lindsay is in private practice in Marion County and is a member of the Juvenile Advocacy Consortium there. As you will recall, we reviewed the work of that consortium last year when we were in Marion County. He is the past president of the Marion County Bar Association and has served on many committees. So now I would like to start with Judge Welch.

066 Judge Welch

I took Ingrid at her word and I put together the ABC's of a juvenile dependency case. Some of this is kind of basic, but it won't take very long. I wanted to make sure that everybody understands what a dependency case is and what we do with a dependency case. Of course, the theme of it is to highlight for you the demands that the process makes on lawyers who represent children and parents. First of all, just to know what a dependency case looks like now, and that has changed a lot over the years: I think the general public probably thinks that dependency, if they think of it at all, as meaning child abuse. We actually have few child abuse cases. It is mainly neglect. We are talking about a population here that would be very familiar to anybody who is involved with the justice system; that is, to a great extent, the children of people who are otherwise engaged, or have been, or will be in the criminal justice system. The profile of a typical parent in a juvenile court case – of the cases we see, we continue to estimate that 80 percent of them have at least one parent that has either a drug or an alcohol problem. The prevalence of mental illness and developmental delay among these people is very high. The prevalence of domestic violence is very high. Those are the primary characteristics of the families that we see. They are poor people. There are a few middle class people, but very, very few. Anybody who has done this kind of work, as those of us sitting at this table have done, know that drug use is, to a great degree, a matter of people medicating themselves because they have significant mental health problems. That is certainly my view. In a typical case – one common form that it takes is a parent or parents are arrested for operating a meth operation, or for leaving their children longer than they should with a babysitter or a relative because they are busy pursuing their addiction. We do get some cases where people are in jail or in prison. Some other general matters covered by the facts on the front page: our practice is, and has been for many years, that everybody gets a lawyer in juvenile dependency cases. One of the things that I suppose is controversial – not necessarily around here but maybe elsewhere in Oregon – is whether parents actually need to have separate counsel.

113 Chair Ellis

Separate from each other?

113 Judge Welch

Yes. In other words, it is absolutely unheard of in Multnomah County that two parents have the same attorney. It is a complicated issue. We appoint attorneys for children in dependency cases automatically. You have to understand that there has already been a fair amount of screening before a petition is filed in a case, at least now. That has changed a lot over the years. DHS does a lot of work with families. So, if the situation is not severe, they will have perhaps worked with the family already. When the petition is filed, it is not usually the first time there has been contact between the parties. As I mentioned, common features of a case are domestic violence and mental illness. A formal case never has just one issue. The parents have multiple problems: criminality, mental health, domestic violence and, almost always, drug and alcohol abuse. Another really basic thing that permeates the problems that we have in administering this system is the Adoption and Safe Families Act, which was passed in about '96. The Feds got involved and the basic theme is that kids should not be in foster care for very long. I am not going to go into a lot of detail about this. You may or may not want to know more about it, but what it has done is basically set a period of one-year as being the guideline for how long a child should be waiting for their parents to deal with their issues. Of course, when you see what the underlying problems that these families have, they aren't

exactly solvable issues in the first place. Whether it is mental health or drug and alcohol addiction, those things usually don't get addressed successfully, and certainly not quickly.

- 146 Chair Ellis Were those standards and mandates tied to some federal money?
- 148 Judge Welch Oh no!
- 149 Chair Ellis Regarding interstate commerce? What is the theory?
- 149 Judge Welch I think most of us pretty much agree with the goals of the Act. We might argue a little bit about how long the time frame should be and how flexible the administration of that time frame should be. What would happen in the past before the Act is that the parent would enter treatment, succeed, relapse, enter treatment, succeed and relapse. That is kind of the history of my career. I have been doing this for a long time.
- 157 Chair Ellis What is the federal hook, if they are not giving you money?
- 158 Leslie Harris It is federal foster care money.
- 158 Chair Ellis So it is tied to money?
- 158 L. Harris There is tons of money tied to it. You don't get more. It is just, if you don't do it, you don't get any.
- 161 Chair Ellis So they conditioned the money they were already granting to comply?
- 163 Judge Welch Basically, what we tell people, what their lawyers tell them, what their caseworkers tell them, is, "You have got a year to show that you are making significant progress. You don't necessarily have to be all the way to being a full-time parent; but we would like to see significant improvement. The court has to be satisfied and the state has to be satisfied that you are serious about being a parent or the state is obliged to initiate a concurrent plan, which is an alternative permanent plan for a child." That presumes under the plan that every case involves an attorney hearing. It is very rare in this county, at least, that this isn't initially the plan – that the parent is a candidate for having the child returned to them. But the state is also obliged by state law to identify what other plan we can follow, if that doesn't happen. That is almost always the kind of case that we are talking about with adoption – not necessarily stranger adoption, adoption by a foster parent, adoption by a relative. You should know, for instance, that I just discussed this with child welfare for the state. Approximately 70 percent of the kids who are going through the process will be adopted by their current caregiver.
- 184 Chair Ellis What is the predominant age you are looking at.
- 183 Judge Welch Of the parent?
- 184 Chair Ellis No, of the children.
- 184 Judge Welch In this context, we are talking about pretty young children. They are usually up to 10, 11, 12 years of age. Maybe the eldest child in the family might be a little bit older. We are talking about pretty young children. From birth we sometimes take these children away the day they are born, right out of the hospital. The parent either already has children in the system or the children are born with drug dependencies. I don't have a number of the average age, but many, many are little tiny kids.
- 194 Angela Sherbo From zero to six is the fastest growing age group in foster care. It is zero to six, six to twelve and twelve and up pretty much divided equally.

- 198 Judge Welch What I have tried to do on the beginning of the second page of my handout is to identify the things that the law requires, in terms of parents represented by lawyers. A dependency petition is filed and the hearing has to be held within 24 hours from the removal of a child from parental custody. Those are called shelter hearings and they are held here every day in the afternoon. The practice here is to appoint, or at least tentatively appoint, counsel for all parents prior to the actual appearance. The reason for that is so that those lawyers will have an opportunity to review whatever material there is prior to the shelter hearing. They are not just walking in there with a client that they have never met and a case that they have never had any information about. That is a first step.
- 216 Chair Ellis In the shelter hearing, each parent has counsel and each child has counsel?
- 217 Judge Welch No. Children won't have separate counsel, generally speaking,
- 218 Chair Ellis So a sibling group would have one counsel?
- 219 Judge Welch There are exceptions to that, but usually not separate counsel at the beginning of a case. But maybe later. There may be issues that arise that require separate counsel for children. The issue at a shelter hearing is not so much whether there is a case – that the state has a case or not – but whether the children need to be removed from the parent.
- 228 Chair Ellis Let me get a sense of this. The shelter hearing is only when DHS wants to remove the child immediately?
- 231 Judge Welch And has.
- 232 Chair Ellis What is the frequency here of shelter hearings?
- 233 Judge Welch We have shelter hearings involving around 100 kids a month – an average of about 60 cases. The average case has about one and a half kids.
- 239 Chair Ellis So you may have three or four a day.
- 239 M. Greenfield Of the 100 or so, how many of those are the first time the court has seen this particular person?
- 241 Judge Welch I don't know how long it has been since you were involved in the day-to-day workings of the juvenile system, but the cases are much worse than they used to be. One of the reasons for that is because DHS is doing a very good job.
- 249 Chair Ellis From our point of view, this is a real challenge because you are looking at as many as three lawyers per case or more, three to four times a day, with a 24-hour rule and the hope that the lawyer gets identified to the client soon enough to at least read the case workup and maybe meet the clients, within that 24-hour period.
- 256 Judge Welch Well, it is less than 24 hours. It is more like an hour or two between knowing they are representing somebody and the actual shelter hearing.
- 259 Chair Ellis I assume, and it must be true, that it is deemed a conflict between the children and the parents, so you can't have lawyers from the same source representing both.
- 262 Judge Welch That is why the Juvenile Rights Projects is so important.
- 262 Chair Ellis We'll get back to that.

- 263 Judge Welch My comment about multiple dads is not unusual. It is not uncommon to have a family with four or five children, with one mother and with four or five fathers. The next step in the adjudication process from a statutory standpoint is a rule that you are supposed to do that within 60 days. I think somebody snuck that out of the statute, but it is still the standard.
- 265 Chair Ellis You still apply it anyway?
- 265 Judge Welch The adjudication process, generally speaking in Portland, does not involve an actual trial. Most of the cases are resolved and I'll get back to some of our best practices issues. But that is the next step. It is supposed to happen within 60 days of the petition being filed. After adjudication, the law requires that cases be reviewed by the Citizen's Review Board. I don't know if you have had much exposure to that in the context of your work. The Citizen's Review Board has been around now for about 30 years. It is operated out of the State Court Administrator's Office. They are supposed to review every six months all children who are in substitute care. The court also reviews cases. There is kind of an ongoing dialogue about when the CRB should be involved and when the court should be involved, in terms of local practices. I want you to understand that this is not an insignificant issue from the point of the lawyers. One of the issues, of course, is how many of these different things do you have to do, and what are the minimum standards for effective, zealous representation of your client – that is, assuming we are talking about the parent's attorney because they probably have the most demanding assignment. If the court is regularly reviewing a case, and our court does, then we often cancel the Citizen Review Board hearing. The judge has already reviewed the case. You will find in different counties that this practice varies dramatically. We probably are the least reliant on the Citizen's Review Board of any county in the state. Another kind of hearing is a permanency hearing. That is required within one year of the finding of jurisdiction. The court is to hold a hearing for the purposes of determining whether the permanent plan should be changed to the concurrent plan. When this system went into effect we were terrified that we were going to have hundreds of hotly contested permanency hearings about whether adoption should be the plan or should the parent get some time to try to address their issues. The fact is that we just don't have a lot of contested permanency hearings. I don't know how true that is elsewhere. I think it has to do with the communication with the bar. It has also to do with how the district attorney's office does its job, or whoever is prosecuting that termination of parental of rights. We are blessed with an extremely good contingent from the district attorney's office that does this.
- 336 Chair Ellis The termination of parental rights is separate?
- 338 Judge Welch It is the next step. In order to initiate termination, a new petition is filed by the state alleging under the termination statute that this case should have that happen. We have fairly elaborate system to do this that I won't try to describe to you now. In any event, the state has the option to file one of these petitions whenever they deem that they have a case and wish to move forward.
- 349 J. Brown Judge, at some point, does the responsibility shift from the District Attorney to the Attorney General?
- 350 Judge Welch Not in this county. But it does on paper because so many of the counties have relied on the Attorney General's Office to do this kind of work. The state actually pays the lawyers in the district attorney's office to do these cases. They are county employees, but they are actually funded by the state. When a termination petition is filed and the matter is set for trial, those are the things that happen in virtually every case. I would like to go back and tell you a little bit more about some things that we are doing that are a little bit different. Going back to the shelter hearing, one of the things we initiated several years ago is a second shelter hearing, which is held for a variety of purposes and not in every case. It is a decision that is made by the presiding judge at the time of the first shelter hearing – whether there are issues that need to be quickly addressed. A typical time between the first and second shelter hearing is two

weeks. It is often done because there are no parents present at the time of the first shelter hearing because they are in jail and will be out fairly soon. Sometimes we will have second shelter hearings because the state's case is kind of skinny and there is a pretty good chance that the kids can go home and the judge wants to monitor that. We started this, as I said, several years ago. At this point, we are holding these second shelter hearings in about 25 percent of the cases. Another thing that we started doing many, many years before was a pretrial settlement conference in every dependency case. So at a shelter hearing on day one the judge makes a decision about whether or not the children are to remain in protective custody or are being returned to a parent. We also decide whether there is a shelter hearing, and, if so, setting it on a specific judge's calendar at a specific time so everybody leaves the courtroom knowing the next date. The other thing that happens is the pretrial settlement conference in each case, which is also scheduled with a specific judicial officer with a specific date and time 42 days in advance. What happens is everybody meets outside the presence of the court for about an hour conference – what we affectionately refer to as plea bargaining over language and over whether the proof is adequate or strong enough in certain subject areas. Frequently, a very, very large percentage of the cases is resolved as a result of that pretrial conference. They come in to see the judge and announce their decision about how they are going to handle their case. Sometimes the judge won't agree with what is being done, so we send them back to the drawing board. But the overwhelming majority of our cases are resolved by this warm up settlement hearing. If it is not settled at that point, subsequent judicial settlement conferences may be held. For instance, the lawyers have not had the opportunity to fully consult with their client about their options, their choices and the likely outcome. Then they say "Judge, I think if we had another settlement conference, we will probably be able to settle this. But I just need a little more time with my client." You can understand that if you have had to tell a criminal defendant what the likely outcome is. Telling a parent, particularly a young and not very functional one, that they may or may not get their children back, this is heavy stuff. It is hard work to represent these parents and explain to them how this whole process works and what the consequences may be. We do set subsequent judicial settlement conferences when the first one doesn't work, and sometimes we don't. We set the matters for trial and we try to set them within the 60 days. But we are not particularly successful in doing that because of the nature of the system. It is a very busy system and lots of lawyers, relatively speaking, are scheduled up to their ears for all of the reasons that I am laying out for you. So finding time when five lawyers and a judge can mesh their schedules is very frustrating, hard work. The family decision meetings and team decision meetings are internal, problematic meetings that case workers and facilitators run in most cases. The judge is involved, though it is not a judicial proceeding. Whether lawyers go to these gatherings is not based on a pattern or set of principles that I have been able to discern. I am a little bit too far removed from it to know. It is a lawyer-by-lawyer thing. It is a professional judgment about whether the meeting is necessary or not because major decisions are made in these meetings.

461 Chair Ellis

This is something set up by DHS?

461 Judge Welch

They tend to involve extended families. The parents are there, the case worker is there, and service providers are there. They ask, "How is momma doing. Is she doing well enough to make this step in the process, which is returning the child?" Placing the child with her in a residential drug treatment program – lots of very important decisions such as the level of parenting time and who will supervise it – a lot of very, very important decisions are made. Again, you have with the CRBs and all these hearing processes, a lot of demands on lawyers. Now, what a lot of lawyers do – and there are people here who are in a position to tell you the details of this – is that they maybe don't go themselves, but they will send a paralegal from their offices or a social worker who works in their firm to at least be there to speak for the parent or help the parent navigate this. There are a lot of demands. I want to talk a little bit about our termination process.

- 482 Chair Ellis Let me just see, the process you described by my account involves, typically, nine appearances by lawyers.
- 489 Judge Welch There can be multiple reviews.
- 490 Chair Ellis I understand that, but just to get a sense of the scope of the problem of lawyers trying to do what they are being asked to do: a single case typically involves at least nine, and could be quite a bit more, appearances?
- 497 Judge Welch I think “Byzantine” is probably a pretty good word to describe these processes. A termination petition is filed by the state, the parents are served, and they are ordered to appear. If they appear, we set trial dates. If they don’t appear we default them and terminate their parental rights. We have a changing process for how these cases are managed through the trial stage. I can tell you about best-interest hearings real quickly. One of the things we do here in Portland, which we have been doing now for about 15 years and we are very proud of and think is very important, is that, whatever judge adjudicates the case, the judge keeps the case for all subsequent hearings. The parents have appeared and they have asked for a trial, or at least they have indicated they are contesting the process. We set trial dates about four, five or six months out from the appearance only because of the volume that we run. In the interim between the initial appearance and the actual trial, we set what is called a best interest hearing, and that is set with the original judge in the case. The real purpose of that best interest hearing is to talk very frankly with the parent about the probable outcome of the case. In other words, what we do in these hearings is we say to the lawyer, “Run down your case, what does your case look like?” We want a quick summary of the strength of the case and who some of the witnesses are. Then we have the attorney for the child or children add comments to that. Then we ask the parents’ attorneys to do that. What happens, practically speaking, is that most cases go away by default, or the parent agrees to terminate their parental rights. That is also a time-consuming process for attorneys, particularly the attorney who is representing the parents. We have to have legal advisors to tell the parties what the choices are and what the implications are. We have a lot of openness now with adoptions, particularly when kids are being adopted by their grandparents, which is not unusual. One of the biological parents is connected to these people, so they obviously have some prospect of having a future relationship with the child. These are the people that are most likely to be agreeable to terminating their parental rights. Openness is becoming the rule rather than the exception. Thirty years ago, that was considered absolutely contemptible – that there would be any knowledge of who the adopting parent was and vice-versus. As you can see, we keep these lawyers pretty busy and, added to that, we operate out of two courthouses. There is a nice long chunk of the interstate in between. We worry about that. The judges have had some lengthy discussions about what we could do to minimize these demands, but we haven’t come up with anything. These hearings are held at all sorts of different locations. We certainly don’t do this to drive lawyers crazy. I have attached to the handout, just so you know what you have, a description of the best interests hearing. I have also given you our juvenile court procedure manual, though it hasn’t been updated now for several years.
- 633 Chair Ellis You are on a 10:00 schedule. Are the rest of you able to stay longer? Why don’t we address questions to Judge Welch while she still has time?
- 641 Judge Welch I told Ingrid that I would be able to come back at 11:00.
- 644 I. Swenson We planned a panel discussion.
- 646 Chair Ellis What would be the best from your point of view?
- 648 Judge Welch I have a few minutes.

- 649 Chair Ellis Obviously, we are interested in how the assignment of lawyers is being handled and what your observations are, just make it a broad topic, with regard to the quality of lawyering and the availability of lawyers.
- 658 Judge Welch Generally speaking, my response is very, very positive. Because I have been doing this for a long time, one of the things that happens on the DA's side, and on the side of representation of children, is that juvenile court has ceased to be a dumping ground for lawyers. This is a place where people come who really care about this work. The judges in this jurisdiction are all doing family law voluntarily, all nine of us. We have lawyers who fit that description as well such as the lawyers in the Public Defender's office, MDI and JRP. The people who are doing this are experts. They are excellent, they are very committed and they work very hard. Overwhelmingly, with all these firms, we are very, very happy. There is frustration because they are not on time because they are driving back and forth or they are overcommitted. We are hoping this consortium that you have set up can help out a little bit. The single biggest problem we have, and I think the consortium is probably going to make it worse, is the appointment list where there is a conflict or where we just run out of lawyers. You can imagine the conflicts when you start out with three or four lawyers, and three of the clients have criminal histories and have lawyers from the Public Defender's Office. It is just a rat's nest. But we fall back on a list of lawyers who are willing to be appointed at \$40 an hour and, guess what: the ones who are willing to do this aren't very good. We need to have more lawyers available when there are conflicts.
- 720 Chair Ellis Some of our contractors combine criminal defense lawyers with juvenile lawyers. Some are specialist juvenile lawyers. I am interested in if you see either any synergies or any disadvantages?
- 728 Judge Welch Yes I do.
- [Tape 1; Side B]
- 010 Judge Welch We have a program going, for instance, where Day 1 we identify before the shelter hearing the criminal history of all the adults who are involved. We know what their status is – if they are on probation, if they are in prison, or whatever. We started doing this several years ago. It changes the whole synergy of how things work. You know what is going on and who you are dealing with. What we moved to is that, if a parent is on active probation in Multnomah County, the probation of that parent is moved to the judge handling the juvenile dependency. So, if I have this case and daddy is on probation for domestic violence or a neglect charge, I become the probation judge for that dad. I think I had mentioned this process to you the other time I appeared. What goes on in those hearings is absolutely breathtaking because the whole system comes together. We work with the Public Defender's Office at that time to do this in a way that really works. In other words, the lawyer on the probation revocation would, generally speaking, be somebody who didn't know about the dependency case. If we have the combined hearings where we are reviewing dependency case and daddy's probation, it is very effective joinder of issues.
- 036 Chair Ellis The PD lawyer that was handling the criminal case will also migrate there?
- 037 Judge Welch It would probably go the other way around.
- 039 J. Connors I think the expectation in our office is that the juvenile lawyer would handle everything.
- 040 Judge Welch Those kind of integrated systems, we are really big on here. It is helpful. I don't see any particular detriment.
- 045 Chair Ellis Let me suggest one. I would think the risk of conflict would be much higher. The question I have is, in the criminal defense area, if conflicts are out there, they are not identified right at

the beginning. The lawyer gets part way through the case and the conflict becomes apparent. Then the lawyer has to withdraw and the public funds that we administer end up being paid twice for the same case. I would think, based on your description of the process, that there would be a huge risk of conflicts. The question I have for you is how often does a conflict happen partway into the process, when you have to reappoint and start over?

- 057 Judge Welch I would say it is getting better with regard to how far into the process we are when conflicts are recognized. The firms are doing a better job of trying to nail that down. I wish I could give you a definitive answer. We sign substitute orders every day because of conflict issues.
- 064 Chair Ellis Do you see any way to improve on that? I don't know what data sources are available at the inception, but obviously that would be a big help.
- 067 Judge Welch I frankly hadn't thought that much about it. If MPD and MDI weren't here –
- 068 Chair Ellis Or if they broke up between the juvenile group and the criminal defense group.
- 070 Judge Welch I think from a selfish prospective that is not as big an issue for the court. It is probably more important to the law firms than us.
- 075 Chair Ellis It may complicate the contracts that we have, which tend to be on a case basis, as opposed to a smaller granular basis. On a particular case, you get two out of five appearances and then the conflict is recognized. Then someone is brought in and counting twice is the problem.
- 080 A. Sherbo I think there is something inherent in the dependency process that causes conflicts to arise later. Partially it is discovering a conflict that preexisted the appointment, but there is something unique about the dependency process where the lawyers are continued from hearing to hearing. There is really no cessation of the case for quite some time, so conflicts arise. You will end up representing two clients –
- 087 C. Lazenby Give us a little more detail.
- 088 A. Sherbo We had a case yesterday where we have two dependent young men in the same foster home that assaulted each other. We were representing both of them and now we have a conflict. It wasn't something that could have been identified. By the very nature of the system, we have a number of children with multiple, emotional or behavioral disturbances who are placed close together in the same location and bad things happen. These are bad things between two clients of the same firm. So that is something that is unique to children and their lawyers.
- 100 Chair Ellis There is a tension that we have to sort out. On the one hand, there are lots of economies of scale by dealing with larger contracting groups. They support each other, their training is better. But to the extent we deal with larger, integrated groups, the more we run the risk of these conflicts. What I am trying to get a sense of is, from your perspective, do you think we should be trying to break up into smaller contractors, or are we okay at the concentration levels that we have currently?
- 109 A. Sherbo Someone else can answer that question. You have identified the ups and downs. Our firm has a number of lawyers who have a lot experience in a lot of different areas. We train and mentor younger lawyers and the advantage that we have, in response to one of the other issues that was raised, is scheduling. If we were a two-person office, we could not tell the judge that we can cover all the hearings. I have a hearing before another judge at 10:00 on Tuesday, and I am supposed to be downtown before another judge. If we didn't have someone to help cover cases, things would grind much more slowly, I think. It is not ideal, obviously.
- 122 Chair Ellis Do you have a suggestion for us, or are we alright with our current number of providers and their concentration? Should we be moving in one direction or another?

- 126 A. Sherbo I feel put on the spot.
- 127 L. Harris You should say you need to think about this.
- 127 A. Sherbo I can really only speak for my office. I feel like the quality of the work that we perform, under the constraints of the system as a whole, is excellent. I wouldn't want to see us much bigger or much smaller. I think we do have a problem in the community that Judge Welch mentioned because we just don't have enough people when we have three fathers, a mother, and children, and they have prior representation. We don't have enough lawyers to cover all that.
- 137 Chair Ellis Tell me a little bit about your organization.
- 139 Judge Welch I think I need to go.
- 140 I. Swenson Mr. Chair, if I can say a couple of things. First of all, I think the juvenile lawyers in those firms have the benefit of training, but the fact that they are part of one firm creates conflicts.
- 149 A. Sherbo They bring an awfully good perspective from my point of view. I work for the Juvenile Rights Project. We exclusively represent children and young people up to, say, 25. I would say about 70 percent of our work is dependency, and most of that work is representing children and teenagers. We are expanding our representation, at the request of the community, and by my desire as well, into representation of parents.
- 155 Chair Ellis It is not like labor work, for example, where you either do employees or employers?
- 156 A. Sherbo It is more like divorce work, where you do husbands and wives. We don't have a very large volume of delinquency cases and we don't do any adult cases, with the exception of a few Measure 11s that we have contracted for in the last contracting session. The expertise in criminal law that the firms that do both bring to delinquency work I think is very high.
- 164 Chair Ellis How many lawyers in the JRP?
- 164 A. Sherbo I think we have 18.
- 166 Chair Ellis They all do juvenile work exclusively?
- 166 A. Sherbo Well, they don't do adult criminal work. Our office is somewhat of a hybrid between a public defender office and a specialty legal aid office. We have a number of lawyers who are funded from other sources, who are representing children in other courts. We have a project where we represent children in special education. That is funded entirely from another source. We have, among the 18 people that I mentioned, several people who are exclusively doing that.
- 174 Chair Ellis You are organized as a non-profit corporation?
- 174 A. Sherbo Yes, that is correct.
- 175 Chair Ellis Tell me a little bit about the structure. Do you have a board?
- 176 A. Sherbo We have a board.
- 177 Chair Ellis Are they providers or outsiders?

- 177 A. Sherbo They are community members. They are not providers. It is a relatively recent board and it is growing. It is made up of people who have a particular interest in children and youth issues. We have a pediatric nurse practitioner, who we developed a relationship with over the years.
- 186 Chair Ellis You mentioned you are funded by multiple sources. Are we talking three or four sources besides OPDS?
- 187 A. Sherbo I think OPDS is probably by far the largest provider. We have employed several people to do the school education through grants, and then we have smaller pieces of funding. The work that we do which is funded by you is defense work, that is where we started –
- 198 Chair Ellis That is 90 percent plus of your budget?
- 200 A. Sherbo I don't know. I am a supervising attorney, not the director. I am not very good with numbers. My guess is that well over half is from OPDS funding. What we have found is the defense work informs the other work. For example, a child's expulsion from school has a direct impact on a juvenile court case. A dependent child who has finally found a foster home, which is a good match, but they are about to be expelled from school, might lose his placement. The child, by the terms of their probation, is required to attend school and has special education needs that aren't being met. So there is such an interrelationship between those pieces of a child's life. I think I was originally asked to talk a little bit about how difficult and complex the work is. Here is what I understood you wanted to hear, both about the quality and the challenges. I felt, when I talked to Ingrid, what I needed to walk is a fine line between bragging about ourselves and whining to you about our needs. I will do my best to walk that line. If you see me going too far in one direction let me know. We provide excellent work, but it is at the expense of family time and leisure time. We have too much work to continue to do the high quality that we expect from ourselves and our staff. Particularly with people like myself and Ingrid and others who have done this for a long time, we started, in my opinion, when the caseloads were lower. So I have expectations of my staff about how they are going to handle a case that are somewhat based on how I was able to handle that case when I had less cases. The amount of research I was able to do, the amount of collateral issues I was able to address, the amount of times I was able to advise someone – all of those things we are just not able to do in the same way now. I think Judge Welch gave you an excellent view of what happens here in this building, step-by-step-by-step, and she told you a little bit about what happens outside of this building. I want to talk to you a little bit about the things that we do, those areas of law that intersect with what we are trying to do and what you all see as the key events: the shelter hearing, the settlement conference or the trial. Dependency law is really statutory, where we have the juvenile code that tells you what the bases for jurisdiction are and what you must prove for the state to intervene into a family. The code tells you that and it tells you the stages of the proceeding. But there are so many other areas for the law, including federal statutes that we need to incorporate every single day, which fund foster care and set requirements on the court. It has multiple meanings and connotations that you have to know about if you are practicing in this area. For example, in this state, if you are related to the child who is placed up for foster care, you may or may not be able to receive funds, and that is based on federal statute. If you are a juvenile court lawyer, you need to know what that says. If you have a client in drug or alcohol treatment, you need to know the law under Title 19 of the Social Security Act. Even if you understand them, you probably aren't going to get that client in drug or alcohol treatment in the time set by the federal statutes. We also have federal statutes that regulate how we do business when an Indian child is involved. We were talking about the possible parties. You have mom, you have dad, you have the children, you have the tribe; and there are CASAs or special advocates and other family members who might intervene. So you have a hearing where you might have eight different representatives that are governed by not only the juvenile code, which is relatively manageable, but multiple federal statutes in areas that are related, but not specific to child welfare. We also have the relationship between juvenile dependency work and domestic relations law. You have the Interstate Compact and Placement of Children laws. You would

think that if you were appearing in front of Judge Welch with two parents who are in jail, and the child needed placement with an aunt in Vancouver, you are home free. Not so; not so at all. It is far more complicated. There is a vast amount of information that each of us needs to know. If we don't know it, we at least need to know that it is out there to look for. When I was talking about trying to present the complexity of this to you, I have done this for 30 years nearly every week, with every single one of those issues. But someone can still come up with a fact pattern or a legal issue that we don't know.

300 Chair Ellis How is some poor law-trained person on the appointment list possibly going to know all this?

303 A. Sherbo I wouldn't know, in this county at least, if there are poor people on that list who only do one or two cases a year. I would say that is a bad system to have somebody who only does one or two cases. My guess is the people here do more. It is sort of a problem where you have an area of law you are proud of and you feel it is so complex that nobody else can do it. I don't mean to be making that statement.

309 Chair Ellis You have me persuaded.

310 A. Sherbo There are general practitioners who do a lot of good work in a lot of different areas. I think this is really complicated work, which has been perceived as simple. So the difference between its difficulty and the perception of it is really a problem as well. The other difficulties of the work have to do with communication with the client. For us, it is primarily children. You have a full set of skills to learn in order to communicate with someone who is 13. There are really important issues, like: "What do you expect your placement to be?" "What do you want it to be?" "Well, I can't achieve that for you;" "There's only a 30 percent chance of achieving that for you, but I might go this other route." These are very difficult communication issues – kids being influenced; being careful not to influence them, but to counsel them. It is time consuming.

325 Chair Ellis You mentioned you have been doing this a long time and your colleagues have been doing it for a long time. Of the 18 lawyers in your group, what is the turnover, what is the average experience level and the age of attorneys?

331 A. Sherbo We have a good number of people with a seven or more years of experience. We feel like, despite the poor pay and the long hours and the emotional drain of the work, that our firm provides support. There is a lot collegiality and a lot of people who really love the work. I will tell you, we have a lot of people who have spouses that have what I will call a real job. They are able to make the sacrifice to work for us long-term. We have just lost a very capable young attorney to go into private practice. We have been unable to hire a number of people who couldn't afford to come to work for us.

343 Chair Ellis How hard is it to recruit when you do have an opening?

344 A. Sherbo We have a number of applicants every time we have an opening. We have really tried to emphasize major felony qualified work because we do have Measure 11 cases. We did just hire a qualified attorney.

352 Chair Ellis In the criminal defense practice there was, and I think there still is, a model to hire a lot of young lawyers who want to get trial experience. It sounds to me like your field is one that lends itself more to a long-term commitment and career.

361 A. Sherbo I think that is correct for a couple reasons. Number one, it is kind of a calling. It is very interesting legal work. The number of issues that come up on a given day is rewarding, intermittently at least, when you have success. Also, as Judge Welch said, there is not nearly as much trial work.

- 372 Chair Ellis What are you finding in attracting new entry-level attorneys, in terms of those who have law school debt? Is that a big issue?
- 375 A. Sherbo That is huge. That is one of the most recent revelations we have had. The young man who just left us could not afford to pay his school loans and work for us. We have a great relationship with Professor Harris, who teaches juvenile law. She sends us wonderful students every summer, and we hire a lot those.
- 392 L. Harris You might be interested to know that the federal legislation provides for forgiveness of debt for prosecutors and not defenders.
- 393 Chair Ellis I know that. The current bill only provides it for criminal defenders not juvenile lawyers.
- 398 A. Sherbo I think there might be some national organizations who have recommended similar loan forgiveness for juvenile court practitioners.
- 402 Chair Ellis We are migrating that way.
- 406 L. Partridge I agree with Angela. Do you have any questions?
- 407 Chair Ellis I was interested, from the law school point-of-view, are you finding a lot of interested students?
- 411 L. Harris Yes. I am trying to figure out how to put this into perspective for you. Let me tell you just a little bit about where I am coming from and frame what I am doing. I have been teaching at the University of Oregon since 1982. I teach children and the law, and have since I came there. Before that I was public defender in Washington D.C., where I did a lot of juvenile court work. I have been working with juvenile court since I came here. I have been on the Juvenile Court Improvement Project Advisory Board since it began. I have been part of Ingrid's work group, which she doesn't claim ownership of – the Juvenile Law Training Academy – since it began. I was the head of your contractor site team that did the evaluation of the Multnomah County juvenile contractors in December. To some extent, I can answer questions about other parts of the state. I would tell you that your best functioning juvenile court and your best set of lawyers is in Multnomah County. The rest of the state doesn't necessarily look like this county.
- 431 L. Partridge I might not necessarily agree with Professor Harris.
- 433 L. Harris I just said "not necessarily."
- 434 Chair Ellis We had two meetings in Marion County and we heard some very positive things.
- 435 L. Harris I also head a project at the law school, which is a child advocacy project. It was set up with money from a donor, but it is really for the students who come in and say they want to do child advocacy work. Besides children and the law, I teach family law. So I rarely run into people coming into law school saying, "My heart is on fire to do divorces." They all want to represent children. So, yes, there is a lot interest. I will tell you that part of the reason Angela can recruit is that JRP is regarded as the place to go in this state if you want to represent children. There are other lawyers with these skills, but they don't have the reputation of JRP. There are wonderful students, who come with great backgrounds and want to do this kind of work. As it happens, I was just meeting the day before yesterday with three students who were awarded fellowships for this child advocacy project. They get money. Part of what I am doing with the money that the donor gave us is to give, in essence, scholarships to some students to try to reduce their loans. This one woman, who is fabulous, worked in juvenile corrections before she came to law school and she is about 30. She is going to work for JRP this summer and got out of college with very little debt. She said after her first year in law

school that she had \$30,000 in debt already. So the debt issue is huge even in public law schools, essentially because of the de-funding of higher education. Seventeen percent of the costs of higher education are paid by the state now. The public schools are basically private law schools in the sense that they rely on tuition; so it's totally different from when we went to law school. When I went to law school, I came out with no debt because I saved money and I worked. It is completely different now, and that is a big problem. It does mean that more and more people can't do this kind of work. What Peter asked me to do was to talk about, from a more national perspective, representation of juveniles and emerging challenges. I don't know which way you want to go?

- 482 Chair Ellis I think the latter, but let me put a question out there in the course of your response, if you can work this in. The biggest growth component in a public defense office is juvenile representation. Criminal defense is obviously a big part of what we do but, in terms of growth in incremental expenses, it is less of a challenge. I would like to understand better what is happening in the juvenile area.
- 497 L. Harris I would guess that the biggest contributor to increasing costs is the dependency cases, not the delinquency caseload. I was all prepared to tell you all the reasons why I think it is harder to be a lawyer in a dependency case than to be a lawyer in an adult criminal case or a delinquency case. I think that you have to master more subject matters. You have to master greater area of laws and related materials, and I think you have to do more work. One of the reasons is because, as you all know I'm sure, in adult criminal court, by and large, once the case is tried and you have a conviction rather than an acquittal, the lawyer's work is basically done. There is so little discretion with regard to sentencing anymore, and once someone is sentenced if they are sent to some kind of facility, the court loses jurisdiction and they go away. On the juvenile side with delinquency, there is more discretion on the sentencing but, once again, in Oregon now, once a kid is committed to the Youth Authority, the case is over. In dependency cases, as Judge Welch was telling you, these dependency cases go on constantly. That is where the bulk of the work is in dependency cases. After the adjudication, they literally last for years.
- 529 Chair Ellis Which raises a question that I will be interested in. I believe our contracts with both of you are on a case unit basis. The definition of "case" I think I am hearing is a very elastic concept which, in terms of fairness of how we deal with other contractors, is an issue. When we get back to you, I would like to hear your thoughts on that.
- 538 L. Harris The other thing that I think is important for you to know is that the quality of representation – the quality of the work that lawyers do – in juvenile cases continues to be a big issue in this state and nationwide. The Oregon juvenile courts in the last 15 years have had at least four major episodes of being studied. Every one of those studies has come back identifying as a major problem the adequacy of representation of private parties. You have got the Juvenile Court Improvement Project assessment materials, but that is just the latest of a string of studies. The Juvenile Court Improvement Project has done a lot of good in this state on many issues, including that they try to do a lot of special training so everyone, including lawyers, will get up to speed and improve the quality of work that they do. But they have had mixed success. I have to tell you that the work that has been done in the last couple of years headed by you – that is to say, by Ingrid – has made a huge difference. I think it is very clearly because you all are the ones who pay these lawyers and you all are the ones that these lawyers listen to. I do want to take this chance to give the maximum praise I possibly can, first of all, to Peter Ozanne for making this a priority, and for having incredible wisdom and good luck to hire Ingrid. She is remarkable. She is so respected; and she has provided so much leadership. She has created this Juvenile Training Academy, even though she won't own it. She is initiating this site visit review process, and it is making a big difference. I think it is really important. I know it costs money to do all this stuff, but I want you know it is really important. On top of all of the stuff about why juvenile law is already complex, I am supposed to tell you how it is going to get worse. You already know about the more complex

hearings. That was already talked about adequately. You know about the push timeline under the federal law.

592 Chair Ellis

The 24 hours –

593 L. Harris

No. Basically, at the national level, it is called the 15-22 months rule.

595 Chair Ellis

The one year thing.

595 L. Harris

What that means is the lawyer for the kid and the parent who is doing a good job simply has got to step it up and can't let things slide. The lawyer has to be on top of things at all times, and it has made things go faster. The push for permanency, which is what this is related to, is creating some important issues. As Judge Welch said, here in Oregon, adoption is the one-size-fits-all solution to the case when the kids can't go home. Across the country, it is increasingly recognized that this is not the best outcome for many children. But there is a lot of resistance, institutionally and structurally, to say maybe we shouldn't be doing adoption. Maybe we should be doing some other permanent plan for this child that doesn't involve completely terminated the child's relationship with the parents. For the lawyers representing the kids, as well as the parents, first of all, they have to keep figuring this out. And then they have a lot of difficulty dealing with the institutional resistance. At a philosophical level, they have a lot of educating to do when they want to do this, and then the case actually becomes more complex. You have to figure out what is that alternative permanent plan. Oregon has got the proper statutes for this. But my observation is that adoption is still so dominant, and these other things are used less, or are not used as much as they ought to be. Another problem is related to what Judge Welch was saying about complex families. In the not very distant past, probably when you when you were in juvenile court, Mr. Greenfield, you just didn't see fathers. The fact that these children had fathers was sort of completely ignored, which I always love, because the very first case in front of the Supreme Court of the United States about father's rights is about a juvenile court case. But everybody totally ignored fathers until recently. Now you are really trying to figure out father's issues for a variety of reasons. It is complicated: practically speaking, not only because one family may have several fathers, but because you might not actually know who the father is. The last legislative term, I worked on legislation when Senator Brown was actually the chair of the overall group about trying to deal with fathers in juvenile cases. Because of some of the complexities of the law, it is not at all uncommon in juvenile court for there to be a couple guys who are presumed to be the father of a child. You have to choose. Figuring out how you sort that out legally -

655 Chair Ellis

You are talking not just about multiple fathers where you have a sibling?

656 L. Harris

No, I am talking about one kid with several father.

[Tape 2; Side A]

002 L. Harris

You might think, "Well, that is simple, just do an DNA test." But it is not that simple because there are legal complexities. It is not simple because it assumes that all you care about is biological parenthood, which isn't necessarily the case. It is hard to resolve these issues, not only because our laws are not all that straightened out, but also because there are different constituencies. You have got the child support people coming in and pushing one way. You have the fathers' advocacy groups coming in and pushing another way. In a very complex area, this stuff needs to be sorted out quickly. There are trends occurring in other states where it is going to be increasingly important for people, especially who are advocates for kids, to know about various ways to deal with de facto parents, who are not biological parents.

012 Chair Ellis

Let me ask, and I am sure this will sound naïve in this room, but if I am a lawyer appointed to represent a two-year-old, where do I get my direction?

- 013 L. Harris Make it up yourself.
- 014 Chair Ellis What?
- 015 L. Harris You make it up yourself.
- 015 Chair Ellis Help me out. How do you decide what is in the best interest of the child?
- 017 L. Harris It is easier to tell you what happens for a two-year-old than a seven-year-old. One of the things with a two-year-old is you have to do what Angela is talking about. You have to figure out how to talk to a very little child. But if you have a very little child, they really aren't going to direct you. They aren't going to instruct you. So you are going to get information from other sources, such as therapists and so forth, to figure out what is going on. But you are put in an odd position as a lawyer.
- 021 Chair Ellis You are like a subjective parent, almost.
- 025 L. Harris You make your own choices. Some people try to structure that by saying, for example, "I am going to have a presumption in favor of keeping the child with the parent," or something like that. You just make it up yourself. The reason I said a seven-year-old is harder because there is a lot of debate about what age a child becomes old enough that they really should be directing the lawyer. JRP's position and the new standards say "7," but there are lots of other people who disagree. If Judge Welch was here, she would say, "I wouldn't even listen to a lawyer that says that." I have heard her say that, but I don't know if she would tell you that now. It is very complicated when you get to children who are a little bit older. How much do you take direction from them, as opposed to, again, making it up yourself? The standards call for the appointments of guardians, but that isn't something that is common in most cases. It could have happened that CASAs would have been developed to fit that mold, but they aren't in this state. In this state, CASAs are separate, independent parties, so they are not the one who directs the attorney for the child. For a little child, you have got the two best interests speakers, the CASA and the defense lawyer.
- 043 A. Sherbo I think the impression is that why couldn't the state's lawyer represent the child, couldn't the parent's lawyer represent the child, or why do we need a lawyer for a two-year-old?
- 045 Chair Ellis We haven't gone that far.
- 046 A. Sherbo What is the value added of having a lawyer for a two-year-old?
- 046 Chair Ellis How does the system work?
- 047 L. Partridge One of the things that I would like to tell you about: if I am representing a two-year-old and why you need a attorney for that child. An attorney general or district attorney deals with DHS and liability issues. I don't mean that in a critical way because what happens is that, if you have a two-year-old, and let's say they are not going to be returned home under a permanent plan, then you have to look and see where is this child going to go to be raised for that 16 years plus. DHS may look at other relatives and rule them out because they can't certify them. They have a whole process they have to go through, which is somewhat mandated by federal law as to who they can certify as a caretaker for that child and who they can't. I just recently had a case – and I hate to tell war stories – to illustrate, where the child had been with the grandmother from birth because the mother was fairly absent and the father was not in the picture. The child got removed because there was a search warrant served next door to the apartment she was in and, while they were there, the police saw what we would call a "dirty house case," which usually means there was some drug component involved. The child comes into the foster care system, the system takes protective custody of that child, and then you say, "Well, where does this child go?" Obviously, if I was representing the

child and sending him to the grandmother seemed to be the best idea, the problem is DHS wouldn't certify her because she had a criminal history. It was, I think, seven or eight years old for a prior drug offense. That, coupled with the condition the apartment was in – there were drugs in that apartment – they wouldn't certify her as a placement resource. So, as the child's attorney, I was really having to push DHS to say, "Hey, let's get around your certification process and see if there is another way we can do this." Ultimately, while they weren't willing to do that, I was able to approach the juvenile court judge and say, "Let's get DHS out of this case and let's talk about guardianship for this grandmother." So, if you don't have a child's attorney, I don't know how that ever happens for a two-year-old. Otherwise, what would have happened with this child is that the child would have been in foster care. They would have gone through a termination process with the parents, and then they would have had to look for an adoptive home, which never would have been that grandmother. It would have been some stranger adoption and, 15 years from now, I'll tell you whether that was a good or bad decision. At least by having a child's attorney, we have that option to go to the juvenile court judge.

079 L. Harris

Another reason why it is important to have the children's attorney, I would say the agency has their own agency. They have their own institutional structures and, very often, what the lawyer for the child is doing is pushing against them. One of the things that is happening, there are studies coming out, including studies based on Oregon's population, that show what a bad prognosis kids who are in long-term foster care have. They are set up to have so many life failures; and they come in damaged. But, traditionally, the system hasn't paid that much attention to them. The whole structure, as it has been explained to you, is really focused on the parent – trying to identify what is the issue with the parents. Can we fix them up so the kid can go back or not? Very often, the kid who is coming in damaged and has issues hasn't had things done for them – anything as simple as getting medical care or their educational needs attended to and so forth. There is now increasing attention to the idea that lawyers for the kids need to be pushing for services for the kids independently of this question of whether they go back to their parents or not. This last year, the Juvenile Rights Project got some legislation passed that will really help some kids. It requires that kids in foster care be able to stay in the school they came from, if that is in their educational best interests, which wasn't possible before. This is great legislation, but there are implementation issues. Lawyers have to know about it. Lawyers have to push it. It is going to be another one of those things where lawyers are having to do things. There is a case that I worked on with Angela involving a child who had moved 12 times in 18 months. She had her issues, obviously. But the core of that was a problem with the agency not taking care of her adequately. Juvenile Rights Project was working on that in representing that child. It is really important to have lawyers for kids, and not all counties appoint lawyers for kids, certainly, not in every case. I can't tell you that lawyers always do a very good job, which is regrettable. But that goes back to the quality issue. Lots of studies show that, if you want to get good outcomes in juvenile court, it turns on the quality of the lawyers. That is incredible important.

112 Chair Ellis

So, when the legislature asks us if we are funding too many lawyers and why do you have to have lawyers for all these children and parents, etc., you are comfortable with the way the system is working now?

116 L. Harris

No. I think sometimes this is a problem of implementation and not theory. I think there are times when lawyers who are appointed for kids don't provide adequate representation.

120 C. Lazenby

Another aspect of that: I understand in felony cases, where you ended up having represented the co-defendant, there is a conflict. But, overall, in the juvenile law area, are the conflicts really more sort of technical? If we could wave a magic wand and, let's say, we could get 31 votes in one house and 16 votes in another to change the law about conflicts for lawyers practicing in the area, is it possible to get rid of the sort of standard view of conflicts? Could you see a way that could actually help, because the system does a lot more social management as opposed to strict legal representation? I am not diminishing the legal representation aspect.

I am actually acknowledging that you do much more than just pure legal representation. If it is possible, if not, just say, "Chip you are crazy." You have said that before, Angela.

- 133 A. Sherbo Not for decades.
- 133 C. Lazenby Is it possible that some of those conflicts are really more apparent than real? You talked about the case where you were representing two kids, and now you have assault charge with one of them. There is going to be a legal disposition of the assault case, but continuing treatment and placement in the dependency case.
- 139 L. Harris Could you keep representing the victim?
- 140 A. Sherbo I don't think we can keep representing either of them. I think it is a tragedy that we can't because, in this particular instance, we have had a very long-term relationship with one of them and have provided him with really superb services. I don't know the answer to your question, Chip. All I can tell you is that we take every one of those potential conflicts to a group in our office. The individual attorney doesn't make that decision. It is always evaluated by supervisors and several other people. We are doing what we can internally, and then there is real reluctance to stop representing somebody who you have formed a relationship with. I don't believe we have conflicted off of any cases where we should not have.
- 158 L. Partridge I can tell you, in Marion County, we have a consortium system and I don't think it is an issue. In Multnomah County, it seems to be a much bigger issue with its system. But in our system it is not really an issue. If we have an apparent conflict at the beginning, someone else just takes the case. I don't believe it is any additional cost to indigent defense. It may be a minimal cost to the court in having to reschedule a court appearance. I know there has been a big debate statewide about what is the best system to provide the best services, but clearly I think one benefit of a consortium is the handling of conflicts.
- 173 A. Sherbo So you are starting with criminal defense, where that people were being appointed counsel regularly in accordance with constitutional court rulings. In juvenile cases, people were not being appointed counsel. In *State ex rel Juvenile Department v. Grannis* the Court of Appeals first recognized a constitutional right to counsel on a case-by-case basis for parents in Oregon dependency cases. That case was decided in 1983 or 84, so it has just been since then that counsel has been appointed for parents in juvenile dependency cases. The statute has also been changed. So counsel have been appointed in dependency cases for a considerable period of time, but it is obviously not nearly as long as in criminal cases.
- 186 L. Harris The other thing is, it is my understanding that the number of criminal cases is fairly stable, at least nationwide. That is not true in dependency cases.
- 189 C. Lazenby People who are younger are having children. Caseloads for dependency are going to get larger.
- 191 L. Harris Everybody always says it is drugs. I am not convinced about the drug arguments because meth has been around a long time, but I haven't seen any studies on the subject.
- 194 L. Partridge Part of it is, and I'm not a policy person and I don't really know about stats, but from my perspective, every time you fund a dollar for law enforcement, and I am not saying that is a bad decision, one of the things that happened in our county is that the police and the District Attorney's Office got a grant for a Child Endangered Services Project. So the police were much more involved in going out on DHS hotline referrals and taking a look at the situation, which led to a lot more criminal mistreatment charges, which led to a lot more juvenile dependency petitions and which created a huge spike in the caseload. When I did criminal work for about nine years before I did juvenile work, very rarely did we ever have a criminal

mistreatment case. Now, there are some folks in the back of the room that do this in Marion County probably six or seven a day. That is a direct result of that grant in Marion County, and I'm not saying that was a bad thing for the community to do. But people have to understand that this has a commensurate impact on the juvenile justice system.

- 220 L. Harris The other area of growth in cases is due to this whole idea that a family and a home in which there is domestic violence should be regarded as a potential dependency case, even where the child is not the victim of domestic violence. That is something that is new within the last ten years. The whole idea that a child being exposed to domestic violence can itself be child maltreatment causes more interventions. In Lane County, people tell me that the number of cases involving domestic violence is over half of the caseload. You get those kinds of spill-overs.
- 222 Chair Ellis I have a question and I would be interested in your thoughts. What has been the reaction of DHS case workers to this increase in legal representation? Do they fight it?
- 229 L. Partridge Are you talking about appointing attorneys for children?
- 230 Chair Ellis Right.
- 230 L. Partridge My perception is that they like it. In my county, very rarely are the case workers represented. There is not an attorney, there is no DA, there is not an attorney general present. It is very problematic as an attorney when you are trying to negotiate a case. Essentially, what I am doing, as a parent's attorney and sometimes as the child's attorney as well, is negotiating with the DHS worker over the language in the petition. I have real concerns about the ethics of that on the part of DHS and the Attorney General's Office and the District Attorney's Office, but that is another subject. But what you find as a child's attorney is that a lot of times, if you have a younger case worker who doesn't have a lot of experience, they will be ready to give away the farm to one of the parent's attorneys. As the child's attorney, you say, "Wait a minute. Hold off here. Let me get the DA on the phone." We will call the DA and basically say, "Okay, what do you have that is going to substantiate this?" If the child's attorney wasn't there, that would be negotiated in a way that would be much more beneficial for the parent.
- 247 A. Sherbo We tend to disagree with them fairly frequently and not necessarily with respect to a simple issue of jurisdiction versus no jurisdiction. Once a child is in the custody of DHS, I look at that as I continue to represent the child. I recognize the duty of ensuring that the child's parent, who is now the state instead of the parent, provides adequate care for that child. Often times, that is just not the case. I represented a 21-year-old developmentally disabled mother who gave birth on April 14, and her baby will be in his third placement next week. There is serious damage done by an under-funded, poorly trained, public child welfare agency. The role of the children's attorney and the role of the parent's attorney, I think, in addition to all the other roles, is holding these people accountable. Ingrid and I both sit on a work group chaired by Hardy Myers that is addressing the issue of representation of DHS case workers. There was quite a push, last session, to basically fund more agency staff. I think the work group that Ingrid and I sit on is basically taking a step back and saying "What would a model system look like that had everyone represented – the state, the child, the parent?"
- 278 Chair Ellis Normally, my vice-chair, Shaun McCrea, kicks me about now. We have been going two hours, so why don't we take about a ten minute recess.
- [Break at 11:10 to 11:16 a.m.]
- 304 Chair Ellis Let me just say to the Commissioners that I need ten minutes notice if anybody is going to have to leave early so that we can get a couple of votes.

- 307 M. Greenfield Define “early.”
- 307 Chair Ellis 1:00 p.m. is what the agenda says. I want to welcome Senate Majority Leader Brown, who is here.
- 311 Senator Brown Thank you.
- 311 Chair Ellis By way of background, this Commission is the result of a two-year study commission of which Senator Brown was a member, and we appreciated her work. Do you have some thoughts you want to share with us?
- 315 Senator Brown I just have some really brief comments. I believe I know all of you although, Mr. Brown, I don’t believe you and I have met. I am Kate Brown and I represent a little bit of northeast Portland, a lot of southeast Portland and the City of Milwaukie. I have served in the legislature since 1991 and I am one of the old ladies in the legislature at this point. I am also a lawyer by training. I have practiced family law, done a bit of juvenile law and a bit of probation violation hearings in the early 90s, before the legislature took that practice away. I practiced juvenile law during the 90s until about 1998. I left, frankly because my legislative duties were getting to be overwhelming, but also because the caseload was higher. I remember I had over a 100 cases and I was practicing 20 hours a week. It just didn’t feel like I could do a good enough job. I don’t think, frankly, those caseloads are that uncommon today. I chose to come back to practice during this year and spoke to Juvenile Rights Project. They agreed to take me on for a year, half-time. My reason for doing that was that I know that the juvenile justice system is really struggling and I was hoping to find the silver bullet to fix the system. I am frankly overwhelmed by the enormity of the issues in the system at this point in time. I am really struggling about where do you start to fix the system. Two things that I would share with you – and I am representing mostly children. I represented parents the last time I was in juvenile court in 1998. Most of my caseload now is children. I have about 55 cases right now. The two things that have struck me in terms of my colleagues out here is the number and size of the caseloads that they have. It is just incredible. The other issue is the level of damage that we are seeing in children. I have a number of cases where they have 12, 13 and 14 reports on the family before the juvenile justice system gets involved and a petition is filed. By the time we see these children, they are very severely damaged. So firms like Juvenile Rights Project, with the School Works program on the side, really help to repair these kids. The last thing I would say is I am really in awe of my lawyer colleagues who handle these cases. They don’t do it for the money. They do it because of the ability to put families or try and put families back together again. The judges also have these enormous caseloads. I know they bring these huge piles of file home every night, and they know their cases very well. I am very concerned about the DHS caseworkers as well. Both the qualifications and the number of cases the caseworkers have are just incredible. That is all the comments I have. I am happy to answer your questions. I am no means the expert that Professor Harris and Angela Sherbo are.
- 370 Chair Ellis I have a general question of all of you out there. Do you have any suggestions about how we could do our job better, or how PDSC could handle its contract relationship with providers better?
- 374 L. Partridge I have a couple of thoughts that, if I had a magic wand, I would like to see. The first is a more coordinated process for how we deal with appeals from juvenile court. It is a different process when you have a criminal case and how you effectuate that from the circuit court than in a juvenile case.
- 381 Chair Ellis Is your question how appeals are staffed? Whether it should be by the Legal Services Division?

- 384 L. Partridge I think the level of professionalism and quality of the lawyers who handle criminal appeals is very good in Oregon. I am concerned that, in juvenile issues, it is kind of an individual system and the quality varies greatly in those appeals. There are some people who do very excellent work and some who don't.
- 391 Chair Ellis Help me out because, on the criminal side, almost everything gets appealed since there is no downside. On the juvenile side, what percentage of the cases end up with some sort of appeal and who makes the decision about that?
- 395 L. Partridge I couldn't give you a percentage. But, for instance, if you have a termination of parental rights trial and I am representing a parent and the trial court judge agrees to terminate the parental rights, almost certainly that parent is going to file an appeal. What is going to happen actually is, as the trial court attorney, I have got to file the notice of appeal with the Court of Appeals. And I am going to file a motion with my trial court to appoint somebody to handle the appeal. I am not going to do the appeal myself. It is kind of the luck of the draw about who gets that case, so the quality of work that happens by chance.
- 405 Chair Ellis It is the juvenile court judge that appoints the appellate lawyer?
- 409 L. Partridge Correct. They have a list. I don't know how it works everywhere. It may be different other places but, in Marion County, they have a list of folks. I don't know how that list is generated or where it comes from, but there is a list of people who will do appeals. Peter or Ingrid may understand it much better than I do. I just wanted to say that is one of my perceptions I have. The other issue I would like to see, if I had a magic wand, would be some type of clearinghouse where, if I had a question there was some kind of process to address technical issues, I could call in and have some consultation with someone who was more knowledgeable. I don't know if that is as big an issue. For instance, if you practice at the Juvenile Rights Project, you can probably walk down the hall and talk to Angela. But if I was out in some place where it –
- 423 Chair Ellis Hood River.
- 423 L. Partridge Well, Jack does a good job, so that is probably not a good example either. But it would be good to be able to call in and say, "Well, I have this issue about what we call the Interstate Compact Agreement where I have got to figure out how to get this kid into some foster care here – you know, six miles across the river to Vancouver." That is a very complicated process. The problem is, when you are triaging cases – and that is basically what we are doing – we need the type of knowledge and skill that a more surgical qualification demands, so you could call into Salem or some resource and say, "How does this work?" or with an immigration issue, for instance. I know that is a hot topic, politically, but immigration issues permeate a lot of our work.
- 438 Chair Ellis In Marion County, I am sure it does.
- 438 L. Partridge If I have a kid that is in foster care and the parent has a criminal charge and faces deportation, are they really going to get deported or are they not? It makes a huge difference in your case planning on what you are trying to do with that child. If you had advice that was telling you, "Hey, that parent is going to wind up being deported to Mexico," you could do a permanent plan under those circumstances. It would be a lot different if the parent is probably going to get released. Then we are going to try and work to reunite them.
- 447 Chair Ellis Let's take your first topic first. Is this an area where there would be an advantage to having the group that provides the trial services stay with the case on appeal or not?
- 453 A. Sherbo I think we are in a unique situation because we actually do have a contract to do appeals. There are some obvious situations where you can't handle the appeal. I just filed an appeal

the other day and we asked to have our office appointed. I know that the public defenders are satisfied because they are able to quickly get appellate services.

- 471 Chair Ellis Let me ask this question. I have talked a lot about the range of conflicts that exist. I assume that probably makes it potentially difficult to have an LSD lawyer – the full-time lawyers that we have to do appellate work – as the predominant appellate provider for juvenile cases because we would still have those conflicts.
- 479 L. Partridge Absolutely, that is right.
- 480 Chair Ellis Aren't we almost driven, on the appellate side, to do this on a contract basis, rather than on an LSD basis?
- 483 A. Sherbo I don't know enough about it.
- 487 Chair Ellis What is your view as to the way appeals have been staffed to this point? Are you comfortable with it, or do you think that it is an area that could be done better?
- 491 A. Sherbo We did them internally, and I thought that was a good thing for office. It teaches you how to preserve error and it enabled us to identify issues. It was very helpful. None of the trial lawyers do it now. We have a woman on staff who is a fantastic lawyer, and she does them. I will say that I just recently read an appellate case in which the Court of Appeals, with respect to mother's counsel's filing of a *Balfour* in the appeal of a dependency case for which the court appointed a health care representative. It has a number of fascinating issues of law in it, and it was inconceivable to me that someone could have been handed that transcript and appellate file and said there was nothing to appeal. So that has sort of piqued my interest in the appellate process and how appeals of juvenile court cases are being handled. But I haven't really thought much more about it.
- 523 Chair Ellis Any other thoughts on the appellate process?
- 525 L. Harris I think the idea of having trial lawyers do their own appeals would probably not work.
- 528 Chair Ellis It might not be for particular trial lawyers. I know in private civil practice, a lot of us who do trial work like to stay through the appeals.
- 535 L. Harris There is contact between the appellate lawyer and the trial lawyer at some level. We can talk to each other, so it is not like there is no contact at all. I would guess the way it is organized, for example, in a place where you have a consortium –
- 540 Chair Ellis That is probably not a good model.
- 543 L. Harris I don't know that the various public defender offices around the country want to hire appellate lawyers to do their juvenile cases.
- 546 S. Gorham Even though you will have a lot of conflicts, having an appellate office that does them certainly wouldn't hurt -- kind of like LSD doing one of the appellate cases and then the other gets conflicted out.
- 558 Chair Ellis We, rightly or wrongly, feel that it is a very uphill battle for us to gain additional FTE positions, which is the model that we use to handle criminal appeals. There is a view within the Commission to have – but it hasn't decided yet – that PCRs do lend themselves to having FTE. We are probably reaching a point of a trade between expanding juvenile appellate FTE versus PCR FTE.

572 L. Harris I suspect, for quality purposes, you would better off having a dedicated office. DOJ certainly does it. They don't have random people doing their juvenile court appeals. They have lawyers who are specialized.

577 Chair Ellis I can certainly see getting a specialty contractor or two, where you have the benefit of specialization, but without the conflict problem. Let me ask the two providers a question, which I alluded to earlier and we haven't gotten back to. Given the nature of what is a case, are we contracting with you in the most rational way? Are there comments on how to do this more fairly? And from our point of view, fairness is a two-way street.

590 L. Partridge I have no idea how to answer that question.

592 A. Sherbo I was hoping he would answer it and talk about it for a very long time. I think with me you probably have the wrong person.

600 L. Partridge Are you talking in the context of a case counting system over a contracting method?

601 Chair Ellis Yes.

601 L. Partridge I have experience under both. The MCAD contract, as you know, is an hourly based system and the juvenile advocacy consortium is a case-count system. For me, what the biggest difference is, and I always come back to this, administratively, the cost to me is much less in a case-cost system than an hourly system. The amount of time that it takes to prepare hourly bills and do hourly statements is much more than it is with a case-count system. The other thing, in a case-count system, what I have found to be advantageous is what the state does. They project a caseload for a certain amount of money based on a certain case mix and then, every month, write a check. That makes it much easier to run your office because you have a much more steady case flow; whereas, if you are billing hourly, it might be that, if I am tied up in a trial and I am just a small one-person office, I may not have a period of time to get that together. So the cash flow goes up and down, and it makes it harder to run your office. I am a big proponent of the case-count system versus the hourly system. I know there is some perception that in a case-count system you are somehow selling your client out, and I think that is ridiculous.

[Tape 2; Side B]

049 Chair Ellis Any other comments on how our contracting is going?

051 J. Connors My sense is the Multnomah contractors would say that it's better and fairer to count cases instead of hours. It's also important to decide which work needs to be covered and pay for it. For example, CRB's, school hearings, judicial settlement conferences, case planning meetings all seem to be important events and perhaps necessary appearances in the history of these types of cases. The Commission should consider increasing the cost of these cases to reflect the increased complexity and number of appearances in these cases.

057 Chair Ellis We did hear in one of the smaller communities that there were complaints by the CRB that the lawyers weren't coming to its hearings.

061 G. Hazarabedian I would add that, several years ago, I practiced juvenile law. I make sure our office sends bodies to CRB hearings. A whole lot of stuff gets brought up and talked about there.

082 Chair Ellis Do any of you have any benchmarks or gauges to give us an indication of how Oregon compares with other states, both in terms of how we are going about the provision of lawyers in dependency cases and the quality of services those lawyers provide – whether our state is approaching it differently, better or not as well?

- 090 L. Harris I could find those things out but, what I know is sufficiently vague not to answer at this point. I can tell you that this is a pervasive issue – the issue of how you provide the lawyers, whether they are appointed to children and the quality issue. Oregon is certainly not alone in struggling with this issue.
- 096 Chair Ellis I assume that.
- 096 Judge Welch My sense is that there is a huge variation of practice within Oregon. At a recent meeting, a judge from another county stated that he did not appoint lawyers for children . . . period.
- 103 Chair Ellis I think I know what you are saying is true.
- 104 Judge Welch In El Paso, they did not begin appointing counsel for parents in termination of parental rights cases until three or four years ago. Our process would be a lot more efficient if we didn't have to deal with attorneys. We could get through a termination trial a lot faster.
- Another issue relates to the appointment of separate counsel for parents where they are in the same household and are seemingly acting together. We have come to the point where separate counsel is appointed for each parent based upon counsel's advice to the court as well as the issues that tend to arise over the life of a dependency case. I know that the practice around the state and elsewhere is variable on this issue as well.
- 118 A. Sherbo I have never handled a case where I thought two parents could be handled by the same attorney.
- 121 I. Swenson I had such a case. It was a case where both parents insisted that they would not accept representation unless they had the same lawyers. But it doesn't work well.
- 129 Senator Brown Mr. Chair, I think in circumstances like this, we end up paying double in the end, when there isn't proper representation up-front. I know there was a case out of Coos County that one of my colleagues, Representative Krieger, and a special committee examined. They were very, very concerned about the inadequacy of counsel in that case. And Rep. Krieger is very concerned about our state paying the basic costs of representation up-front, and that the costs go up two or three times more by the time cases reach the Court of Appeals level because we failed to pay a nickel up-front. I know that the legislature is very concerned about this issue.
- 138 Chair Ellis Other questions for our panel?
- 139 M. Greenfield Without putting anybody on the spot, I would just offer an opinion that people could argue that the CRBs were created to solve the problems of DHS inefficiencies and some implications that the courts weren't paying attention. My view currently would be that, among all of the rats' nests and the confusion in the workload, that the CRBs would be a wonderful place to look to see if that is really something that is adding value commensurate with what it is costing us under the current system. I just would ask anybody's opinion.
- 148 Senator Brown Mr. Chair, I am happy to give my opinion. In Multnomah County, the CRB system is irrelevant. I don't know whether that is true in other counties, but in Multnomah County it is.
- 150 L. Partridge I think we attend CRB hearings more in Marion County than it sounds like in Multnomah County. We have not been able to cover them like we would like to because of the caseloads. By and large, a lot of those CRB hearings are not a valuable process, and I would agree that a lot of FTM and DTM hearings would be a much more valuable use of our attorneys' time. The problem is making a judgment call as to which ones are going to make a difference and which ones aren't. A lot of times, I find that the CRB coordinators, at least in Marion County, are pretty knowledgeable about DHS rules and regulations. They are going through and reviewing whether DHS is in compliance with what they are supposed to do. Frankly, I have

gone to a lot of CRB hearings where there were issues that I didn't even know were issues. The expectation is that attorneys show up for every CRB hearing, but even the CRB coordinators I think would agree that this is not appropriate.

166 L. Harris

One thing that I learned from the Multnomah County review is that there are a lot of variations, even within that one county. So I am sure, across the state, the extent to which the offices have a well-educated legal assistant, and I understand that that is partly philosophical within the offices whether they are going to put their money into that, they do solve this issue partly by sending legal assistants to participate in these hearings. I don't know whether it is appropriate for the Commission to do more structuring of that decision-making than you do, but it is something that you might ask about and you might think about.

179 A. Sherbo

If the requirement of a review is federal, the choice about whether it is an administrative body or not should be considered in light of the reality that there would still be periodic reviews before some kind of fact-finder. Those are occasions when attorneys ought to be present and prepared for them. The FTMs or the DTMs are things that have increased over time and added to our workload substantially, particularly in this county with the addition of the branch in Gresham. It is a long haul out to that branch. I think our office has kept track of the number of those events that we have added. There is a question of whether we ought to be compensated for adding that event, or whether the compensation that we get for handling a case up to the point is sufficient. I might decide that I am going to write some sort of memorandum. I am not billing you for that time. That is work that I am obligated to conduct between the two events. I think it is a wise thing for us to have these events. The bigger question is what is adequate compensation for the work that we do between court appearances that is necessary for you to properly represent your client.

213 Chair Ellis

Any other questions or comments? I want to thank all of you. We appreciate it very much.

Appendix B

*** PART I: BACKGROUND ***

SECTION 1: MISSION AND HISTORY OF THE JUVENILE COURT

The goal of Oregon's Juvenile Court in the dependency arena is to protect children, preserving families whenever possible.

Oregon Courts insure that children "in the system" are safe, that appropriate measures are taken to address and promote their health and well-being, and that they get out as timely as possible into safe and permanent homes.

HISTORY OF THE JUVENILE COURT: THE EARLY HISTORY OF CHILD WELFARE LAWS IN AMERICA

American child welfare policy has "been marked by a tension between two missions: an emphasis on rescuing children from abusive or neglectful families on the one hand, and efforts to support and preserve their families on the other" (Schene 24). From colonial times until the turn of the twentieth century, child protection efforts focused on the poorest citizens and immigrants and removed their children to orphanages or indentured servitude with no concern for the children's return.

In the 20th century, child advocates shifted their focus, discovering that "the best place for normal children was in their own homes" (Bremmer). In 1909, the White House Conference on Children concluded that the "[c]hildren of parents of worthy character, suffering from temporary misfortune, and children of reasonably efficient and deserving mothers who are without the support of the normal breadwinner, should as a rule be kept with their parents, such aid being given as may be necessary to maintain suitable homes for the rearing of the children. Except in unusual circumstances, the home should not be broken up for reasons of poverty, but only for considerations of inefficiency or immorality" (Roosevelt).

In response to this changed thinking, states enacted mothers' aid laws. Ultimately, Congress created the federal Aid to Families with Dependent Children program through Titles IV and V (ultimately IV-B) of the Social Security Act of 1935 (Jones). Government support for families led to a decline in the number of children in foster care (Kadushin).

CHILD WELFARE LAWS FROM 1970 TO THE PRESENT DAY

By the late 1970s, between 500,000 and 750,000 children were in publicly funded foster care at any one time. Numerous state and national studies conducted during the 1970s documented the many problems facing children who were at risk of placement or already in out-of-home care (Fanshel & Shinn and Shyne & Schroeder). Legal experts analyzed the problems in the legal system that contributed to this situation (Goldstein et al., Mnookin, Wald, tenBroek).

These studies revealed that many children spent their formative years drifting from one foster home to another without ever establishing bonds with either their biological or foster families. The state made little or no effort to reunite these children with their families or provide them with permanent and stable substitute homes.

This research formed the basis for much litigation on behalf of foster children. In 1977, the U.S. Supreme Court relied heavily on the literature when it noted:

[C]hildren often stay in "temporary" foster care for much longer than contemplated by the theory of the system...indeed, many children apparently remain in this "limbo" indefinitely.... It is not surprising then that many children, particularly those that enter foster care at a very early age and have little or no contact with their natural parents during extended stays in foster care, often develop deep emotional ties with their foster parents.

Yet such ties do not seem to be regarded as obstacles to transfer of the child from one foster placement to another. The record in this case indicated that nearly 60% of children in foster care in New York City have experienced more than one placement, and about 28% have experienced three or more. The intended stability of the foster home management is further damaged by the rapid turnover among social work professional who supervise the foster-care arrangements on behalf of the State. Moreover, even when it is clear that a foster child will not be returned to his natural parents, it is rare that he achieves a stable home life through final termination of parental ties and adoption into a new permanent family.

Smith v. Organization of Foster Families, 431 U.S. 816, 833-38, 97 S. Ct. 2094, 53 L. Ed.2d 14 (1977)

By the late 1970s, the stage was set for wholesale reform of the country's child welfare system.

FEDERAL RESPONSE

Against this backdrop, Congress amended Title IV-B and IV-E of the Social Security Act in 1980. Commonly known as P.L. 96-272, the Adoption Assistance and Child Welfare Act of 1980 was designed to reduce unnecessary use of foster care. To receive federal foster care funds, each state had to provide a system of case planning, case review and services to prevent unnecessary removal of children from their homes and promote reunification. The Act also provided subsidies to promote expeditious permanent placements for children who cannot safely reunite with their families.

During the same period, removal of Native American children from their families of origin was particularly high. In 1974, approximately 25 to 35% of all Native American children lived in adoptive or foster homes (U. S. House of Representatives 7531). Eighty-five percent of those children were in non-Native American homes.

In response, Congress passed the Indian Child Welfare Act (ICWA), 25 United States Code (USC) 1901, et seq, in 1978. ICWA did three things:

- imposed federal procedural protections on child custody proceedings in state courts,
- set high standards for removal of a Native American child from the child's family of origin, and
- required that state agencies actively work to prevent the removal of Native American children from their homes or provide reunification services to families when the state did remove children.

Both P.L. 96-272 and ICWA assigned oversight responsibilities to state juvenile courts. Under both laws, the juvenile court is responsible for ensuring that state child welfare agencies make efforts to provide services to help reunify the family. Under ICWA, the court ensures that the state identifies Native American children and that Native American tribes have notice and an opportunity to participate in proceedings involving children who are members of a tribe or are eligible for tribal membership.

THE ADOPTION AND SAFE FAMILIES ACT (ASFA)

In 1997, Congress passed The Adoption and Safe Families Act (Public Law 105-89); ASFA made the most significant changes to federal child welfare law since 1980 by addressing three primary concerns:

- Children continued to remain too long in foster care.
- The child welfare system favored family preservation and reunification over children's health and safety.
- States were not devoting enough effort to adoption as a permanent placement option for abused and neglected children

ASFA clarified that all removal and reasonable efforts decisions were based on a child's health and safety. The timelines for providing reunification services were shortened in an effort to place children in permanent homes sooner. ASFA also encouraged states to expedite permanency decisions through concurrent planning and other innovative approaches. Finally, ASFA established performance standards that create financial penalties for child welfare systems that fail to show improvement in child welfare outcomes.

SECTION 7: INITIATING A JUVENILE COURT DEPENDENCY PROCEEDING

FILING A PETITION

Any person in Oregon with personal knowledge about an abused or neglected child may file a petition in juvenile court (ORS 419B.809(1),(3)). Department of Human Services (DHS) child welfare caseworkers and juvenile department staff may file petitions based on information and belief (ORS 419B.809(3)). Typically, DHS assesses the safety needs of children before a petition is filed. Depending on the county, either DHS or the juvenile department is responsible for drafting and filing the petition itself. Respondents to the statewide survey for the reassessment report that in at least half of Oregon counties, the responsibility for drafting and filing petitions now rests with DHS.

INITIAL SERVICE OF SUMMONS

Adequate notice is not only constitutionally required but key to ensuring participant presence in court. Non-custodial parents cannot come forward to participate in reunification services if they are unaware of court involvement. Additionally, notifying absent parents gives them the opportunity to come forward to be reunited with their children or pay support. Because of this, notice should be provided at the earliest possible stage of the dependency proceeding to all parties, including custodial and noncustodial parents, putative fathers and others with legal custody.

In Oregon, the party filing the petition must serve summons on the parents, including putative fathers in some instances, and on children age 12 and over (ORS 419B.839(1)). Statutory revisions to conform with ASFA reduced the amount of time available for service from sixty to thirty days after the petition is filed (ORS 419B.812(3)). The juvenile code now specifies that the summons include information regarding the jurisdictional allegations, availability of legal assistance, and the consequences of failure to appear at court hearings (ORS 419B.815(4)). A specific form for a summons is set out in statute as well (ORS 419B.818). When the petition involves a child covered by the Indian Child Welfare Act, DHS must notify the tribe of the proceeding (ORS 419B.878). The court may order parents to participate in services only if they have been properly summoned (ORS 419B.385 and ORS 419B.387). Throughout the state, summons are most commonly issued and served by the county juvenile departments.

THE COURTS SHOULD ENSURE ADEQUATE NOTICE BY:

- Requiring quick and diligent notification efforts by the social service agency;
- Requiring both oral and written notification in language understandable to each party and witness;
- Requiring notice to include reason for removal, purpose of hearing, availability of legal assistance; and
- Requiring caseworkers to encourage attendance of parents and other parties.

Resource Guidelines, p.36

SECTION 8: SHELTER HEARINGS

CURRENT OREGON LAW AND PRACTICES

When the state removes a child from home on an emergency basis, the juvenile court must hold a hearing within 24 hours of removal, excluding Saturdays, Sundays, and judicial holidays (ORS 419B.183). The person removing the child must make efforts to notify parents of shelter hearings (ORS 419B.171). Parents may be notified by the juvenile department, DHS, or law enforcement. Different Oregon communities refer to these hearings as preliminary hearings, shelter-care hearings, and 24-hour hearings. This report calls them shelter hearings.

At shelter hearings, the court must decide whether the child can be safely maintained in or returned to the home pending the disposition of the petition. The outcome of a case where a child remains at home with services to the family is predictably different from the outcome where the child is placed in foster care and visits with the family weekly for an hour. The court and participants in the shelter hearing must analyze the facts surrounding the initial removal and consider what steps might be taken to ensure the child's safety in the home.

Because shelter decisions have profound effects on the lives of the people before the court and substantial influence on the course of the case, the judicial officer must insist on a thorough presentation of all relevant information. National standards support this careful approach.

At the shelter hearing the court must give parents the "opportunity to present evidence to the court...that the child...can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process prior to adjudication" (ORS 419B.185(1)). Both state and federal law require the court to make written findings at the shelter hearing regarding:

- DHS's reasonable or active efforts to prevent removal;
- Future services the agency should provide to promote reunification;
- Where removal is ordered, that removal or continuation in care is in the child's best interest;
- Whether the child is a member or eligible for membership in a Native American Tribe; and consequently covered by the Indian Child Welfare Act (ORS 419B.185).

When making a reasonable efforts finding, judges must specify the services DHS provided to prevent removal of the child (ORS 419B.185(1)(a)). DHS must assist the court by submitting a written affidavit outlining services provided in support of a reasonable efforts finding (ORS 419B.185(2)). Since 1997, state law has also required DHS to give priority to relatives as placement resources and report to the court on the efforts made to place children with family (ORS 419B.192(1)).

Shelter hearings are the court's first opportunity to make inquiry and orders on issues that will recur throughout the life of a juvenile court case. The court should inquire about paternity, absent parents and efforts to locate them, appointment of counsel and CASA for parents and children, ICWA applicability, and

preliminary services available for families. The court may also set next court dates and direct staff or DHS to serve parents with summons for further proceedings (*Resource Guidelines 37-39*).

SECTION 9: JURISDICTIONAL AND DISPOSITIONAL HEARINGS

The jurisdictional hearing is critical to ensuring due process and important in resolving dependency cases. Families who have an adversarial relationship with DHS or disagree with the basis for jurisdiction may need the court to make a judicial determination of jurisdictional facts before they will engage in services. Where a family opposes particular services, the jurisdictional hearing is key to determining which services are appropriate for the family.

Parties to the petition must admit or deny allegations pertaining to them within 30 days of the petition's filing (ORS 419B.305(2)) and should exchange discovery within 30 days after the petition is filed (ORS 419B.881). The court must schedule a contested hearing and notify parties of the date and time either orally or in a written order (ORS 419B.816(1)). The order must include an admonition that the court will proceed, regardless of whether the party appears at the next hearing (ORS 419B.816(3)). The court must hold a jurisdictional hearing within 60 days of filing a petition (ORS 419B.305(1)). Continuances are granted only by a written order establishing that good cause to extend beyond 60 days exists (*Id.*). The case must be given the highest scheduling priority if a continuance is granted (ORS 419B.305(4)).

Between the shelter and jurisdictional hearings is generally when DHS caseworkers develop initial service agreements. Attorneys meet with clients, receive discovery and conduct their own investigation. In many cases, DHS also holds a "Family Decision Meeting," a facilitated meeting designed to engage families and other people important to the child in the case planning process, advise parents of ASFA timelines, and explain the consequence of noncompliance with services (ORS 417.365; OAR 413-040-0031).

ORS 419B.310(1) provides that "the court without a jury" decides jurisdictional issues. Unlike the preliminary hearings and subsequent review hearings, the rules of evidence apply to jurisdictional hearings, and jurisdictional allegations must be proven by a preponderance of the evidence, except for Native American children who are tribal members or eligible for membership, in which case ICWA requires the evidence be clear and convincing (ORS 419B.310(3); 25 USC 1912(e)).

The court must hold a dispositional hearing within 28 days of the jurisdictional hearing, unless there is good cause to extend the time, and enter "an appropriate order directing the disposition of the case" (ORS 419B.325(1); Uniform Trial Court Rules (UTCRC) 11.050). Most often, dispositional hearings immediately follow the jurisdictional hearing.

If the court finds that the allegations of the petition have not been proven by a preponderance of the evidence, the appropriate disposition is dismissal. If the court finds the child within its jurisdiction, the court has options for disposition (ORS 419B.331). It may allow the parents to retain legal custody with particular conditions of protective supervision, appoint a guardian if a party or intervener so petitions (ORS 419B.366), or as in the vast majority of the cases, temporarily commit the child to DHS for care and placement (ORS 419B.337(1)).

The dispositional phase of a dependency proceeding is a critical step in ensuring permanency for the child. The court's dispositional order sets the expectations for the parents' progress and DHS's provision of services for the case. Oregon law grants juvenile court judges the authority to specify the particular type of

care, supervision or services to be provided by DHS to children placed in the DHS custody and to the children's parents or guardians. (ORS 419B.337(2)).

Before dispositional hearings, the judge considers written dispositional reports from DHS, CASA, and other parties. DHS must distribute its written reports on its investigation to all participants at least seven days prior to the dispositional hearing (UTCR 11.060(1)). Other parties are required to distribute any reports or witness statements within three days of the dispositional hearing (ORS 419B.881(2)(a)(B)). National standards support early distribution of proposed dispositional plans so all parties can fully participate in the hearings (*Resource Guidelines* 56).

The DHS report contains the Agency's case plan for providing services to the family. The case plan must

- have a rational relationship to the jurisdictional allegations,
- incorporate the perspective of the family,
- be integrated with other service agencies, and
- include a concurrent plan that the agency intends to implement if the parent is unable to make sufficient progress for the child to return home (ORS 419B.343(1),(2)).

If the current plan is something other than return to parent, the case plan should specify the current permanent plan (ORS 419B.343(2)). The case plans of all children age 16 and older must include independent living services; the Agency should include independent living services in the case plans of children ages 14 and 15 if appropriate (ORS 419B.343(3)).

At the dispositional hearing, the court must review the Agency's case plan to ensure that it is adequate to meet the child's needs (ORS 419B.343(1)). The court reassesses reasonable or active efforts and, as at the shelter hearing, must briefly describe the services DHS provided to justify the findings (ORS 419B.340(2)). If necessary, the court must make a new finding that removal from the home (or continuation in care) is in the child's best interest (ORS 419B.340(1)).

ASFA added new responsibilities for the court at disposition. Now, Oregon and federal law require that the court review the DHS case plan and make reasonable or active (in cases subject to the ICWA) efforts findings regarding the agency's reunification and preventative services (ORS 419B.340(2),(7)). In making the finding, the court must consider the health and safety of the child as the paramount concern (ORS 419B.337(1)(b)). DHS can ask the court to be relieved of making reasonable or active efforts when there is a judicial determination that certain aggravated circumstances exist (ORS 419B.340(5)). Because of the strict timelines for reunification, the order (as well as the record) should document that the court advised the parents of the urgency of complying with the approved case plan.

Jurisdictional hearings end the investigation and fact finding stages of dependency proceedings. This is the last opportunity for parties to debate the state's intervention into family life. Dispositional hearings are generally combined with jurisdictional hearings and are the court's opportunity to provide their expectations to families and DHS. Participation by all parties as well as thorough judicial inquiry are important to successful hearings.

Dispositional orders should be written in easily understandable language so that parents and all parties fully understand the court's order; they should explicitly state:

- the legal disposition of the case, including the custody of the child, based upon the statutory options provided under state law;
- the long-term plan for the child (e.g., maintenance of the child in the home of a parent, reunification with a parent or relative, permanent placement of child with a relative, placement of the child in a permanent adoptive home);
- whether there is a plan for monitoring the implementation of the service plan and assuring the child's continued well-being;
- the evidence or legal basis upon which the order is made when placement or services are ordered that were not agreed upon by the parties;
- the terms of parental visitation;
- parental responsibilities for child support; and
- scheduled date and time of next hearing, if needed.

Resource Guidelines, p. 61

SECTION 10: REVIEWS - COURT AND CRB

CURRENT OREGON LAW AND PRACTICES

Once the court approves the initial disposition for a dependency case, there are a variety of state and federal review mechanisms to ensure agency and party compliance with the case plan. Judicial and citizen oversight of dependency cases allow for re-examination of case planning goals and adjustments that reflect the parents' progress and the child's needs. Periodic, rigorous review is critical, particularly when children are placed out of the home. ASFA timelines heighten the importance of careful monitoring of DHS service delivery, concurrent planning and parent's progress.

Review by the CRB

Except for permanency hearings, reviews under state law shall be conducted by an administrative or citizen "foster care review board." In Oregon, the Citizen Review Board (CRB) fulfills this function in 33 out of 36 counties (ORS 419A.090 et seq.). Local Citizen Review Boards have between three and five citizens "with special knowledge or interest in foster care and child welfare which may include but shall not be limited to adoptive parents and members of the profession of law, medicine, psychology, social work, and education" (ORS 419A.092(1)(a)).

"Review hearings are necessary because continuation of a child in foster care for an extended time has a negative effect on a child and family. A child in foster care forms new relationships which may weaken his or her emotional ties to biological family members. A child shifted among foster homes may lose the ability to form strong emotional bonds with a permanent family. A careful decision concerning the future of every child is needed as soon as possible. Review hearings can help ensure that decisions concerning a child's future are made at regular intervals and implemented expeditiously."

Resource Guidelines, p. 66

When CRB reviews a case, reports otherwise submitted to the court are submitted to the them. Reviews commence six months after a child enters care and every six months thereafter unless a review is conducted by the court (ORS 419A.106(1)(a)). CRBs invite participation from parents, mature children, advocates, CASAs, attorneys, foster parents, involved relatives, service providers, and other interested parties. The court can cancel a CRB review if it conducts a review within 60 days of the scheduled CRB (ORS 419A.106(1)(b)). CRB sends a *Findings and Recommendations* document to the court and DHS for each review conducted. DHS must give CRB written notice they do not intend to implement the recommendations (ORS 419A.120(1)). In 2003, CRB also assumed responsibility for reviewing the status of children in guardianships established by the juvenile court (ORS 419A.109).

CRB findings become part of the juvenile court file (ORS 419A.120(2)). The court, upon review of the CRB findings and recommendations, has the opportunity to make modifications or set a separate court hearing to pursue issues raised at the board review. The court must also inform the CRB in writing if it modifies, alters, or takes action on a recommendation (ORS 419A.120(1)). In some counties, the court formally approves the recommendations and orders that the recommendations be implemented.

Court Review

DHS must file a report with the juvenile court or the CRB six months after a child is placed in substitute care and at least every six months thereafter (ORS 419B.443(1), ORS 419B.446). The report must contain

- a description of the problems that resulted in placement
- a discussion of services for the child and family
- a proposed treatment plan that includes visitation, expectations of the parents and children
- a proposed timetable for achieving the current permanent plan

ORS 419B.443(1)(a-e).

The court must send the report to parents (and tribes if the case is governed by ICWA) and inform them whether the court will set a hearing (ORS 419B.452). The court or any party may request a review hearing so that the court may "order modifications in the care, placement, and supervision of the child" (ORS 419B.449(1)). The court must hold the review within 30 days of the request (ORS 419B.449(1)(b)). If parents' rights have been terminated and the child has not been placed in an adoptive home, the court must hold a hearing upon receipt of DHS' six-month report (ORS 419B.449(1)(a)).

Review hearings should consider DHS' efforts to return children to their parents or to implement the permanent plan if it is other than return to parent (ORS 419B.449(2)). The court order should state why continued foster care is necessary and include the expected time for return or other permanent placement. In addition, the court must review the agency's efforts to implement a concurrent plan, including efforts to identify or select an adoptive home (ORS 419B.449(3)).

It is critical that review hearings involve all parties and interested persons, including foster parents. It is particularly important that service providers for parents and children be available or thoroughly interviewed before review hearings. (*Resource Guidelines 70*).

When the court reviews a case plan, the key issues to be addressed at a review hearing are:

- Whether the agency is making reasonable efforts to rehabilitate the family and eliminate the need for placement of a child.
- Whether services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances.
- Whether the child is in an appropriate placement which adequately meets all physical, emotional and educational needs.
- Whether the terms of visitation need to be modified.
- Whether the terms of child support need to be set or adjusted.
- Whether any additional court orders need to be made to move the case toward successful completion.
- What time frame should be followed to achieve reunification or other permanent plan for each child.

Resource Guidelines, pp. 70-72

SECTION 11: PERMANENCY HEARINGS

CURRENT OREGON LAW AND PRACTICES

Permanency hearings are the most significant change to dependency proceedings related to ASFA. Permanency hearings are post-dispositional hearings to select the permanent plan for children in foster care. Before ASFA, the court and child-welfare agencies had 18 months after removing a child to work with parents before designating the final permanent plan. Now, both state and federal law require permanency hearings 12 months after jurisdiction and no later than 14 months after the child's placement (ORS 419B.470(2)). When the court decides that reunification services are not required, the court must hold the permanency hearing within 30 days (ORS 419B.470(1)).

"The court is responsible to schedule and conduct the permanency hearing for a time and date certain that fall within the statutory maximum time frames."

Adoption Guidelines, p.19

At the permanency hearing, the court makes many of the same findings made at review hearings and CRB reviews. The court makes reasonable efforts findings regarding DHS services; may order modifications of the care, placement, and supervision of the child; and may also order changes to the case plan (ORS 419B.476(2)). The primary purpose of the hearing, however, is to make a permanent plan for the child.

ASFA prioritizes permanency goals for children in foster care in the following order:

- Safe return home to a parent
- Adoption, by a relative or non-relative
- Guardianship
- Another planned permanent living arrangement

When the court approves a permanent placement, the order must explain why it did not choose more preferred plans. When the plan is return to parent and the court has found that DHS has made reasonable efforts to provide reunification services, the court must first ask whether the parents have made sufficient progress for the child to safely return home (ORS 419B.476(2)(a)). If the parents are not prepared to take custody of their child(ren) immediately, the court may order the parents to participate in specific services for a specific period if participation in those services will result in reunification within a reasonable time (ORS 419B.476(4)(c)). If the court concludes that the parents have not made sufficient progress and that more services will not result in returning the child to a parent in a reasonable time, the court must consider alternative permanent plans.

Following ASFA's priorities, adoption is the preferred plan for children who are not able to safely return to their parents' care. If the court approves a guardianship, the order must explain why adoption is not in the child's best interest (ORS 419B.476(5)(e)). The least favored permanent plan is "planned permanent living arrangement." To justify that plan, the court must show a compelling reason why each of the more permanent plans is not in the child's best interests (ORS 419B.476(5)(f)).

Once the court approves a permanent plan, the agency must work quickly to achieve it. The court order from a permanency hearing must be entered within twenty days of the hearing and must include specific timelines for achieving the permanent plan (ORS 419B.476(5)(b)). The court may also monitor DHS's permanent planning efforts by reviewing the efforts made to identify and select an adoptive resource (ORS 419B.476(4)(e)).

SECTION 12: TERMINATION PROCEEDINGS

CURRENT OREGON LAW AND PRACTICES

When parents fail to make sufficient progress to have their children safely returned within a reasonable time, the state or child may move to sever the parent-child relationship so that the child may be adopted (ORS 419B.500). DHS is required to file a petition to terminate parental rights (unless there is a compelling reason not to) when:

- a child has been in care for 15 out of the last 22 months,
- a parent has been convicted of murder or voluntary manslaughter of another child of the parent,
- a parent has been convicted of aiding, abetting, attempting or conspiracy to commit murder or voluntary manslaughter of a child of the parent,
- a parent has been convicted of felony assault that resulted in serious physical injury to a child of the parent, or
- a parent has abandoned the child. (ORS 419B.498(1))

Because termination has enormous consequences, the law requires a new round of procedural protections for parents and children. A petition stating grounds for termination must be served on the parents (ORS 419B.819(1)). Attempts must be made to find parents who were absent at the jurisdictional stage. Indigent parents are appointed counsel (ORS 419B.518). At trial, the state or child must prove the allegations by clear and convincing evidence rather than the "preponderance" standard required in dependency proceedings. If a child is subject to ICWA, the state must prove the allegations beyond a reasonable doubt (ORS 419B.521(1)).

National standards support the use of pretrial conferences "to check delays in the appointment of counsel, ensure early notice to parties and expedite discovery. They can also resolve evidentiary issues prior to trial" (*Resource Guidelines* 93). No such standardized process exists in Oregon but Oregon does encourage mediation in cases involving termination (ORS 419B.517).

The state or child can file to terminate parental rights in cases of extreme conduct without proving reasonable efforts (ORS 419B.502). These provisions parallel, for the most part, the "aggravated circumstances" that release DHS from providing reasonable effort to families at jurisdiction.

Adoption 2002 recommends that, in cases where reasonable efforts are not required at jurisdiction, they should not be required for termination of parental rights in order to avoid leaving children in foster care limbo:

State law should ensure that for those circumstances in which reunification services are not required, there are applicable grounds for the termination of parental rights. While the criteria for not requiring reasonable efforts need not be the same as grounds for termination, they reasoned, the State should take care to avoid situations in which a child will remain in foster care without efforts to reunify his or her family. In this situation, it is not possible to terminate parental rights although adoption is in the child's best interests.

Adoption 2002

Oregon law does not require DHS to make reasonable efforts if excused by a court, either at disposition or termination, when parents kill, attempt to kill, starve, torture or sexually abuse a child (ORS 419B.340(5), ORS 419B.502). Parents with prior involuntary terminations are not entitled to reunification services when they have not ameliorated their condition. In cases where parental abuse or neglect has caused serious physical injury to a child or where a parent has "unlawfully caused the death of another parent," Oregon courts may make a finding that reasonable efforts are not needed at disposition (ORS 419B.340(5)(a)(c), (G)). However, there is no corresponding provision in Oregon's termination statute.

SECTION 13: APPEALS OF JUVENILE ORDERS

CURRENT OREGON LAW AND PRACTICES

The appellate process serves to ensure fairness in the juvenile dependency system. Parties need adequate time to address appealable issues, but it is important that the appellate process does not unduly delay permanency for children. *Adoption 2002* recommends that State law establish specific guidelines to expedite appeals in child welfare cases. These guidelines should include setting a short deadline for notice of appeal; setting short deadlines for preparation of transcripts and records for appeal; setting a special tight briefing schedule; and setting time limits or guidelines for deliberations and issuance of decisions.

The National Council of Juvenile and Family court Judge's Adoption and Permanency Guidelines (Permanency Guidelines) recommend a timeline that resolves termination appeals within 150 days of notice of appeal (p.40). In Oregon, any person whose rights or duties are adversely affected by a juvenile court judgement has a right to appeal (ORS 419A.200(1)). Notice of appeal must be filed within 30 days of entry of the judgement and must be served on all parties who have appeared in the proceeding, the trial court administrator, the transcript coordinator, and the Court of Appeals (ORS 419A.200(3)(c)).

"Judgements" for appeal purpose are:

- any order dismissing or disposing of a petition,
- orders finding a child within the jurisdiction of the court, or
- any order entered after disposition that adversely effects the appellant including orders from permanency hearings (ORS 419A.205(1)).

Children and parents are entitled to court-appointed counsel for the appeal, subject to trial-level limitations (ORS 419.211(2)(b)). The Court of Appeals reviews all juvenile appeals by examining a transcript of the proceedings and any records or evidence admitted at trial and determining whether the trial court made the correct factual finding(s).

*** PART IV ***

SECTION 16: QUALITY OF REPRESENTATION AND ADVOCACY

For courts to fulfill their federal and state obligations, judges must be provided with accurate and complete information. The court system depends on each party's ability to discover and present evidence and to advocate effectively. In most instances, this means that parties to court proceedings should be represented by counsel. Of equal importance is quality of representation.

This section discusses attorneys who appear in juvenile court dependency proceedings. The reassessment team collected data about frequency of appearances by attorneys for parents, children, caseworkers (through the Department of Justice) and "the State" (through local district attorneys). The team observed attorneys in court proceedings in each of the five study counties and interviewed lawyers and other court participants about representation issues. Foster parents and other juvenile court participants responded to survey questions about quality of representation.

Data about Court Appointed Special Advocates is included here. CASAs are parties to juvenile court dependency proceedings, not representatives. However, because their role in juvenile court is to advocate for the best interest of abused and neglected children, they are discussed in this section.

COURT APPOINTED COUNSEL FOR PARENTS AND CHILDREN

ROLES AND RESPONSIBILITIES FOR ATTORNEYS

Indigent families have a right to court appointed counsel. Parents are entitled to be represented by a court-appointed attorney when "the nature of the proceedings and due process so require" (ORS 419B.205(1)). Children are entitled to court appointed counsel whenever a request is made or upon the court's own motion (ORS 419B.195(1)).

The court appoints attorneys for parents and children who are eligible for public defense services. Some attorneys are compensated for court-appointed work on an hourly basis. Others have entered into contracts with the Public Defense Services Commission (PDSC) to provide representation in certain categories of cases at specified rates. Most public defense representation in juvenile dependency proceedings is provided pursuant to contracts. PDSC, established in 2001, took over responsibility for indigent defense from the State Court Administrator in 2003. ORS 151.216(1)(a) charges PDSC to "establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice."

PDSC contracts with attorney providers for services in specific counties. For the most part, attorneys contract to represent parents and children in a set number of hearings (jurisdiction/disposition hearings, reviews, CRBs,

and terminations) throughout the year and are paid a twelfth of their annual contract amount on a monthly basis. Contract attorneys may be sole practitioners or consortia or non-profit public defender corporations depending on the particular county. Each year, PDSC contracts for thousands of appointments for parents and children in juvenile court dependency proceedings.

The performance of court-appointed counsel in dependency cases is governed by a variety of standards. Parents are entitled to “adequate representation” in dependency cases, just as they are in criminal proceedings (*State ex rel Juv. Dept. v. Geist*, 310 Or 176, 796 P2d 1193 (1990)). Court-appointed counsel for parents and children must meet the qualification standards for court-appointed counsel to represent indigent persons at state expense (*Qualification Standards*) that are developed and maintained by the Public Defense Services Commission (PDSC,). These standards were adopted by the State Court Administrator’s Office of the Oregon Judicial Department and implemented by the Indigent Defense Services Division of that department before the transfer of responsibility for trial level public defense services to the PDSC in 2003. These standards address issues such as caseload size, adequate support staff, experience, and familiarity with applicable law. The standards also create procedures for disqualifying attorneys from eligibility for court appointments.

In 1996, the Oregon State Bar adopted the following principles and performance standards (*OSB Principles and Standards*) for representation of parents and children in dependency proceedings: “The General Principles for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases, “General Standards for Representation in All Criminal, Delinquency, Dependency and Civil Commitment Cases” and “Specific Standards for Representation in Juvenile Dependency Cases.” The OSB Principles and Standards address conflict of interest, attorney obligations to child clients, adequate client contact, and standards for investigation and practice at each stage of dependency proceedings (Oregon State Bar Indigent Defense Task Force 29-34). The principles are mandatory; the standards are aspirational. Familiarity (though not compliance) with these standards is required by both the Qualification Standards and the PDSC model contract for public defense providers.

Quality of Representation

The reassessment focused on a fundamental component of representation to assess quality – client contact. Creating and maintaining a relationship with a client is critical to effective representation (OSB Standard 3.5). The OSB Principles and Standards recommend that attorneys meet and conduct an initial interview within 72 hours of appointment and confer with their clients “as often as necessary after the initial interview to ascertain all relevant facts and otherwise necessary information” (OSB Standard 3.5.7). The PDSC model contract requires that a contractor must “arrange for” contact with out-of-custody clients within 72 hours of appointment, including notification of a scheduled interview time or what the client must do to schedule an interview time (PDSC model contract 7.1.4.2). The goal of these standards is to ensure that parents and children have well-informed, active representation at the earliest possible time in dependency proceedings. Survey and interview results suggest that these standards are not being met.

Juvenile court participants in the study counties routinely reported that their juvenile defense bar had a high level of expertise in juvenile legal issues. Participants also consistently reported that some practitioners provided high quality legal services to parents and children alike. However, participants routinely expressed concern about attorneys delaying contact with adult clients until shortly before scheduled court appearances

and rarely contacting child clients.

Reassessment team members observed attorneys in court and CRB reviews who appeared to be meeting their clients for the first time or for the first time since the last court appearance, validating reports from juvenile court participants. Thirty percent of respondents to the statewide survey reported that they believe that attorneys only rarely or occasionally (less than 35% of the time) contact clients before the day of a court appearance.

Attorneys reported several barriers to early contact with clients. Attorneys reported that delay in receiving notice of appointment slowed initial contact with clients. While most counties initiate appointment of counsel for parents and children at shelter hearings, in many counties attorneys are not present at the time of appointment and are not notified of their appointment until after the hearing. Some attorneys reported that notice of appointment may not arrive until two weeks after the shelter hearing. This delays first contact as well as creates confusion if the client was notified of the appointment before the attorney receiving the order. Some court staff reported that some attorneys appeared to wait until the day of a scheduled court appearance to notify the court of a conflict of interest requiring withdrawal from representation.

Lack of discovery was also noted as a factor in delaying initial contact. In most counties, attorneys receive the petition, court dates and discovery presented at the shelter hearing from the court or juvenile department - whichever is responsible for completing appointment of counsel. Attorneys then usually must formally request discovery from DHS. Attorneys expressed a reluctance to schedule first appointments with clients until all discovery was available. Some attorneys also expressed a reluctance to "track clients down" and waited until clients made contact with their offices.

Attorney contact with child clients was also concerning. The OSB Standards (OSB Standard 3.5) and PDSC model contract (7.1.4.2) hold attorneys for children to the same standard for client contact within 72 hours of appointment. The OSB Standards advise that children should be observed or visited in their home environment (OSB Standard 3.5.4).

The reassessment team surveyed foster parents statewide about contact by attorneys for children in their care. About half of those responding indicated that court-appointed counsel rarely (less than 5% of the time) called within one week of appointment and only 9% indicated that counsel usually (more than 75% of the time) made contact within the first week after appointment. Similarly, about half of those responding indicated that court-appointed counsel rarely met the children in the home of the foster parent before they went to court for the first time, while 13% reported that the attorneys usually meet the children in the home prior the first court appearance. 37% of court participants statewide reported that they believed that attorneys for children visited their clients in their homes rarely or occasionally.

"Often we never know who the attorney or CASA workers are until we see them in court. It would be good if there was a way to get information to the judge about the children without having to speak in front of parents. Sometimes these kids tell us things that should be known, and we're never sure if the case workers pass information along."

Foster Parent

CASA programs reported that they frequently act as liaisons between children and their attorneys because there is so little contact from children's lawyers.

There is a debate in some county's juvenile bars about the role of attorney for children. Some contractors question whether client contact is necessary at all to represent children. Others were unaware that client contact was a contractual requirement or that standards existed that required in-home contact with dependent child clients. Attorneys expressed concerns about the work load involved in monitoring children's care by visiting children in their placements.

Given the fairly widespread acknowledgment that some juvenile practitioners do not meet basic standards for client contact, it is worthwhile to consider what quality control mechanisms exist for public defense contractors.

"The only communication I have received is through the case worker. Never an attorney or judge or other advocate. Sometimes I feel left in the dark concerning my granddaughter's case and pending adoption. Not even my caseworker can answer vital questions about this case! 'I'm not sure' is not a good answer. I have had a child in my care for 6 months now. His attorney has never talked to me regarding the child or seen the child outside of court."

Foster Parent

PDSC's Qualification Standard 4.1E outlines the process for suspending an attorney from receiving public defense appointments. The process allows for either a presiding judge or the State Court Administrator²¹ to suspend an attorney when they become aware of "facts that call into question an attorney's ability to provide adequate assistance of counsel."

Juvenile court participants expressed concern about placing much of the responsibility for monitoring attorney performance and seeking suspension with the local courts. In general, juvenile court participants interviewed perceived that giving local courts responsibility for oversight of the quality of representation was inconsistent with their roles as judicial officers. Participants believe that monitoring attorney performance (at least of public defense attorneys) is more appropriately the role of the contracting agent for the state, PDSC. The views of participants notwithstanding and even though the Judicial Department no longer has responsibility for the provision of public defense services, the court remains the appointing authority and has an important role to play in monitoring the quality of representation and reporting concerns about quality to the attorney or contractor and PDSC.

PDSC is aware through reports from the Oregon State Bar and others about concerns regarding the quality of representation being provided in juvenile dependency cases. Through its contract process it continues to seek the highest quality legal services available. In addition, PDSC, in conjunction with JCIP, juvenile practitioners, and other interested groups, is working to create a "Juvenile Training Academy" curriculum that may become mandatory for all juvenile practitioners. In addition, PDSC has started a public review process for each county's public defense providers. It completed its first review, which involved Linn, Lane, Benton

²¹This standard was written when the State Court Administrator was the contracting authority for indigent defense. PDSC has the same authority to suspend contractors for poor performance.

and Lincoln Counties and will perform a review in Multnomah County in the fall of 2004. The review process allows for public comment about quality of representation as well as an opportunity for self-assessment of individual providers. PDSC has also made efforts to evaluate the quality of representation provided by individual public defender offices and consortia. It has completed the evaluation of one large public defender office to date and has scheduled the evaluation of two others before the end of the year. In counties with fewer public defense providers, the PDSC may perform county-wide quality evaluations rather than evaluations of each individual attorney or office. PDSC has also initiated a formal complaint process which will provide an established procedure for handling complaints from judges, other court participants, and the general public regarding both the quality and the cost of public defense services.

Appendix C

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Discussion Item
June 15, 2006

Issue

Provision of counsel in juvenile dependency appeals.

Discussion

Chief Judge Brewer has formed a juvenile appeals work group to develop strategies for shortening the timelines and improving the quality of representation in juvenile dependency appeals.

The work group agreed at its meeting on June 1st that it would be beneficial to have counsel appointed and transcript production initiated as soon as possible after a notice of appeal is filed. The procedure that Legal Services Division uses works so efficiently for criminal appeals that it was suggested that a similar procedure could be developed for juvenile appeals.

An online intake form could be designed for trial-level attorneys to complete and thus more quickly discharge their obligation to perfect an appeal. OPDS would then file the notice of appeal and an order appointing counsel who would be selected from an appointment list of private attorneys. A fee statement for the production of the transcript would be emailed directly to the county transcript coordinator.

This approach has several advantages:

- 1) It eliminates the need for trial-level attorneys to prepare the notice of appeal (which is filed in the Court of Appeals) and the order appointing counsel and request for production of transcript (which is filed in the trial court).
- 2) It eliminates the need for the trial-level court to find appellate counsel.
- 3) It reduces the miscommunication that sometimes occurs when an attorney has prepared an order that requests more copies of transcripts than OPDS is authorized to provide.

In order to accomplish this, OPDS would need to hire a paralegal to administer the intake and distribution of cases (there is currently a vacant paralegal position). Some modifications to the online form would need to be made and procedures would need to be established, but this is an improvement OPDS could effectuate in a reasonably short time frame.

The work group also discussed the possibility of shifting a portion of the juvenile appellate work to OPDS employees. We estimate that approximately 75% of the dependency appeals (representing parents) could be handled without conflict by 4 FTE attorneys. The remainder would then be assigned to attorneys on the private bar list. The table below shows the additional cost of using FTEs, offset by the reduction in the amount currently being paid to private bar attorneys.

Net Cost of Adding 4.0 FTE to the Office of Public Defense Services

	Annual Cost	Biennial cost
4.0 FTE Deputy Defender 2 at Step 2 (\$4,669)	\$224,112	\$448,224
OPE at 42%	\$94,127	\$188,254
Total personal services	\$318,239	\$636,478
Services & supplies at 16%	\$50,918	\$101,836
Total cost	\$369,157	\$738,315
Less 75% reduction in non-employee attorney expenditures	\$216,190	\$432,380
Net cost of adding FTEs	\$152,967	\$305,935

This model assumes that the caseload is set at 25 appeals per attorney per year (in accordance with the standard adopted by many states), which would be about 70-80 hours spent on each appeal. Private bar attorneys currently bill an average of 47 hours per appeal. So either private attorneys do not spend enough time on a case (which may account for some of the quality issues) or FTE attorneys could handle more than 25 appeals per year.

There were discussions that doubling the private bar hourly rate would be necessary in order to improve the quality of representation to an acceptable level. The private bar hourly rate of \$40 per hour is approximately \$80,000 per year. OPDS employees, plus services and supplies, would cost \$92,289 per year. Therefore the additional cost of using state employees would range between a 15% increase and a 50% increase, depending on the appropriate number of hours per appeal. Although this approach would only provide improved representation in three-quarters of the cases, it is still a more economical approach than doubling the hourly rate for all dependency appeals.

Because OPDS will have the ability to regulate workload by adjusting the number of appeals that are sent to private bar attorneys, the FTE attorneys will be better able to meet the tight timelines required in dependency appeals. In addition, the supervisory infrastructure and the support of colleagues will improve the quality of representation.

Recommendation

OPDS recommends that PDSC include a policy package in the 2007-09 budget to provide for the addition of 4 FTE attorneys to handle juvenile dependency appeals.