

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Friday, October 21, 2011, 12:30 p.m. – 4:00 p.m.
Wildhorse Resort & Casino
72777 Highway 331, Pendleton, OR 97801

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's September 15, 2011 Meeting; Approval of the Minutes of Executive Sessions July 8, 13, 21, & 30, 2011 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Update on Umatilla/Morrow Service Delivery Model | Invited Guests and Others |
| 3. Staff Recommendation to Approve Capital Contracts (<i>Attachment 2</i>) | Kathryn Aylward |
| 4. Public Comment on Staff Recommendation to Approve Capital Contracts | Chair Ellis |
| 5. Action Item: Approval of Capital Contracts | Chair Ellis |
| 6. Annual Performance Progress Report (<i>Attachment 3</i>) | Kathryn Aylward |
| 7. Action Item: Budget Update and Approval of OPDS 2011-13 Compensation Plan (<i>Attachment 4</i>) | Nancy Cozine
Kathryn Aylward |
| 8. PDSC Schedule for 2012 | Chair Ellis
Commissioners |
| 9. OPDS Monthly Report | OPDS Management Team |
| 10. Update Regarding Agency Strategic Plan | Nancy Cozine |

Please note: Lunch will be provided for Commission members at 12:00 p.m.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: The next meeting of the Commission is scheduled for December 8, 2011, from 10:00a.m. – 3:00 p.m. at the Office of Public Defense Services.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

Official Minutes

Thursday, September 15, 2011
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
John Potter
Janet Stevens
Honorable Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Caroline Meyer
Shelley Winn
Amy Jackson

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

Agenda Item No. 1 Approval of the Minutes of PDSC's July 28, 2011 Meeting

Chair Ellis requested two corrections to the minutes. Commissioner Potter moved to approve the minutes, Commissioner Stevens seconded the motion; hearing no objection, the motion carried with a unanimous vote.

Agenda Item No. 2 Update and Further Discussion of Lincoln County Service Delivery

Chair Ellis requested that Kathryn Aylward provide a summary of the situation in Lincoln County. Ms. Aylward reminded the Commission that the new entity in Lincoln County will be the Lincoln Defenders and Juvenile Advocates; the group has their new bylaws and membership agreements, but still has a lot to put into place. Ms. Aylward and Mr. Greco discussed PDSC concerns regarding the structure of the new entity, reviewed contracting options, and agreed to an extension of the current contract (naming the existing entity, Lincoln Defense Consortium), with the understanding that once all of the pieces are in place establishing the new entity, the contract could be further amended to name the new entity. Chair Ellis asked, and Ms. Aylward confirmed, that Mr. Greco had requested a one-year extension of the existing contract, and that OPDS allowed only six months, believing this to be a sufficient amount of time for finalizing creation of the new entity.

Chair Ellis asked whether Mr. Greco was provided with transcripts of the two or three meetings we have had on Lincoln County, as there are important discussions in those minutes that Mr. Greco needs to remember as they go through the process of establishing the new entity. Ms. Aylward assured Chair Ellis that Mr. Greco was sent a packet that had excerpts from the last three meetings.

Chair Ellis inquired into the identity of the proposed outside board members; Ms. Aylward explained that Mr. Greco had some ideas and has been working on who would appoint the outside members, perhaps the local bar association, but he is still working out details.

Agenda Item No. 5 Request to Submit Post Deadline Response to RFP

Chair Ellis welcomed Randy Vogt and invited him to explain why his capital defender RFP response was submitted after the deadline. Mr. Vogt explained that he expected to receive the packet by mail, rather than email, and that he was not subjectively aware of receiving the email. Once he learned of the deadline, he submitted his application the next day.

The Chair asked other Commission members for their thoughts. Commissioner Potter requested clarification regarding the current status of the death penalty contracting process. Ms. Aylward explained that OPDS recommendations would be discussed today in executive session, and that if the Commission approves the plan, analysts would proceed with negotiating contracts and have those contracts ready for approval at the October 21 meeting. Commissioner Potter asked whether Mr. Vogt's submission would be included in today's discussion if it is accepted past the deadline by the Commission. Ms. Aylward indicated that because we did receive and review the proposal, it could be included.

Chair Ellis offered to abstain from voting to avoid an even split of the Commission members (one Commission member had not yet arrived). Commissioner Potter moved to allow the late submission of Mr. Vogt's application for a death penalty contract. Commissioner Welch seconded, but noted that contractors now should know that the RFP comes by email, and there should not be exceptions after this year.

Chair Ellis called for a vote; the Commission allowed the late submission with a 2-1 vote. Chair Ellis clarified that though the proposal will be considered, the Commission has not approved or disapproved the proposal on its merits.

Agenda Item No. 3 Staff Recommendations to Approve Contracts Pursuant to Statewide Contracting Plan

Ms. Aylward provided background from the July 28 executive session discussions before proceeding with specifics regarding the contracting plan. Ms. Aylward explained the history and development of OPDS's contracting process, and offered that, in her view, there are at least three reasons to enter into a contract: (1) to secure legal services for a two-year cycle, (2) to retain the best contractor possible, without fear that a superior provider will surface, as this can have a chilling effect on the superior provider's willingness to submit a proposal, and (3) to provide a predictable number of cases per month to each contractor (less so with a consortium, but more so with a law firm), so that once a group has set up their business and hired staff, they can continue to operate through the contracting period.

Ms. Aylward reminded the Commission that during this contracting cycle there were a number of contracts (five or six) that were not recommended for a subsequent contract because there were too few cases to provide the contractor with a viable way of doing business. For those contractors, OPDS would still pay for private bar appointment cases, but in that scenario, there is no guarantee regarding the number of cases.

Ms. Aylward advised the Commission that there were three alterations to the information presented at the July meeting. (1) Both new contractors interested in appellate PCR cases agreed that there were too few cases to support two PCR contracts; after speaking with both contractors, OPDS decided to contract with only one provider, O'Connor and Weber. (2) OPDS has, for many years, been trying to consolidate PCR providers into a single consortium to improve the quality of trial-level PCR representation. The contracting plan was to take the PCR caseload handled by Multnomah County Indigent

Defense Consortium, and add that caseload to the Noel Grefenson PCR consortium. In the end, it seemed like too much too soon to have the Noel Grefenson group suddenly take on all these different caseloads. OPDS is recommending a one-year contract with the existing contractor, Multnomah County Indigent Defense Consortium, with a plan to reevaluate after one year. (3) In Yamhill County, a new entity called Justice Alliance Center arose out of the ashes of Yamhill County Defenders. They put together an excellent proposal and are hoping to have Judge Selander as their executive director. They are a little bit cautious about going to a values system because all of their members had been paid at an hourly rate. OPDS is recommending a one-year contract so that The Justice Alliance Center can determine whether they can adjust to the values system. All other contracts were negotiated as described at the July meeting.

Chair Ellis asked how caseload was distributed between MCAD and Marion PD. Ms. Aylward explained that they remained status quo, though the PD's office would like to grow. Chair Ellis asked whether there is "peace in the valley." Tom Sermak indicated that the contractors were not happy, but they understand that the cases aren't there. Steve Gorham commented that MCAD is happy and feels that there was a good split.

Chair Ellis asked how the contracting process had gone in Lane County. Ms. Aylward and Ms. Winn explained that the split between Lane County Defense Consortium and Lane Public Defender Services was pretty much the same as in past years. Greg Hazarabedian indicated that the two groups are managing to keep things equitably divided and have good working relationships in Lane County.

Chair Ellis noticed that the Lincoln County contract was not on the approval list; Ms. Aylward explained that in the past contract extensions have not been brought to the Commission for approval.

Agenda Item No. 4

Public Comment on Staff Recommendations to Approve Contracts

Chair Ellis invited Brendon Alexander to address the Commission. Mr. Alexander explained that he had provided a lengthy written submission outlining the contracting history in Bend. He further explained that there had been a change since the Commission's July meeting, in that the Early Disposition Program will be reconstituted in a way that satisfies all of the Commission's concerns. Mr. Alexander indicated that his understanding was that the recommendation to discontinue contracting with him had nothing to do with the quality of services, and that he and his staff have dedicated their lives to indigent defense. He asserted that he has always acted for the best interests of the court, has always worked out a solution to contracting problems in Bend, and always agrees to take the hardest cases. Mr. Alexander explained that he would not be able to pay his support staff if offered only hourly rate work rather than a contract; that his firm is 95% public defense. He suggested that he has saved OPDS money over the years through efficient case management. Mr. Alexander requested that the Commission investigate the number of cases that will be going to the Early Disposition Program, and wait until the next meeting to approve the Deschutes County contracts. Mr. Alexander indicated that none of the other contractors are willing to do the EDP, and though he doesn't particularly want to do it either, the existence of his law firm has been tied to this thing.

Chair Ellis asked how the EDP program gained new life. Mr. Alexander indicated that he had done some pushing, and the judges had as well, because the EDP alleviated crowded dockets. Mr. Alexander concluded by indicating that the judges didn't want to get involved on his behalf, but did because he has been there 20 years; he is part of the courthouse and part of the fabric of what goes on there. Mr. Alexander went on to explain different ways in which contracts could be structured in Bend to include a contract with his firm.

Chair Ellis thanked Mr. Alexander and asked whether there were other public comments.

Tom Crabtree came forward and introduced himself as the public defender in Deschutes County. He offered to provide historical information regarding contracting in Bend, and to explain how it relates to the current proposal. Mr. Crabtree began by explaining the creation of the original EDP, for which his firm provided representation during the first six months, January through June of 2002. His firm immediately identified a number of problems with the structure. They provided Ann Christian with a list of 16 concerns in May 2002, indicating that the firm was willing to continue with the Early Disposition Program but only if it met constitutional standards. Crabtree & Rahmsdorff stopped providing representation at the end of June 2002. The Quality Assurance Task Force in 2004, which included Tom Sermak, raised further concerns. Mr. Crabtree indicated that if there is an EDP program that does meet constitutional standards and the stricter standards that the Commission set forth, his firm would be interested in providing representation.

Chair Ellis asked whether Mr. Crabtree had seen the letter from the DA indicating that he now intends to reopen the EDP, and whether he has a view regarding whether the procedures now meet the requirements. Mr. Crabtree said that he heard about it today, and that he would be more than happy to take a look at the proposed program. Mr. Crabtree reminded the Commission that he has come to them before because his firm has not been meeting quotas, and that they are still repaying the state \$7,000 a month. His feeling is that this situation arose because Bend is over-contracted. He doesn't want to again be in a position where he has to repay the state, and urged the Commission to ensure that Deschutes isn't over-contracted.

Agenda Item No. 6

Approval of Contracts

Commissioner Lazenby requested that the Multnomah Defender's (MDI) contract be voted on separately, noting that he has a conflict in that his wife works for MDI.

Chair Ellis asked Ms. Aylward whether she or her staff wanted to comment regarding the Deschutes situation. Mr. Aylward clarified that in the Deschutes Service Delivery Review, Mr. Alexander's firm had two associates that were underperforming, and noted that once juvenile and EDP cases are removed, there is very little reason to have a contract. In addition, Deschutes has the model of a public defender's office, two law firms, and a consortium. In past contracting cycles, the consortium was principally a misdemeanor consortium, unable to take felony conflict cases because they didn't have the experience. Over time, without the Commission prompting them, this consortium developed a board with outside members and bylaws and quality control; they are now available to take felonies. If an ethical EDP program is created, OPDS would like to place it with the PD's office. Ms. Aylward explained to the Commission that Mr. Alexander has stated in his proposals in the past that it is very difficult for such a small firm to cover EDP, that if the program were expanded, it would be even more difficult. Ms. Aylward also clarified (in response to a comment in Mr. Alexander's letter) that the OPDS never awards contractors more than they bid.

Commissioner Lazenby questioned whether there were any discussions with Mr. Alexander giving him warning that his contract would not be renewed. Ms. Aylward provided history on the contracting process, and indicated that there were no discussions about declining a new contract proposal. Ms. Aylward explained that these are two-year contracts and at the end of each two-year cycle everything is up in the air. There is no guarantee beyond the two-year period that various entities will have a contract.

Chair Ellis invited any other comments or questions, and then clarified that the PDSC's mission is not to keep law firms in play. The PDSC's mission is to serve clients in a community. The analysis of the staff proposal is whether it provides service to that community and the client base. Chair Ellis expressed the view that the staff proposal achieves this goal, and from a standpoint of management and good contract administration, the proposal from staff will procure what we need in Deschutes County.

Commissioner Lazenby expressed a desire to give more weight to the urgings of the district attorneys and judges who sent letters. He agreed that the PDSC is not in the business of keeping law firms in business, but feels that the PDSC has done a lot to build relationships with the people who provide services, and would like to learn more about the impact of the new program before deciding upon contracts for Deschutes County.

Commissioner Welch moved to approve the staff recommendations regarding contracts; Commissioner Stevens clarified that the motion does not include MDI, and seconded the motion. Commissioner Lazenby moved to amend the motion to delay voting on the Deschutes County contracts until the October meeting, for the purpose of gathering more information about the impact of the new and revitalized EDP program. Commissioner Potter seconded that motion.

Chair Ellis asked for a vote on Commissioner Lazenby's motion to amend. The motion was defeated with a 3-2 vote.

Chair Ellis asked for a vote on the main motion, which was unanimously approved.

After Commissioner Lazenby exited the room, Commissioner Welch moved for approval of the staff recommendation regarding MDI. Commissioner Potter seconded the motion, and it passed with a unanimous vote.

Agenda Item No.

OPDS Monthly Report

Ms. Cozine provided an update regarding her first six days in the office, the August 26 revenue forecast, and likely unavailability of the 3.5% holdback when the Legislature returns for the February 2012 session. She explained that the management team would present a compensation plan to staff and request feedback, then present a proposed plan to the Commission in October.

Mr. Levy presented an analysis of *Dolan v. King County*, in which the Washington Supreme Court held that the employees of nonprofit public defense organizations in King County that contract with the county are de facto employees of the county and entitled to retirement benefits under the county public employee retirement system. Mr. Levy explained the ways in which our circumstances in Oregon, both factually and legally, are very different from what existed in King County. Mr. Levy concluded by remarking that we are constantly aware of the fact that we are dealing with independent contractors and that there are lines that cannot be crossed.

Mr. Gartlan provided two updates regarding the Appellate Division. First, that there were 121 applications for the single appellate attorney posting; they conducted interviews last week and hope to extend an offer or offers by the end of the month. Second, the Appellate Division is either briefing or mooting and preparing to argue twelve Oregon Supreme Court cases, which is far more than usual. In response to an inquiry from Chair Ellis, Mr. Gartlan indicated that *State v. Hemenway* is a landmark case challenging *State v. Hall*. The case concerns the introduction of evidence after the police have acted illegally to seize a person, and whether voluntary consent following an illegal stop wipes away the effect of the prior illegality. The state contends that if the consent is voluntary it is an independent source for that evidence, and is admissible.

Ms. Aylward provided two updates regarding the Contract and Business Services Division. First, Paul Levy has worked with John Potter to put together a great agenda for the OCDLA Management Conference on October 21 and 22. All analysts will be attending and are looking forward to it. Second, they are working on the annual performance progress report and will present it to the Commission at the October meeting.

Agenda Item No. 7

Meetings and Possible Topics

Chair Ellis requested suggestions and comments regarding future meetings and possible topics. The following were discussed and agreed upon as additions to the October 21, 2011, meeting: annual performance progress report (APPR), July executive session minutes, meeting dates for 2012. After discussing the Service Delivery Plan for Umatilla and Morrow Counties tentatively scheduled for December 8, the Commission decided to request an update on Umatilla at the October 21 meeting, rather than a new Service Delivery Plan in December. Commissioner Welch encouraged the Commission to consider the Commission's role when a Service Delivery Review or update reveals concerns regarding a particular provider, and suggested the Commission has a responsibility to do something beyond identifying the problem when a quality concern is identified. Chair Ellis suggested, and Ms. Aylward agreed, that the Service Delivery Review results are passed along to CBS, and those results are considered as they enter the contract review process.

Agenda Item No. 9

Executive Session - Review of Contracting Plan for Capital Contracts

The Chair announced that the Commission would go into executive session, pursuant to ORS 192.660(2)(f), for purposes of discussing staff recommendations with respect to capital contract proposals to provide legal services beginning January 1, 2012, which documents are exempt by law from public inspection until a decision is made to award contracts. The Chair invited designated staff and news media to remain in the room, with the latter directed not to report on any deliberations except the general subject of the meeting previously announced. He said no decision would be made in executive session, and that the audience would be invited back into the room and the commission would return to open session later in the afternoon.

Agenda Item No. 10

Approval of Contracting Plan for Capital Contracts

Chair Ellis reconvened the public session and requested the Commission's action toward approval of the contracting plan for capital contracts. Commissioner Welch moved for the adoption of staff recommendations regarding contracting for capital cases; Commissioner Lazenby seconded the motion, and suggested that he would like to see all contractors, or a portion of contractors, evaluated over the next year or two, with enhanced recommendations provided by staff to the Commission to ensure quality representation in capital cases. The Commission approved the death penalty contract plan with a unanimous vote.

Meeting Adjourned

Commissioner Potter moved to adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried.

PUBLIC DEFENSE SERVICES COMMISSION
UNOFFICIAL EDITED TRANSCRIPT

Thursday, September 15, 2011
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
John Potter
Janet Stevens
Honorable Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Caroline Meyer
Shelley Winn
Amy Jackson

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

Agenda Item No. 1 Approval of the Minutes of PDSC's July 28, 2011 Meeting

0:03 Chair Ellis We will call the meeting to order. The first item is approval of the minutes of July 28. Are there any additions or corrections? I had two just to prove that I read it. One is the two paragraphs where it says Agenda Item No. 3. The second line the word "award" should be "awarded." On the last page the top line after the word "noted" it should insert the word "regarding." Other than that I was okay with them. Is there a motion to approve the minutes as corrected?

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

Agenda Item No. 2 Update and Further Discussion of Lincoln County Service Delivery

1:07 Chair Ellis The second item is Lincoln County. Nancy or Kathryn, whoever, Kathryn, why don't you for the record explain where we are on that.

1:22 K. Aylward Certainly, Mr. Chair. As we discussed in executive session, we talked about the new entity Lincoln Defenders and Juvenile Advocates and their bylaws and their membership agreements and they had a lot to put into place. Mr. Greco was confident that it could happen. The Commission's plan was to come back and visit them in a year's time, which would have been May of 2012. We had talked about either a six month extension of the current contract or a six month contract with the new entity if the new entity was actually in place. So when I called Mr. Greco in early August he said they would not be ready to sign an agreement with the new entity by September 15, which was our goal. My concern was that if it then stretched to October or November that then we would have fewer alternatives if we didn't end up reaching agreement and that was the whole point of bringing the

contracting forward so we didn't run up right against an expiration date. Some of the concerns that we had - they didn't have their outside board members confirmed yet and until they had their board formed the board couldn't - they needed the board to make decisions on members and membership agreements. I did talk to Mr. Greco about the concern that we had heard that the member agreements would be modified such that an associate who left a firm would have to leave their piece of the pie with the firm, which was clearly not what the Commission intended to have happen. Mr. Greco said that in the meantime he had spoken to the Ouderkirk and Hollen firm and that they didn't feel the need to modify member agreements to that effect. So he assures me that maybe that won't be a problem, ultimately. One of my other concerns is this notion that there are contractors and senior contractors as members. A regular contractor is an associate and a senior contractor is either a firm, partner, or a stand alone members. Their bylaws say that an associate can never be a member of the board which concerns me a little bit. In any case Mr. Greco did agree to a six-month extension of the current Lincoln Defense Consortia, but he wanted it clarified that when the new entity was ready that existing LDC contract would be assigned to the new entity. I said "yes" and put it in writing and he assures me that the extension will be signed as soon as possible.

- 4:11 Chair Ellis Have we sent him the transcripts of the two or three meetings we have had on Lincoln?
- 4:18 K. Aylward We sent him this packet that had excerpts from the last three meetings. Yes.
- 4:27 Chair Ellis I reread those and I thought there was quite a lot of material there that would be important for him to remember as they go through this process. I take it is a non-profit entity that they are forming?
- 4:50 K. Aylward I don't remember. I think so.
- 4:53 Chair Ellis Do we know who the outside board people are?
- 4:57 K. Aylward He didn't name them because he hadn't confirmed who they were. It was a civil attorney. Do you remember who it was? He had some ideas that were good ideas like a civil attorney, a CPA. He was working on who would appoint the outside members and he was thinking the local bar association, but maybe then they weren't that interested. He was still working out details.
- 5:26 Chair Ellis Okay. That sounds fine. I know he had asked for a longer extension and I was not very excited about that. I want this to happen.
- 5:34 K. Aylward In both conversations with Mr. Greco said he is looking out for us and said he was concerned that if he only had a six month extension and the Commission came in May that there wouldn't be enough time to put something else into place. He was confident that they would pass inspection, but if they didn't there wouldn't be enough time for us to put something else in place and what would we do. That is why he said a year would be better.
- 6:04 Chair Ellis Okay. I don't think that requires action but thank you for that. I think it might be best if we jumped to Item No. 5 and do Randy Vogt's issue. That way if he wants to go back home and get to work he can.

Agenda Item No. 5 Request to Submit Post Deadline Response to RFP

- 6:24 Chair Ellis Randy, welcome.
- 6:26 R. Vogt Thank you. I had this put on the agenda because my RFP to get my capital defender contract renewed was very, very late. The reason it was late, as I said in my letter, is that I expected to get a packet in the mail because I had always gotten packets in the

mail when my contract comes up for renewal. Instead of getting a packet I got an email. I am not subjectably aware of getting the email. I probably got it.

- 6:57 Chair Ellis You are probably over 50 aren't you?
- 7:00 R. Vogt Little bit. My computer skills are about average for a 61 year old guy. I am asking the Commission's approval of my submitting a late, and I mean really late, application for renewal of my contract. Like I said the email arrived and I either didn't get it or I blew it off. Once I learned of this, I got my application in the very next day. During the last several months I have asked my contract administrator, Billy, why I wasn't getting any new cases. He just said this case has been assigned to somebody else and this case has been assigned to somebody else. I have been trying to keep abreast of things. I am really kind of embarrassed that I blew this major deadline. All I can say is mea culpa if I did.
- 8:03 Chair Ellis Did you by chance see our transcript of our discussion of the similar issue involving Joe Rieke?
- 8:16 R. Vogt I did.
- 8:16 Chair Ellis So you have read that so you know the dialogue that we had?
- 8:19 R. Vogt Yes I did.
- 8:24 Chair Ellis What is the pleasure of the Commission?
- 8:24 J. Potter I would like the staff to remind me what the current deadline are for reviewing and approving death penalty contracts. I understand the regular contracts, but where are we with the death penalty process?
- 8:35 K. Aylward Our plan is to discuss in executive session with you today what we would recommend. Then we would go - if you improve the plan and our recommendations - we would go and negotiate contracts, reach agreement, and have those contracts brought to you for approval at the October 22 meeting.
- 9:01 J. Potter If the Commission were to approve the submission of a late application by Mr. Vogt, would that be included in the discussion today with your recommendations?
- 9:09 K. Aylward Yes, it can be, because we did actually receive a proposal already and we have reviewed it already.
- 9:22 Chair Ellis So I can count heads. I know of the four that are here it would be two and two if you voted the same way that we did on the Rieke situation. I am going to abstain because I am not going to vote yes because that would be contrary to the position that I do believe. But I also think that consistency it may be the hot goblin of small minds but it also has a virtue. I will abstain and we can take the vote and if it goes the way that I predict that would allow the late submission without violation of my sense of what is right. Do you want to call the question?
- 10:15 J. Potter I will make the motion that we allow this late submission of Mr. Vogt's application for a death penalty contract.
- 10:24 Chair Ellis Is there a second?
- 10:24 Hon. Elizabeth
Welch Yes. I will second it. I want to say something. Because there has been a procedural change, at least from the way Mr. Vogt describes the expectations of people to receive their information in a certain way, that there be some kind of general notification that this was the year for the exceptions and that there aren't going to be anymore. Maybe that has already been covered. I am just saying that seems to me

that when you change the way that you do business sometimes you have to be flexible, but that is the reason - at least those of us who favored the approval last time said. The circumstances are not exactly the same. Mr. Vogt is much, much later in addressing the issue than Mr. Rieke was.

11:33 Chair Ellis The record should so note. It has been moved and seconded? I will call for the question. All those in favor say aye. John Potter and Hon. Elizabeth Welch voted for the motion. Janet Stevens voted no. Chair Ellis abstains. **Vote 2-1.** You have already filed your proposal so it will be considered.

12:00 R. Vogt Thank you.

12:00 Chair Ellis Bear in mind, Randy, this just gets you in the door. We are not approving or disapproving on the merits. Okay, thanks.

12:12 R. Vogt Any other information anyone wants from me?

Agenda Item No. 3 Staff Recommendations to Approve Contracts Pursuant to Statewide Contracting Plan

12:17 Chair Ellis When you are winning it is best to stop. Now, Kathryn let's go back to Item No. 3, staff recommendations to approve contracts pursuant to statewide contracting plan.

12:38 K. Aylward If it is alright with the Commission I would like to just briefly go over some of the things that we discussed in executive session at the July 28 meeting. I want them to be on the record. I want our contractors to understand how we have arrived at the point that we are at now. When Indigent Defense Services Division started a long time ago, it was a completely different organization. If there were, for example, private bar appointments that meant lots of bills to pay and those bills went through the local courts and then through the (inaudible) office and it was hugely time consuming and took a lot of staff. The solution was - ah instead of having all these individual bills why don't we award a contract and then we cut one check per month and it will give flat rate and we don't have to add up all those hours, it will be wonderful and it will save us a lot of time. So we moved toward getting contracts. Then over time what happened is we leveraged technically, we developed better ways, and now we process 40,000 bills a year. So if there weren't a contract and it meant having to process individual bills, what is another two or three hundred if you are doing 40,000? It is not a significant impact. For example, with the Yamhill County Defenders when we terminated their contract, the sort of first reaction is oh my gosh we will have all those bills to pay. Then we thought that is not a big deal. We can pay those bills. Then we began to look at contracts in a different light. In my view there are at least three reasons to enter into a contract. One of them is that we want to be able to secure those services. In some locations there might be someone who is taking cases private bar and they could leave town tomorrow and we don't have anyone. That is one reason. We want to lock you in for two years. You are going to sit here in Grant County and you are not moving because we have you for two years. One of the other reasons is we have to be pretty sure that during the two year period no one better is going to show up in town. This is one of the things that I was talking about in executive session as well. The realization of the chilling effect of their being a contract. In my particular county we had someone that we were hoping - good, new to the community, enthusiastic, did a lot of juvenile dependency, great, great attorney. We kept saying, "Gee, you should put in a proposal for a contract." When this person didn't, her respond was, "Well, you have been contracting with the same group for 10 years. I assumed you liked them. I assumed that is what you wanted." We have to come to realize that by having a contract in place you have excluded other people that might come along. So you have to be pretty sure that you want all your eggs in this basket. The third factor is that we have to have a quota that we can commit to. If we enter into a contract that says you are going to get 10 cases a month, a hundred cases a month, we feel an obligation to be pretty sure that those are available because you have set up your

business. Less so with a consortium, but more so with a law firm. You set up your business and hire your staff. You are ready, willing and able and if only nine come in the door or 90, then you are running short and we feel an obligation to find those cases. Well you find them by taking them from other people. One of the things we have to be really careful about, particular with small contracts is that we better know for sure that that caseload is there or we are harming the other contractors, we are not contracting efficiently, and ultimately it doesn't do any good for the person we are contracting with. As you know this time there were a number of contracts that we recommended not be offered a subsequent contract. Some examples were Aaron and Associates in Hood River. There were no more associates it was just Brian Aaron and when you get down to a contract that small it no longer becomes a viable way of doing business. We hope and assume that, for example, in Mr. Aaron's case he will be there and take private bar cases, but we don't know how many cases there are going to be. Especially in that case it was a contract that covered multiple counties and with one person you had trouble being in The Dalles and Hood River. It just didn't make sense to have a contract. There were quite a number of them. I think we had five or six contracts that we didn't recommend renewal. We laid out our plan over three hours at the end of July. I think perhaps what I would recommend doing next time is maybe dividing it into no changes - business as usual. Then now let's concentrate and spend two of the three hours on situations that are different. The majority of these contracts really just have nothing changed. After we met we went out and tried to accomplish what you instructed us to do. We do have some variations. Some things changed when we tried to do this. For example the very first contract listed under statewide it says O'Connor and Weber. This is a new contractor. It was a proposal for PCR appeals. In the past we had the Oregon Appellate Consortium did pretty much all the PCR appeals. We actually got two new bidders this time and they each said they wanted - well one of them wanted a 184 PCR appeals a year. The other wanted 127 and maybe some habeas appeals. We thought, okay, here are two new entities. How about this? You can have half - instead of giving the full amount that they were asking, instead of 180 a year about you have 48 and you have 48. So each entity separately came back and said, "Well, thank you and I won't say no but our plan requires a critical mass." They each came back and said that it is probably right. I should have thought of that. We made a decision and chose to go with O'Connor and Weber and told the other entity that we agreed with them that it wasn't viable and that we had chosen someone else. So that was a change. We didn't end up splitting that. Another change happened in Multnomah. As you know the Noel Grefenson and - what we have been trying to do is the trial level PCR to centralize it in the PCR consortium. That has been a plan for - I don't know six or eight years, a long time, to improve the quality of post conviction relief representation. Trying to build an organization that would train and be PCR central, and we did take some caseload from some eastern Oregon contractors, PCR caseload, and rolled it in. Our plan was to do the same with Multnomah County Indigent Defense Consortium which is principally Geoff Silver. He had a contract for post conviction relief cases. When it came right down to it, it seemed like too much too soon to have the Noel Grefenson group suddenly take on all these different caseloads. What we are recommending to you today is a one year contract with Multnomah County Indigent Defense Consortium to do PCR cases. So basically another year and we will make a decision then whether the Grefenson group is ready to take more or not. The only other change was in Yamhill County. The Justice Alliance Center is a new entity that came up out of the ashes of Yamhill County Defenders. They put together an excellent proposal. They are hoping to have Judge Selander as their executive director. They are a little bit cautious about going to values because all of their members had been hourly paid. Likewise, in Marion County the MCAD attorneys were really cautious. What they wanted to do was just have a one year contract so that they are not tied in if they end up finding that case values doesn't work for them for some reason.

21:59 Chair Ellis

The one year would be on a value or on a hourly?

22:06 K. Aylward Values. They are going to give it a try. I understand that and I think MCAD may have always wanted to give themselves an out. You don't know until you take the cases and do the case count.

22:23 Chair Ellis But MCAD converted like three years ago. I have always understood they were pretty happy about it.

22:35 K. Aylward I think they are not interested in returning to what they had before. Unless you have any questions nothing else was different from what we presented.

22:53 Chair Ellis How did you deal with our perennial conundrum between MCAD and Marion PD? Is it essentially status quo continued?

23:05 K. Aylward It is status quo continued. I think we discussed that the PD wants to still grow. There was discussion about how they had 10 attorney positions and, I think, nine were filled and one was vacant. I think the Commission, at that point, was surprised a little bit that the PD had grown as much as they had. They started not that long ago with just four attorneys. We kept the split the same as it has been.

23:32 Chair Ellis And is there peace in the valley?

23:38 K. Aylward I don't know. Are there any valley natives here?

23:42 Chair Ellis I see one.

23:42 T. Sermak We have the smallest army so we are not declaring war. I don't think any of us are happy with it, Mr. Commissioner, but I think we have to recognize the reality of it. There just are fewer criminals in Marion County. Since I live in the county that is a good thing.

24:07 Chair Ellis You know the economy is down in lots of ways.

24:07 T. Sermak Really. Surprisingly when the economy is down crime goes up. But that didn't happen this biennium much to our disappointment. I was hoping to have eight lawyers. We are at seven and ...

24:30 Chair Ellis One got stolen I understand.

24:30 T. Sermak We are just not filling that position at this point. I would very much like to hire my law clerk and I am not going to be able to because of that. I think we are going to be able to make due and I think we can tighten our belts enough to get through. I go home every night hoping for an uptick in the amount of crime in Marion County and feeling bad about it for my neighbors. I expect that we will be able to get through this. I do hope to be able to continue to grow in the future. There are some things that our office needs to have the opportunity to do that are ordinarily the purview of the public defender office. I was hoping to be able to expand to the point that we would be able to assume those largely uncompensated or undercompensated responsibilities. I don't see that happening in the immediate future.

25:23 Chair Ellis Steve, I see your hand.

25:25 S. Gorham I guess I say for MCAD that MCAD is happy. I think MCAD feels this split is a good split. I think the courts feel the split is a good split. I think MCAD is satisfied with the new contract.

25:48 Chair Ellis The other one I wanted to ask about is Lane?

25:54 K. Aylward You mean the public defender or all of them?

25:56 Chair Ellis Well both of the two principal providers.

26:03 K. Aylward Lane Public Defender Services got a small reduction. I think principally in their juvenile caseload because there was a concern that they were overloaded with juvenile cases. I think we reduced - to refresh my memory. We reduced their juvenile caseload. Was the split between the two - it was a little bit different?

26:28 S. Winn Actually it was pretty much the same.

26:34 K. Aylward I do have it.

26:40 S. Winn The split is between LCDC and the PD office. That stayed pretty much status quo, I believe.

26:48 G. Hazarabedian Mr. Chair, would you like me to chime in briefly?

26:48 Chair Ellis Yes.

26:48 G. Hazarabedian What I would tell you is that I think our two groups, meaning the consortium and my office, have been playing pretty well together. I think we are now in a situation where we are running a little bit above contract and the consortium is running a little bit below contract. We came to a mutually agreed upon solution of one day a month that they would take all the cases that we would normally take. That is done in cooperation with Ms. Winn of this office. I think we feel like we are managing and have good relations in Lane County. I don't think it is the same situation you were just talking about.

27:28 Chair Ellis Good. Then I noticed that Lincoln is not on the list, but will you include them in whatever motion gets made?

27:38 K. Aylward What we have done in the past is extensions or amendments to existing contracts, we have not brought to the Commission for approval. As soon as he signs it we will have our executive director sign it. Then it will be an existing extension in place.

27:59 Chair Ellis Other questions or comments from Commissioners?

28:02 J. Potter I am assuming we are going to talk about Deschutes County?

28:08 B. Alexander I am not sure if we are on to section four yet. I am Brendon Alexander from Bend. Let me know when it is time for me to speak up.

28:26 K. Aylward When we drafted the agenda my assumption was that we would either present our recommendations and what we had done and then comments from the audience pro or con, whatever. Then we would move on to actually approving contracts. That is kind of why I didn't put it separately on here. There may be others who wish to comment.

Agenda Item No. 4 Public Comment on Staff Recommendations to Approve Contracts

28:49 Chair Ellis So what you are suggesting is that we now go to Item No. 4, which is the public comment piece. Brendon this would be the time for you to step forward.

29:06 B. Alexander Thank you. When we first got the call from Kathryn, I thought of what I would try to say today. Maybe I was going to put on my blue face paint and my animal skin suit and run back and forth across you and say, "Someday you will terminate my contract but not today." Fortunately my staff is used to dealing with mentally ill people and they restrained me from that. I am here. This is tough. I have been part of the growth of Bend for 20 years now. I don't know if you have had an opportunity to - you know I try not to repeat myself. I have given you a very lengthy submission here outlining what the history has been in Bend. The primary change since your July 28 meeting was that the Early Disposition Program is going to be back in place,

and in a way that satisfies all of the Commission's concerns. As I outlined in the letter and I won't repeat myself if you will promise to read it before you decide to - I am not supposed to say terminate us but shut us down.

30:07 Chair Ellis

Your letter was circulated, but I am not going to preclude you from summarizing it.

30:17 B. Alexander

I know there are probably other people that want to speak and I don't want to hog the time. My understanding is that this had nothing to do with the quality of our services, but it is hard not to take that. We have been doing this 20 years and this is my life. It is the life of five people. We have dedicated our lives to indigent defense. We have been part of the growth of the community of Bend. We have been an integral part of that. I think it is just patently unfair to take one private firm and favor one private firm over another solely based on the size of that firm, which is my understanding and not any perceived quality differences. I have got letters there that almost choke me up; letters from the district attorney's office. You don't get respect from your adversaries like that too often. If you get a chance to, look at those. I didn't expect that. I sure didn't. To hear from my adversaries to tell you what we have done and what we have meant to indigent defense. Before this gets to sound too much like a eulogy I am going to give the reasons why you need to consider contracting with us, okay. Besides the fact that we have provided excellent service, myself for 20 years and then the first 10 years with Mr. DeKalb, all I can say is that I took the high road in that dispute. I could have brought indigent defense to a halt with a temporary injunction when a 50/50 partnership splits up. I was the initial contractor. Instead of doing that our firms have always acted for the best interests for the court. Instead of doing that we worked out a solution. Because of the population growth in Bend, I was able to take a smaller contract. That is how we ended up with what I guess is referred to as a boutique contract. Nobody told me over the years that we would have to add associates and grow to be considered. I always thought that quality of representation was the issue. We take the hardest cases. If you went to that courthouse today and you got on the phone - the analysts who have worked with us and Ms. Aylward knows this if she talks to the analysts, we are the go to firm. We are the firm that they call when they have the most difficult client. We are the people. We are known for that. I can't do that on an hourly basis. I can't be available just to take the person that has fired the last three lawyers for \$45 an hour. Would any of you when you were in practice work solely for \$45 an hour? We can't keep our team together. Dealing with the mentally ill client in a Measure 11 case - a non-aggravated murder case as well, we do it as a team. I don't have any magic. They say that maybe I am a little bit crazy and that is why I am good at dealing with people who have some problems. But that is not it, it is our team. It is my secretary of 15 years. It is my investigator, Melissa, who is incredible at dealing with people that are challenged. It is my other two lawyers that each has 15 years a piece. That is what works. Our record is 23 phone calls in one day from a client who is mentally ill but short of commitment. We do this for the other counties as well. I don't know, Judge Ahern had intended to write to you as well from the 22nd district. He was in a jury trial the last couple of days and intended to get something to you. I don't know if that got to you in time. We are a vital part of their act as well. My sense of what went on in the executive session, and of course I don't know what you discussed last time, but was - I was so puzzled. When I saw the service delivery plan, it didn't recommend shutting down my law firm. I know I shouldn't use the phrase "shut down" but it is. We are 95% public defense and we always have been. There wasn't any discussion of that. The service delivery plan talks about the need for major felony qualified attorneys. That is what we are. That is all we are. I guess our contract they call it the bipolar contract, because we have the most serious cases of all. We also have the EDP cases, the least serious. The problem that you have got is that I can't keep those people together. I think in an ideal world what OPDS would like - you know why don't you guys stay available to just take our most difficult cases? That is not going to happen. An attorney would have to be crazy to do. To just hang on and beg, can you please give me only the cases where they fired their last three attorneys? You can guarantee the post conviction petition before you have gotten out the door of the courthouse. You can't expect us to do that. The reason

that we have always taken those cases, and I won't comment on whether I believe that our contractors try to get out of those cases or not, but I will say is this, the reason we never do is because it is part of the obligation of having a contract. We recognize that having a contract is a privilege for all the reasons that have been cited. We understand that. We always have felt that as part of that privilege it is our duty to take the most difficult cases because somebody has got to do it. That is how we ended up with this doggone EDP. I won't say our cross. It has been our thing. We volunteered to help 10 years ago in 2002, so nine years ago when this came up. The court begged us. They said, "The PD's office won't do it. DeKalb won't do it. The consortium won't do it. Somebody has to do it because it is a statutory mandate." We said, "Alright. There's three months to go for the contract. We will do it. We will help out." We didn't even get paid. Now suddenly, over eight years later, if there is no EDP there is no Alexander and Associates. We have saved you over a million dollars, \$200,000 a year, every year, every biennium for five bienniums. We don't get any credit for that. We do that by having, out of the three attorneys that we have, every single day of the month one of those lawyers has to be in the courtroom between 1:15 and sometimes 4:00. It makes it darn hard to schedule any kind of private practice. It makes it darn hard to do anything else. We schedule our major Measure 11 trials and we have to schedule them around that duty. We have done it every year for you people. Where has that money gone? That has gone to my colleagues to have their experts. It has gone for the forensic evaluations that we desperately need in our major cases. It has gone for our expert witnesses that we need when people are facing death; when they are facing hundreds of years of a stacked mandatory minimum. Where is that money coming from? It is coming from our work. Forgive me. I know I am getting a little fired up here. We work very hard for you people; for us. I shouldn't say you people. We are all in this together. You guys are sacrificing by even being here today. It is no great glory to be on the Commission. I really appreciate the time that you guys spend on it, but we are talking about our lives. This is what we do. It is our passion. It is what we are good at and nobody else is there to do the early disposition program now. You have seen the letter from District Attorney Flaherty. He has been under a lot of controversy in Bend. He has had a lot of other things going on and he let the program slide. Anyway we had meetings on the Commission's concerns. We did the best we could with what we had. We now have a great plan in place that is going to provide for the individual conferences that you wanted to see and I think you were correct in insisting on those. We now have the physical facility for that. We have the court's commitment that we are going to end multiple appearances, where we had clients being fast tracked and being there seven, eight, nine times. I guess we were good. We kept arguing their excuses for the court and the court would keep giving them additional opportunities, but we cut our own throat by doing that. We end up with 20 or 25 people a day. So now we are going at the outset that it is a two appearance rule. That is all you get. We can't even argue unless you literally have the note from your doctor. A note from Vinnie's mother isn't going to do it. It has got to be from St. Charles. It is going to be the only excuse to continue. With those in place the numbers that I put in my correspondence are real. Just under the old system we are looking at 60 or 70 cases a month that would have been appointments. We are going to handle those in a two hour period of time. They are talking about adding and, again, I have not committed to this yet. The statute specifically provides for conditional discharge cases and for other non-violent felonies. We haven't even looked at that. I don't know whether we do that under the flat rate per month system that we were doing. I would be very nervous about doing anything that involved a potential felony. I think we would probably find another way to do those, but the judges would very much like to have us there to talk about diversion eligible DUI's for people and the consequences there. Again, a huge savings that we can use for the things that we really need and that all of us here in this room that do major felony work have got to have and we know the money is running short for those things; for our psychologists and for our chemical type evidence that we need; our computer costs and all the computer forensic cases that we have had. We need this money and we are providing you with a way to do this. That is one of the reasons that we decided to keep doing the EDP is because we looked at it that way. We have this

contract where we do the most serious work and we know that the money is short. We are always fighting to try to get our expert money or additional investigation that we need; specialized bilingual investigation in many more cases. All of these things that we have got to have and EDP gives us a way to do that. It is a win/win situation. It is such a cliché now but it really is true. We are taking the money from the low level cases, where the consequences to the citizens aren't nearly as severe, and we are focusing that money, in a limited budget, we are focusing that money on the cases count where we need to have it; where all of us have got to have it; where the lives of some of these people are at stake. It is just crucial. The only other thing that I would add is I know that I am asking this office to do an awful lot of work and to go back to the drawing board. I think you can approve Crabtree and Rahmsdorff at this point, but given that we don't have many misdemeanor cases and possibly Class C felony cases are going to become part of the Early Disposition Program, what I am asking you to do is to wait a month until the next meeting for Deschutes County to approve the Deschutes County contracts and take a look at how many cases are going to be part of the Early Disposition Program because none of the other contractors are willing to do it. I don't particular want to do it either, but apparently the existence of our law firm has been tied to this thing.

- 42:18 Chair Ellis What happened? At least what I understood is the EDP program was kind of off the table by the DA. Now it seems to have gained new life.
- 42:31 B. Alexander Did you see the letter from District Attorney Flaherty?
- 42:32 Chair Ellis I did. But I was curious what was behind that because that sounded like a real change in direction from where he had been before.
- 42:44 B. Alexander There may have been some pushing.
- 42:43 Chair Ellis By you?
- 42:44 B. Alexander Certainly. By the judges as well. The judges wanted to see it again. Monday morning under our new, efficient docketing system, I counted them and I can't say it is an exact count, but we had 98 in a room approximately this size. We had 98 people for misdemeanor court. They need to clear the docket and this is the one way that it really worked. What we are doing now is we have gone to a system where all the entries of pleas in misdemeanor cases that use to be spread out over the week are all on Monday morning at the same time; we use to call it "felony Monday." If the fire marshall would have been called, we would have been in trouble. It was that bad. It was hot and nasty. If we get back with the EDP program, the fast track program, that is going to take a number of the cases where the arraignments occur at 1:15, and those are spread out over the whole week. We will be handling a number of those cases at arraignment. Our proposal is that a client will have 10 days to decide if they want to accept the fast track proposal to have a separate appointment in our office, if need be, or a phone appointment if we weren't able to spend a sufficient amount of time that day. Because, instead of coming back at the 8:30 time where we had the 110 people on Monday morning, they will be coming back at 1:15 for a quick sentencing. It will really help out the courts. If you want to know where the pressure came from it came from the judges and me.
- 44:25 Chair Ellis Okay, thank you.
- 44:23 B. Alexander It is kind of unprecedented to get letters from judges. The judges didn't want to get involved on my behalf but I have been there 20 years. We are part of the courthouse and part of the fabric of what goes on there. This is it for us. This is all we do. If you go to this system, that is done in the other counties. In the counties of similar populations, Jackson and Linn are the two closet to Deschutes right now, you have a single public defender. I don't see any reason why you can't go ahead and approve Crabtree and Rahmsdorff's contract, but as far as having another private for profit firm, favoring them over me is just flat out not what I would expect from this

Commission and it is not fair and it is not right. You shouldn't do it. The other thing is now we don't know those numbers. What we should do is - I think in the long term the only fair thing to do is to go - I don't know if it would be a felony and misdemeanor consortium, or just a major felony consortium augmenting the PD's office. That serves Ms. Aylward's stated purpose about getting in new members. It is a good way to bring some fresh talent. It is a good way to, I think, to divide because there was quality concerns about the service delivery plan some of the juvenile attorneys that were handling some of the juvenile cases and mixing some of them in the criminal case. I am obviously not going to go into any of those personal type things that went on. None of those involved our firm, but I think dividing that kind of work, and it works best with the calendar too. Just the juvenile and dependency work that is one consortium and the criminal work could be another consortium. I am not sure whether the misdemeanors would fit in - misdemeanors would be included on a felony consortium or where that would go. It could go either way. I think if that is where we are heading than the only fair thing to do for our firm, for all the years and dedication that we have given and the money that we have saved you, is to go ahead at this point and say let's go to the consortium system now. If you are not going to go to that consortium now, then let's state an intent that we intend to go there in one or two years. In the meantime my firm is presently involved in a number of very difficult major Measure 11 cases. I don't know how I even continue with those in January. I don't know how I keep the doors open. I don't know how I keep my investigator on staff. There is no reason at all that with the combination of the Early Disposition Program and continuing to provide major felony services in our own county and in some of the other counties where our services have been used that you can't find a place to continue to use us. We are needed out there. We want to continue to do that. I was just frankly stunned that after all these years and everything we have done that there wouldn't even be a meeting about the issue. Let's sit the contractors down and the DA is not filing as many felony cases. There is not as much crime as mentioned by someone else. It is unusual in a down economy, but couldn't we sit down and talk about this in a county level. Wouldn't that make sense? Wouldn't that make sense to take some of the other contractors - why don't lower 5%, lower some of the other contractors. I was promised by OPDS to not worry. We are not going to give away your cases to the other contractors. You can just have them by the hour. First thing that happens. One of the proposals to one of the other private contractor was for a decrease. Then they decide they are going to terminate our contract. Magic. That contractor's numbers are restored. That is not fair. That is not right. That is not what you do. That is not how you treat people here. I can only come to you for that. I don't know why that occurred. I was promised that it wouldn't.

48:41 Chair Ellis

Thank you.

48:45 B. Alexander

I don't know if there are any other questions I can answer on Deschutes County.

48:50 Chair Ellis

Thank you. Other public comments?

49:07 T. Crabtree

Sorry. I am suffering a little bit from car lag.

49:11 Chair Ellis

So is Commissioner Stevens.

49:12 T. Crabtree

For the record I am Tom Crabtree. I am the public defender in Deschutes County. I wanted to provide a little bit of historical information and how it relates to the current proposal in terms of contracts. The Early Disposition Program was set up statewide and in Deschutes County in January of 2002. Ben Westland had pushed this through the legislature and had asked me personally if I would do it for Deschutes County. That was in consultation with Ann Christian, of course. I agreed to do it for the first six months. That was January through June of 2002. The idea was to see how it worked. If it did work and propose any changes in that and basically get it set up and in place. We did that. That immediately identified a number of problems with the way it was set up. This is something the judges loved.

It took cases off their docket. People came in and they plead guilty. They didn't have to worry about those cases anymore. I quickly determined that we couldn't continue this program ethically the way that it was set up. As the Commission is aware, everybody met in the small room. There was no discovery given ahead of time. There was no ability to meet with the clients privately. In May of 2002, I came up with a dozen things that were wrong with the fast track program to give to Ann Christian, and actually there were 16 things on the list and I probably could have come up with some more. I told Ann that we were willing to continue doing the Early Disposition Program but only if it met constitutional standards. At that time the Commission hadn't established standards for the EDP, and I just said that I can't have my firm involved in this program if it continues the way it is. I proposed changes to it and suggested that we would continue with it but it would more than double in cost in order to ensure that we could meet privately with each of the people that were in the program. There were more in it than originally anticipated and that was because Mike Duggan figured, "Oh, gee, all those cases we didn't file before we can run through fast track and we can get people to plead guilty to them." So it expanded in scope. We got out of it at the end of June of 2002. I told Ann at that time that we would be happy to continue taking it over if it ever gets down to a constitutional basis and meets, what I thought, were ethical standards that were necessary for that program. In 2004, our office was the first to be evaluated statewide under the Quality Task Force. Tom Sermak was on the committee that came over. As part of the evaluation, watching things, they saw how the fast track or slow railroad, as I call it, system worked. He came back to my office after doing it and he was appalled at it. He said, "is that really how that program functions?" As a result of that conversations that we had, we decided that we needed to work on getting standards for early disposition programs statewide. That lead to this Commission ultimately adopting the standards that you have regarding that program. The Deschutes program continued to be run throughout its existence under the original framework that was set up by Mike Duggan. That, as you saw, does not meet current Commission standards and isn't something that I would be involved in. As I told Ann back nine years ago, if there is a EDP program that does meet constitutional standards and the stricter standards that this Commission has set forth, we would be interested in assisting indigent defense in providing that service but only if it met those standards. One other thing that I want the Commission to be aware of concerns the amount of over contracting that had been in Deschutes County.

54:49 Chair Ellis

You are changing subjects. This letter that we got from the DA indicating that he now intends to reopen the EDP, do you have a view about whether the procedures now meet the requirements that we have?

55:02 T. Crabtree

I haven't seen it. This is, frankly, the first that I have heard that he is intending to do that. I would be more than happy to take a look at it. If it is something that is new in the county, I trust whoever ends up doing it if it does go into place that the Commission will make sure that whoever is doing that program meets the standards that you folks have established for those statewide.

55:45 Chair Ellis

But you have not seen it?

55:46 T. Crabtree

I have not seen anything about it. I just heard Brendan's comments and saw a copy of Pat Flaherty's letter. As the Commission is aware, I think it was the first meeting over in Bend where you were reviewing the evaluation in Deschutes County, I came to you and asked that we be restored \$172,000 that we were short on our contract of the way that cases were ultimately assigned under that. For the 2008-2009 contract period, we were \$272,310 below our quota. That is because Deschutes County was over contracted. The other contractors had overages. We were under that amount and thanks to generous negotiations with Kathryn that amount was reduced to \$172,600. For every month of our contract during this current biennium, we were repaying the state \$7,000 a month to go Brendan, to go Jacques DeKalb, to go the Bend Consortium. I don't know what the total figure was for the county as a whole,

but it was over contracted, and basically we borne the brunt of that. The prior contract we were also short on our quota. The county was over contracted in the amount of \$18,366. I think the amount was higher than that but it was reduced to that level. So since the bubble burst in Bend and Deschutes County numbers have gone down.

58:24 J. Stevens

It is because all our crooks are rich now.

58:26 T. Crabtree

It is. As somebody once said it is a lot easier to steal money with a briefcase than a gun. We have had a number of white collar crime instances, if you will, over in Deschutes County, but I digress. In any event, it is a situation where I don't want to be in a position again where I am negotiating with Kathryn how much money I have to send back to the state. As you all know it has been an extremely tough last two years. The Bulletin has even had to shrink in size to continue on. We have had as a result of that \$7,000 a month less than we should have because we were over contracted in the county. I don't have a particular proposal in terms of how it is done, but I just would urge to make sure that we aren't over contracted again. We preserve, essentially, the model that the Commission has come up with of a strong public defender and a local consortium and whatever for the private bar. The problem has been for at least the last four years that there were too many cases contracted for in the county. I think it is very clear that Pat Flaherty is not going to charge the same way that Mike Duggan did. It is also very clear that Mike Duggan didn't have a crap filter. He would file anything and run it through the EDP to get a lot of pleas out of that. I doubt that is where Pat Flaherty is coming from in the new proposal for EDP, but I don't know what the specifics are for that. In terms of the other, again, we want to make sure that there is quality in whatever services are provided there. There were major concerns of quality in juvenile cases. I have spoken with Brendan about concerns that had been expressed to me by various people in that. He is aware of that. That has been one area where PDSC has been doing their best to increase the quality and I want to make sure - that is my passion. That is the area where I practice personally and want to make sure that the high standards that have been put into place are kept so we don't have people wanting to sell their dogs to hire new attorneys.

1:02:13 Chair Ellis

Okay. Any questions or comments? Thank you, Tom.

1:02:17 T. Crabtree

Thank you.

Agenda Item No. 6

Approval of Contracts

1:02:23 Chair Ellis

Any other public comment? Okay. We are now to Item No. 6.

1:02:38 C. Lazenby

Mr. Chair, as normal I need to request that the Multnomah Defender's contract be voted on separately. I have a conflict in that my wife works for them and I can't take official action. If we are going to move on these I would like to have that one considered separately so I don't participate.

1:03:01 Chair Ellis

Kathryn, anything you or your staff want to say regarding the Deschutes situation?

1:03:08 K. Aylward

I would like to. When Mr. Alexander was speaking I found myself writing furiously things I wanted to comment on and I couldn't write fast enough. There were a few that - at the end when Mr. Alexander said, "There were concerns about quality" and he said "none of it involved our firm." Well the service delivery plan says that because the identity of the two associate attorneys that were identified as not providing adequate representation is known, that staff should no longer provide a quota of juvenile dependency cases for that firm. It also said EDP, if it is not going to happen, should be just spread like normal cases. Mr. Alexander's firm is the firm that had the two associates that were underperforming. If we look at the contract, which is approximately 6% of the caseload, you take away juvenile and you take EDP there is very little reason to have a contract. In addition we have the unusual

model of a public defender's office and two law firms and a consortium. What is happening with these cases is if it is a conflict for the PD it goes to DeKalb. If it conflict for DeKalb it goes to Brendan Alexander, so we have paid for that case three times. The difference is that in the past the consortium that was there was principally a misdemeanor consortium. They didn't have the experience. They didn't have the infrastructure and training, but over time without the Commission prompting them, this consortium developed a board with outside members and bylaws and quality control and has stepped up their game. Now that consortium is available to take felonies. Some of this caseload that we think we are seeing if there were not two law firms and a PD there wouldn't even be that caseload. The whole discussion about EDP saving money, yes, absolutely EDP does save money. But if we are talking about an expanded EDP possibly, we are talking about a combination of things; an EDP that meets the ethical criteria and an EDP that is possibly expanded to include DUII diversions, PV's, whatever else. What is that going to do to your public defender in the county or the DeKalb firm? You worry less about consortia because they share the wear, but when you have an entity whose budget is all accounted for, suddenly all those PV and DUII diversions that Tom Crabtree is expecting have gone. How is he then going to maintain his budget? Well, the answer to that is now that there is a very large and very ethical EDP program, we would like to place it with the PD's office. If we don't, you are going to have layoffs and shrinkage because you have lost your misdemeanors because they have gone EDP. Mr. Alexander has stated in his proposals in the past that it is very difficult for such a small firm to cover EDP as it is. If it got any larger it would be even more difficult. He talks about members not being able to take vacations, not being able to attend CLE's, and having to work through the lunch hours. It is not a good situation. It is not a secure place to put EDP. I have one last thing that I must say. In Mr. Alexander's letter there was one comment that I can't let pass. He says that in his last proposal they only requested a 5% increase and this office gave them twice as much. That absolutely did not happen. We never award someone more than they bid. He is mistaken. It is not true. What he asked for was a 5% increase in salaries for his staff, which is approximately \$17,400. In addition, he said I need this, this, and this for health benefits and other things that total \$17,700. So the total did end up being slightly over 10%, but that is what he bid. In fact, we didn't quite make the amount that he bid. So I really don't want anything on anybody's record that says we do that because we absolutely don't. One last thing - when I sat here listening to Tom Crabtree relate history, and for us this is history, we are talking a long time. He talks about people and situations and events and I find myself pleasantly reminiscing. Yeah, I remember that, I know what he is talking about. Every single detail of what he says is accurate and crystal clear. When I was listening to Mr. Alexander I kept saying, "Wait, what is he talking about? What is he talking about that happened with DeKalb?" None of it rings true to my recollection and my understanding.

1:08:13 C. Lazenby

I have just a process question. What you are describing systematically makes some sense to me. One of the points that Mr. Alexander raised was that this kind of came as a shock and a surprise to him, that there weren't any discussions about this. It would seem to me that if we were going to be making this sort of change, which I can't believe we didn't know was a life or death issue for this law firm, that there wasn't an attempt to sit down and talk with maybe all the players and see if there were different ways of coming on. Is that what happened? Were there any discussions with him, or was he just told we are not renewing you and we are spreading this elsewhere?

1:09:02 K. Aylward

The Alexander firm was told in 2002, that there was no need to contract with them. We didn't need them as a contractor unless they were going to take EDP which had to be done under contract. He interprets that as you wouldn't have a contract unless you take EDP. What we were saying was we don't need a contract with you. The only basis for a contract would be to memorialize how you do EDP because they are not individual appointments. We don't need him. We haven't needed him. What we do need - sorry, when the courts talk about not having enough felony coverage, what they are talking about is not that they need more felony attorneys, it is that they need

the workload spread in more hands. It is a scheduling issue. So, fine - oh, one other thing, too. I don't doubt that Mr. Alexander himself provides good representation. That he is good with difficult clients. I hear that and people are telling me that. The problem with awarding the contract to the firm is that you don't know whether it is Sam Ramirez or Don Larson - whoever the associate is and who is going to get the case, but if it is a private bar appointment and the judge says, "Brendon Alexander I want to put you on this case and I know you're are going to be working this case and not someone else." The court knows who they are appointing. We know who we are getting and for those difficult cases where someone does call you 23 times a day, you are not getting your flat rate of \$400 or \$390. Every time that phone rings I am happy to talk to you because I have all the time in the world because I am being paid hourly. The notion that being paid hourly doesn't work - it is not true. Look at MCAD. Look at Yamhill County. It worked fine for them for years. Plenty of other private bar people out there. I think I am done.

1:11:04 C. Lazenby

Okay. I am going to return to my question which was, were there discussions with him in 2010 and 2011? Were there conversations with him this go round that would have prepared him for not getting a contract, and then your comments raise another question for me, which is, why is that different from appointing the DeKalb firm or appointing somebody from Greg Hazarabedian's firm? You appoint the public defenders in Lane County you don't know which particular lawyer is going to get that. So why is that specific about Mr. Alexander? And I do want my question answered about whether or not there were discussions with him that would have him more prepared for being cut off from funding suddenly.

1:11:47 K. Aylward

No. There were no discussions. These are two year contracts and at the end of each two year cycle we look at all the bids, we look at all the needs, and everything is up in the air. There is no guarantee beyond the two year period that you will have a contract so we didn't discuss it with him.

1:12:04 Chair Ellis

Any other comments or questions? The problem as I see it, I don't see our mission as keeping law firms in play. That is not our mission. Our mission is to serve clients in a community. I am listening to what I heard from the standpoint of, does the staff proposal going forward provide service to that community that will provide the service to the client base that we need? I am hearing that it does and I think from a standpoint of management and good contract administration, the proposal from staff sounds like, yes, what we need to procure in terms of legal services in Deschutes County will happen. It is sad. Change does happen and in a shrinking caseload environment those changes are going to carry with them some pain. But from what I have heard I don't believe staff has somehow behaved inappropriately. It feels to me like you have a pretty good sense as to what we are doing in Deschutes County.

1:13:56 C. Lazenby

In a sense that we have letters from the district attorney and at least one judge urging us not to do this. I heard testimony and comments this morning from several people that have talked about this issue that the reinstatement of EDP is unknown. People don't know what impact that is going to have. It sounds like the district attorney has just recently decided to do that.

1:14:24 Chair Ellis

With prompting, I think.

1:14:24 C. Lazenby

Regardless, I take the district attorney and the judge at their word that this is something that is coming and something they think they need more help on. I don't think we have an accurate picture of what the impact of that is going to be. I agree with you, as well, that we are not in the business of keeping law firms in business. But I think we around the state have done a lot to build relationships with the people who provide these services. These are hard times but we don't have to be hard along with them. I have a concern about the manner in which this decision was made simply because we are not obligated to re-contract, but just do it this way without any sort of conversation about it I just don't like it. It is perfectly fine, but I just don't like it. I would like to see, and I have a feeling I may be the only vote for this, but I

would like to see us at least find out more about what the impact of the new program the district attorney wants to pursue will have on cases. I understand the numbers are down but we should at least respect the district attorney and the judge saying to us, wait a minute and take a look at this before you go and do this. Whether that results in Mr. Alexander ultimately getting a contract or not I am indifferent. I do think that out of respect to those elected officials and people who are our partners in the system who are urging us not to do this that we ought to at least explore this and get more information. That is what I think.

- 1:16:01 Chair Ellis Procedurally what I think you could do, if you want, is, if there is a motion to approve the staff proposed contracts, you could move to amend that motion to carve out either all or a portion of Deschutes and your motion then would be to amend the pending motion to carve that out for...
- 1:16:34 C. Lazenby Separate consideration; understood.
- 1:16:32 Chair Ellis Then there will be a vote on the motion to amend and then a vote on the main motion after that.
- 1:16:42 C. Lazenby Okay. Do I also need to make a motion on the MDI contract or will you do that just as a prerogative of the chair?
- 1:16:53 Chair Ellis We will do that separately. If there is not more discussion, I would entertain a motion to approve staff recommendation that is contained in the attachment no. 3 other than MDI. That would be the motion that you could move to amend and we will see where that goes. Then whether it is amended or not that motion will get voted on and then we will have a separate motion on MDI with Commissioner Lazenby excluded. Is there a motion?
- 1:17:35 Hon. Elizabeth Welch There is a motion to have a break.
- 1:17:38 J. Stevens Yes there is.
- 1:17:48 Chair Ellis Alright. We will recess for 10 minutes and then come back.
- (recess)
- 1:26:51 Chair Ellis Kathryn you said you had something else.
- 1:26:52 K. Aylward I would just like to flesh out my response to Commissioner Lazenby. When you asked if there were any discussions in 2010 and 2011 regarding the possible discontinuance of this contract, I think there were three things that were brought to light in that time period. One was the quality issues that were brought to Mr. Alexander's attention. The other thing is the declining caseload that there is in the county, which he is aware of, and the third is the end of EDP. I think with those three things that any contractor would know that they were at risk under those circumstances.
- 1:27:36 Chair Ellis I think we are at a point where we are ready to move on. We were at the point of entertaining a motion. Is there a motion?
MOTION: Hon. Elizabeth Welch moved to approve the staff recommendations regarding contracts;
- 1:28:07 J. Stevens Minus MDI.
- 1:28:12 Hon. Elizabeth Welch Sure. Yes.
- 1:28:13 Chair Ellis There is a motion to approve but MDI.

1:28:20 J Stevens Second the motion.

1:28:22 Chair Ellis Is there a motion to amend?

1:28:23 C. Lazenby Yes, Mr. Chair. I move to amend that motion to separate out also the Deschutes County contracts so that we can gather more information about the impact of the new and revitalized EDP program.

1:28:41 Chair Ellis Do you mean to make it all of the Deschutes contracts, or just the DeKalb.

1:28:50 C. Lazenby Yes, just the DeKalb group.

1:29:03 Chair Ellis The issue ties to DeKalb as I understand it.

1:29:07 C. Lazenby The question in aid of my objection would be that I think we heard that if there isn't a new EDP program, and we don't know what the dimensions of that are, but staff's recommendation is that those cases just be spread throughout all the existing contracts. I think what I really do want to move is to take all of the Deschutes County contracts and separate out from this motion so that we can gather more information before approving them.

1:29:37 Chair Ellis Alright. So there is a motion to amend the main motion. The motion to amend would carve all of the Deschutes County for further review.

1:29:45 J. Potter Is that further review taking place at our next meeting in October?

1:29:50 C. Lazenby I would think that would be more than enough time.

1:29:50 J. Potter I will second that motion.

1:29:56 Chair Ellis Unless there is further discussion I will call the question on the motion to amend. Those in favor of the motion to amend say aye. Chip Lazenby and John Potter voted aye. Those opposed to the motion to amend say aye. Janet Stevens, Hon. Elizabeth Welch, and Chair Ellis voted aye. The motion to amend does not carry on a vote of **VOTE 3-2**. That moves us now to the main motion. Is there further discussion on the main motion? All those in favor of the same motion say aye. **VOTE 5-0**.

1:30:41 C. Lazenby I will leave the room.

1:30:41 Hon. Elizabeth Welch **MOTION:** I move that the staff recommendation regarding MDI be approved. John Potter seconded the motion.

1:30:51 Chair Ellis The record should show that Commissioner Lazenby has withdrawn for this. **VOTE 4-0**.

Agenda Item No. OPDS Monthly Report

1:32:00 Chair Ellis Well, nice to see you in the chair.

1:32:01 N. Cozine Thank you. Chair Ellis and Commission members it is wonderful to be here. I have had, as you know, six days and some hours to get myself settled. I have met with 23 of the 68 staff members so far, and what shines through during those conversations is just how committed everyone is to this office and how passionate they feel about their work, and how interested everyone is in continuing to advance the mission of this office. I should add to that list how pleased everyone here is with the work of the Commission. I am, again, very grateful to be here, and having a very nice start to my time here.

1:32:46 Chair Ellis Great.

1:32:51 N. Cozine When we met last time we did a very brief conversation about the budget. We are not at the point where we were ready to put that on the agenda for this meeting. But I will tell you that, I wanted to remind you that in that conversation we talked about the fact that LFO had indicated that agencies were authorized to spend up to 54% of their budget, and there was a 3.5% hold back that the legislature was hoping to authorize in February of 2012. Kathryn has had several conversations with John Borden, our LFO analyst. She and I met with him late last week and the message that we are getting now, after the August 26 revenue forecast, is, of course, quite dramatically changed from what we heard at the last meeting. It is about \$200 million dollars down already. So the message we are getting now is be prepared to manage the budget anticipating that that 3.5% holdback will not be available. We have met as a management team. We have scratched out some proposals. We would like to meet with staff and get some feedback, and then we would like to present to you on budget at our next meeting. That is the first update.

1:34:15 Chair Ellis A very dark cloud.

1:34:15 N. Cozine I am so sorry to be here presenting that dark cloud, but it is really a very serious issue, and one that we have been spending quite a bit of time on as I have begun to settle in, so, more on that later. I know Paul wants to give an update on a Washington State case.

1:34:38 P. Levy Yes, and I can make this discussion more or less detailed at your pleasure. Several times I have talked to you and mentioned a pending case in the State of Washington heading to the Supreme Court of Washington. It is *Dolan v. King County*. It was decided on August 18 by the Washington Supreme Court, holding that the employees of the nonprofit public defense organizations in King County that contract with the county are de facto employees of the county and entitled to retirement benefits under the county public employee retirement system. We have mentioned the pendency of that case to you a number of times in the context of more general discussions about the inherent limitations that we face of providing public defense services through independent contractors and the need to maintain that status - at least we become employers of every person who shows up in the court in this state. I think am on very sound grounds in telling you that our circumstances in Oregon both factually and legally are very different from what existed in King County. What the court factually concluded in the *Dolan* case was that the public defender organizations were mere vassals of the county. I think it was a factual and not a legal conclusion.

1:36:29 Chair Ellis Did they use those words?

1:36:29 P. Levy Yes. They used it a number of time to the point where I thought maybe it is a legal term.

1:36:40 Chair Ellis It was in 1120.

1:36:43 P. Levy When you read the description of the relationship between these entities, which in fact they called agencies which was perhaps a bad term in retrospect, these public defender agencies. The result becomes a little bit more understandable, but just a little big, frankly. The case was tried in a very peculiar posture and may not have had the record developed in the best way available. In a nutshell, the defender organizations in King County appear, just as any other county agency did before the county counsel or whatever budgeting entity there was. They made their pitch as I understand it from this opinion, just as any other agency would. For a time each defender organization was a separate item in the county budget. That was later consolidated, but the defender organizations were still a county budget item with some items for payroll and equipment. They looked for budgeting purposes very much like a county agency. They were not permitted to retain at the end of the budget cycle any of the profits or other funds that remained. Those all went back to

the county. The county had the right to control and approve all leases and other major defender organization expenses. These are all, by the way, differences between how King County and we operate here. In an admirable move the county enacted an ordinance calling for salary parity between defenders and prosecutors, but this really was more a direction to the county counsel or whatever their legal body is there, to treat these two groups alike so that they both got exactly the same cost of living increases. The defender organizations and employees were treated like county employees in that respect. Indeed defender organization employees were required to comply with the county employee code of ethics. The county ...

1:39:16 Chair Ellis

Required by the county?

1:39:18 P. Levy

Yes, and the county - also quite remarkable - the county contracting authority, the organization that oversees public defense, is headed by Dave Hocraffer. He had the right to review client files. Imagine if you had that right.

1:36:46 Chair Ellis

We by statute have the opposite.

1:39:49 P. Levy

You do not have that right. The relationship and the circumstances really did lend itself to a factual conclusion that these look very much like county entities. The law that the Supreme Court applied is curious. They really relied on only two authorities. One was a 1956 Washington Attorney General opinion finding that a student government agency established by the University of Washington was in fact a part of the University of Washington. It seems to make some sense. The only other case they relied on was a 1984 Oregon Court of Appeals case finding that an entity chartered and established by the Portland City Council to manage their energy policy was a part of the City of Portland and that the employees of that entity were entitled to PERS. But, again, this group was established by the City of Portland and basically run by the City of Portland. You understood that opinion. That opinion had never been cited before the *Dolan* case. We are quite different. I think our law that would be applied here is quite different as well. The dissent, and this was a 5-4 decision, the dissent criticized the majority for failing to apply what one would have expected to have been applied, which was sort of the analytical and legal framework of independent contractor law. The dissent said if you look at the question does the contracting authority have the right to control how the work is done? That very clearly was not the case. The county couldn't tell the lawyers how to handle their cases. That in Oregon is the test too. It is statutory and it has also been fleshed out by the case law for determining whether somebody is a contractor or an employee. The statutory test is, is the contractor free from direction and control over the means and manor of providing the service? That is absolutely the case in Oregon. The case law in Oregon makes clear that a contracting authority obviously can insist on adherence to national standards of an industry in how that work is performed without crossing this line of the controlling the manor and means of which the work is performed. I think both factually and legally our circumstances are quite different.

1:43:05 Chair Ellis

Let me see if I understand the consequences. This makes all those PD employees eligible for pensions and other things?

1:43:16 P. Levy

Yes, and potentially going back many years as well. I asked Dave Hocraffer for an update on what is happening now. They are still in litigation and he really didn't want to comment much. The case has been remanded back to the trial court to figure out what this means. I don't know if this is typical or not. The parties agreed - there was a motion for summary judgment filed - a bunch of written submissions and they agreed that if the summary judgment was denied that the question of liability could be decided on those written submissions. It seemed as though the record was not well developed.

1:44:13 Chair Ellis

Was it a class action?

1:44:14 P. Levy

Yes. It was. I am fairly certain it was.

1:44:19 Chair Ellis Do you hear any indication that any of our the entities that contract with us think this is something they might like to try here.

1:44:35 P. Levy I think some of our contractors have been aware of this case and that it is pending. I know Greg Hazarabedian and Lane Borg are aware of it. I think they would not consider themselves vassals of the Commission, but if they wish to try to do so I think they are in very different circumstances.

1:45:13 Chair Ellis I feel we have been given less fealty than we are entitled to. Could you email a copy of the opinion to the Commissioners and I see you reading from an outline. If it is in form that you are willing to do this could you share that? I think we ought to be informed of it so if we are asked about it we have the ability to respond.

1:45:44 P. Levy It asks, do you want to be a vassal or not? I would be happy to do that at the end of the meeting today.

1:45:51 Chair Ellis That is amazing. Any other comments or questions on this issue?

1:45:53 P. Levy Let me say this. We are constantly aware of the fact that we are dealing with independent contractors and that there are lines that can't be crossed. The case reminds us of that, but says we have a little ways to go before we are over that line.

1:46:20 Chair Ellis Thank you. That is a remarkably interesting subject.

1:46:27 N. Cozine We now have Pete Gartlan here to give an update on AD.

1:46:32 P. Gartlan Good morning. Pete Gartlan for the record. I only have two items to report on and that is that we conducted interviews for a juvenile appellate attorney position last week. Myself and the juvenile section consisting of two attorneys and support staff interviewed for several hours last Thursday and Friday. We are checking references now. We hope to extend an offer or offers by the end of the month.

1:47:03 Chair Ellis How many applications for the position?

1:47:04 P. Gartlan We had 121.

1:47:04 Chair Ellis For one position. That is just amazing.

1:47:08 P. Gartlan I am pleased to report that we had very good applicants, too. So we have a good pool to select from.

1:47:12 Hon. Elizabeth Welch Hopefully not all 121 that you had to interview.

1:47:26 P. Gartlan No. The other thing is I have been reporting about Supreme Court cases. We have had a few more. Now we are up to either briefing or mooted and preparing to argue 12 Oregon Supreme Court cases. It is very busy.

1:47:46 Chair Ellis That seems like many more than normal.

1:47:50 P. Gartlan It is the most that I can remember. I can never remember it being this busy.

1:47:56 Chair Ellis Do you have a view as to why that is?

1:47:56 P. Gartlan Partly, I think the composition of the court – they are interested in criminal law.

1:48:09 Chair Ellis That must be a reference to its newest member.

1:48:13 P. Gartlan Justice Landau and the Chief and Justice Kistler, Justice Balmer. Several have been in the Attorney General's Office so they have come in contact with criminal law. I think they are interested in it. I can't be positive but I hope that they think that they are getting good representation and good adversarial competition.

1:48:45 Chair Ellis Any that you think are kind of landmark issues?

1:48:50 P. Gartlan Yes. I think one *State v. Hemenway*, is a case that is challenging *State v. Hall*. It concerns the introduction of evidence after the police have acted illegally to seize somebody. So if police conduct an illegal seizure and then ask for consent to search, *Hall* has said that the product of that consent search is not admissible at trial. The state has argued, at Justice Durham's kind request, that the state challenged that case, *State v. Hall*, and so this is that challenge. It is very important because *Hall* was a landmark case.

1:49:42 Chair Ellis So it is the scope of the exclusion.

1:49:45 P. Gartlan Yes. The theory is - at least the state's theory is that that voluntary consent that follows an illegal stop kind of wipes away the effect the prior illegality. If the consent is voluntary then that is kind of an independent source for that evidence, so the evidence can come in. Hopefully we will be able to retain *Hall* because it is a very important case. All of the practitioners in the room recognize the importance of this case.

1:50:21 C. Lazenby How old is *Hall*?

1:50:25 P. Gartlan I think it is about five or six years old.

1:50:31 Chair Ellis And I can almost hear the argument that if you change that then there will be an incentive to do a lot of illegal stops, because out of those you will get enough arguably consensual searches. So from a policy point of view I can hear that coming.

1:50:55 P. Gartlan Correct. It even goes so far - *Hall* overruled an old case *State v. Quinn*. In *Quinn* there was an illegal search of the car while the defendant was in jail. Based on the illegal search the police went to the defendant in jail and asked for consent to search the car. The officers went because they found evidence in the car. The defendant consented and the old Oregon Supreme Court held that that was permissible because the defendant's consent to that search was unaffected by knowledge of the illegality. So *Hall* had overruled that case. *Hall* is really consistent with what the rest of the country is doing and what the federal courts are doing, but under the state's view things are different here. They are different because it is a personal rights model for suppression of evidence as opposed to the federal model which is deterrence. Under the state's view somebody who consents to a search is kind of espousing or at least supporting, showing his independence and that consent should be respected. It will be very interesting.

1:52:26 Chair Ellis Okay. Thank you. Anything else?

1:52:32 N. Cozine That concludes the office update for this month.

1:52:34 J. Stevens No, wait, you forgot Kathryn.

1:52:36 N. Cozine I am so sorry.

1:52:39 K. Aylward I finally thought of something. So, the next thing on CBS's task list is the OCDLA management conference which is October 21 and 22. Immediately after which is the next Commission meeting. We are working on putting together written materials that are due by September 30. John and Paul have worked very hard to put a great agenda together. All the analysts will be attending. We are looking forward to it.

1:53:15 Chair Ellis That is the one in Pendleton?

1:53:18 K. Aylward In Pendleton. That is right. The only other thing that we are working on is our annual performance progress report due September 30. We are working on that and we will present it to the Commission at the October meeting as well. That is all CBS is doing.

1:53:37 N. Cozine And that concludes the update.

Agenda Item No. 7 Meetings and Possible Topics

1:53:40 Chair Ellis Any questions. Okay. Let's see the next item is no. 7, which is the meetings and possible topics.

1:54:01 N. Cozine Yes. We have the October 21, 2011, Pendleton meeting and we have already noted that we would like to add onto that meeting the budget conversation.

1:54:25 K. Aylward The APPR. The annual performance progress reports.

1:54:33 Chair Ellis And the much anticipated approval of minutes from several meetings that I finally got some minutes prepared for yesterday.

1:54:42 N. Cozine Yes. The executive session meetings we will add those as well. We don't have any suggested additions to that October 21 agenda at this, unless there are suggestions from Commission members.

1:55:00 Chair Ellis Any?

1:54:57 N. Cozine Alright. Then December 8th is as stands. We would like to know if you have suggestions to the 2012 suggested schedule at that meeting.

1:55:17 K. Aylward I had put this together. I just pulled this from the last meeting where it had been set over to this meeting. I made a few minor changes but didn't really put this together as a staff recommendation or anything. One of the things I see was a possibility was that service delivery plan for Umatilla and Morrow Counties on December 8. I know what a tremendous amount of work it was for Ingrid to put together service delivery plans and the meetings and the writing and reviewing. I don't want Nancy tied up doing that because we need her for other things. There is too much for Nancy to do right away to put together a service delivery plan by December 8. I didn't ask her this, but I know how much that will take her away from the office and away from the focus when we have the February session coming. We have huge budget issues and I think that is a little early to expect a plan.

1:56:18 Chair Ellis What is your feeling? Or you don't know yet?

1:56:24 N. Cozine It is a little early to say on day six. You know that I haven't participated in a service delivery plan before. The Commission is aware of some of my initial goals of meeting with all the internal staff. I have quite a list of legislators that I do need to meet with prior to January, and all of you, and some of our system partners throughout the state. There are a quite a lot of initial steps that I need to take prior to February to be ready for the February session.

1:56:59 K. Aylward Paul reminded me that at the October 21 meeting where it says, "Update of Umatilla/Morrow service delivery plan" is what we imagined was we are in their town is to invite Craig Childress and Doug Fisher and anybody else who wishes to comment. Just to come forward and just say, "Look, here is what the plan was the last time we did it. How are things going? Any changes?"

1:57:22 Chair Ellis That was about three years ago if I recall.

1:57:26 P. Levy Kathryn, myself, Tom Sermak and Karen Stenard, if she is still here, we went and did an update to that plan a couple of years ago. I think what we discussed really was asking these folks to comment on that update to let us know how things are going and what is changed. There were certainly some concerns identified in that update. There were concerns identified in the original service delivery plan. It would be an opportunity to hear from the providers, the judge, the new prosecutor, perhaps, as Kathryn said since we are in their town.

1:58:06 Chair Ellis Why don't we do this. Let's while we are there do invite them in and let's do it as an update. Let's not have on December 8th a commitment that we will have a new plan. I think you do have a lot on your plate and this isn't in horrible condition if I recall correctly. Let's do it that way. Okay.

1:58:43 N. Cozine Thank you.

1:58:40 Hon. Elizabeth Welch I have an issue that I want to bring up. I always have some things I hope we are going to do. This one came out of what has happened here this morning. I don't want to spend any time on it now, but over the years that I have been involved with this, the staff goes, sometimes Commission members go, and visit a community, Pendleton, whatever, and come back and talk about contractors about whom there are complaints regarding the quality of representation. That comes to their attention as a result of the process of meeting and observing and talking to all the people that you talk to when you go out. My question is what do we do as an organization to follow up on those identifications? The last Commission trip to Pendleton there was some fairly juicy issues on that subject. I remember that we did get some kind of an update but it may be an update that you were just talking about, Paul. I know there was a very formal kind of process. You can understand my reference to today's meeting. When the head of a firm is told you have got lawyers that we have got real problems about, whatever, whatever the details are. What are the implications of that? What are people told the implications of that are? Are they given a period of time in which to report to the Commission regarding that question? I think a Commission's first and foremost is the quality issue here. Maybe there is an answer to that so I don't want to belabor it. It just seems to me that we need to do something other than just identify problems.

2:01:03 Chair Ellis I think we have steered away from having these regional meetings where we review the service delivery lapsing into a detailed review of individual performance. That is really not what we are there for. I agree with you when issues like that surface in the - particularly when staff goes out ahead and meets with people. I have assumed that information gets to CBS and I have assumed that it gets factored into the contract review process. Would that be fair to say?

2:01:46 K. Aylward That is fair to say.

2:01:53 Hon. Elizabeth Welch I guess the question is is there anything in between? Okay.

Agenda Item No. 9 Executive Session - Review of Contracting Plan for Capital Contracts

2:02:00 Chair Ellis I think we are now at the point of Item no. 9 that we go into executive session to review capital contracts.

2:02:09 J. Potter Before we do that, Mr. Chair, on the scheduling we are up through December 8. Do we have dates scheduled beyond then?

2:02:23 N. Cozine We do not. At the December 8 - where it says discussion of 2012 schedule, I was anticipating that we would carve out those dates.

2:02:38 J. Potter We are going to do it then. I missed that.

2:02:33 N. Cozine But if you prefer to have a general discussion at this point, I am happy to.

2:02:37 J. Potter For me earlier is better. I would think that maybe if it was possible to move that up to the October meeting. That would be helpful.

2:02:50 Chair Ellis Sure.

2:02:50 N. Cozine And would you envision that as being a discussion of the schedule in terms of identifying dates with substance to follow in December? Or do you want the October meeting to be both schedule and substance?

2:03:05 J. Potter Schedule.

2:03:10 N. Cozine Thank you. We will add that as well.

2:03:08 C. Lazenby Can I just ask a question about substance for next year. Is there any sense on the Commission that in light of Mr. Haugen's trying to accelerate his execution, we had some presentations on the death penalty in the last year. Do we need to revisit that again or are we good with that? Do we need to revisit death penalty and our role in paying for counsel there? Is that a fair topic for us to take up again in 2012, I think?

2:03:45 N. Cozine I think that it is. Having talked with staff here that seems very ripe for the Commission's attention.

2:03:52 Chair Ellis Which is fine. I agree with that. I am at the point where I get to read a statement. We are going into executive session. The Public Defense Services Commission will now meet in executive session for the purpose of reviewing contract proposals to provide public defense legal services in death penalty cases beginning on January 1, 2012. The executive session is being held pursuant to ORS 192.660(2)(f), which permits the Commission to meet in executive session to consider information and records that are exempt by law from public inspection. Under the public records law, contract proposals are exempt from public inspection until a decision is made to award a contract. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session we will return to open session and welcome the audience back into the room.

2:05:27 J. Stevens May I ask that the daughter of a member of the news being allowed to stay. Is that a problem?

2:05:33 P. Levy I think we can accommodate that.

2:05:35 J. Stevens Thank you.

2:05:38 Chair Ellis She just got deputized as a journalist.

(Executive Session)

Agenda Item No. 10 Approval of Contracting Plan for Capital Contracts

0:01 Chair Ellis We are reconvening in public session. We are now at Item No. 10, the approval of the contracting plan for capital contracts.

MOTION: Hon. Elizabeth Welch moved that the adoption of the staff recommendations regarding contracting for capital cases; Chip Lazenby seconded the motion;

0:24 Chair Ellis And are those recommendations understood? I think we understand them, but you will attach to the minutes a list of those you are recommending two year contracts. A list of those you are recommending one year contracts.

0:39 K. Aylward I hadn't anticipated attaching that to the minutes. At the next meeting our notice of intent to contract, which is the issued the week before we ask for contract approval, will list the duration of the contracts.

1:00 C. Lazenby For the record, I think that as staff starts to put this together I think that I, speaking as just one Commissioner, think that it is very important for us to assure that there is quality in this sector of our contracting. I would really like to see enhanced recommendations from staff about steps that we can take to assure that there is quality. Whether that is reviewing the entire body or just some, but I think it should be a priority of the Commission over the course of the next year or two to ensure that everybody who is on the list is providing quality representation for people charged in death penalty cases.

1:39 Chair Ellis Okay. All those in favor of the impending motion say aye. **VOTE 5-0.** Any further business members of the public want to bring to the attention of the Commission? If not, I would entertain a motion to adjourn.

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

Meeting Adjourned 1:35

PUBLIC DEFENSE SERVICES COMMISSION
EXECUTIVE SESSION
Official Minutes

Thursday, June 30, 2011

9:00 a.m. – 5:30 p.m.

AKT

5665 SW Meadows Road
Lake Oswego, Oregon 97035

MEMBERS PRESENT: Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch

The meeting was called to order at 9:00 a.m.

The Commission met in Executive Session to interview candidates for the position of Executive Director.

The meeting adjourned at 5:30 p.m. by Barnes Ellis, Chair

PUBLIC DEFENSE SERVICES COMMISSION
EXECUTIVE SESSION
Official Minutes

Friday, July 8, 2011
2:00 p.m. – 3:15 p.m.
Via Telephone Conference

MEMBERS PRESENT: Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch
Chief Justice Paul J. De Muniz

The meeting was called to order at 2:00 p.m.

The Commission met in Executive Session to discuss candidates for the position of Executive Director.

The meeting adjourned at 3:15 p.m. by Barnes Ellis, Chair

PUBLIC DEFENSE SERVICES COMMISSION
EXECUTIVE SESSION
Official Minutes

Friday, July 13, 2011
12:15 p.m. – 1:45 p.m.
Via Telephone Conference

MEMBERS PRESENT: Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch
Chief Justice Paul J. De Muniz

The meeting was called to order at 12:15 p.m.

The Commission met in Executive Session to discuss qualifications of candidates for the position of Executive Director.

The meeting adjourned at 1:45 p.m. by Barnes Ellis, Chair

PUBLIC DEFENSE SERVICES COMMISSION
EXECUTIVE SESSION
Official Minutes

Friday, July 21, 2011
9:00 a.m. – 12:30 p.m.
Office of Public Defense Services
1175 Court Street NE
Salem, OR 97301

MEMBERS PRESENT: Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch
Chief Justice Paul J. De Muniz

STAFF PRESENT: Ingrid Swenson
(During Interviews) Kathryn Aylward
Peter Gartlan
Paul Levy

The meeting was called to order at 9:00 a.m.

The Commission met in Executive Session to interview finalists for the position of Executive Director.

Following the interviews Staff was excused, and the Commission deliberated in Executive Session.

The meeting adjourned at 12:30 p.m. by Barnes Ellis, Chair

PUBLIC DEFENSE SERVICES COMMISSION
Official Minutes

Friday, July 21, 2011
12:30 p.m. – 1:00 p.m.
Office of Public Defense Services
1175 Court Street NE
Salem, OR 97301

MEMBERS PRESENT: Barnes H. Ellis, Chair
Shaun S. McCrea, Vice-Chair
Henry H. Lazenby, Jr.
Peter A. Ozanne
John R. Potter
Janet C. Stevens
Honorable Elizabeth Welch

The meeting was called to order at 12:30 p.m. All Commissioners except Chief Justice Paul J. De Muniz were present.

Chairman Ellis called for nominations for the position of Executive Director.

Nancy Cozine was nominated, and the Commission voted to approve her selection 5-1 (Commissioner Lazenby).

The Commission further voted to set the salary of the new Executive Director at Step 8 of the ED Compensation Schedule.

The meeting was adjourned at 12:30 p.m. by Barnes Ellis, Chair

Attachment 2

**Public Defense Contracts Recommended for Approval
by the Public Defense Services Commission
at its October 21, 2011 Meeting**

	Legal Services Contractors	Hours	Rate	Contract Total	Initial Term
1	Andy Simrin, PC	1,800	\$90	\$162,000	Two years
2	Bronson James, LLC	3,680	\$90	\$331,200	Two years
3	Christopher Edward Burris	3,680	\$90	\$331,200	Two years
4	Christopher M. Clayhold	3,680	\$90	\$331,200	Two years
5	Daniel J. Casey	3,680	\$90	\$331,200	Two years
6	Deborah Burdzik	3,600	\$90	\$324,000	Two years
7	Duane J. McCabe	3,680	\$90	\$331,200	Two years
8	Geoffrey J. Gokey	3,680	\$91	\$334,880	Two years
9	Gordon Mallon	3,600	\$90	\$324,000	Two years
10	Jenny Cooke	3,680	\$96	\$264,960	Two years
11	Katherine O. Berger	3,600	\$90	\$324,000	Two years
12	Kathleen M. Correll	3,680	\$97	\$356,960	Two years
13	Ken C. Hadley, P.C.	1,800	\$97	\$174,600	One year
14	Laura Graser	1,800	\$90	\$162,000	Two years
15	Laurie Bender	3,680	\$96	\$353,280	Two years
16	Mark S. Rader	1,840	\$91	\$167,440	One year
17	Mark Sabitt	2,000	\$91	\$182,000	Two years
18	Michael D. Barker, P.C.	3,680	\$91	\$334,880	Two years
19	Patrick Sweeney	3,240	\$90	\$291,600	Two years
20	Peter B. Fahy	3,680	\$91	\$334,880	Two years
21	Ralph H. Smith, Jr.	1,350	\$90	\$121,500	One year
22	Richard L. Wolf, P.C.	3,680	\$90	\$331,200	Two years
23	Robert L. Huggins, Jr.	3,600	\$90	\$324,000	Two years
24	Steven H. Gorham	1,840	\$90	\$165,600	One year
25	Steven L. Krasik	1,840	\$90	\$165,600	One year
26	W. Keith Goody	2,700	\$90	\$243,000	Two years
27	Wm. David Falls	3,680	\$91	\$334,880	Two years

	Mitigation Investigation Services Contractors	Hours	Rate	Contract Total	Initial Term
1	Alice D. Ellis Gaut	1,800	\$59	\$106,200	Two years
2	Christine Inglis	3,600	\$59	\$212,400	Two years
3	Jackie Page	1,800	\$59	\$106,200	Two years
4	Joyce Naffziger	3,600	\$59	\$212,400	Two years
5	Laura Rittall	1,800	\$59	\$106,200	Two years
6	Lisa M. Harmening Investigations	3,600	\$44	\$158,400	Two years
7	Mary C. Goody Mitigation Specialists, LLC	2,952	\$59	\$174,168	Two years
8	Mitigation Services, Inc.	3,680	\$59	\$217,120	Two years
9	Pacific Mitigation Specialists, Inc.	1,800	\$59	\$106,200	Two years
10	Pamela Rogers	2,760	\$59	\$162,840	Two years
11	Rhonda L Coats/RL Coats Investigations, Inc	3,600	\$54	\$194,400	Two years
12	Teresa Ann McMahill	2,712	\$59	\$160,008	Two years

Attachment 3

PUBLIC DEFENSE SERVICES COMMISSION

Annual Performance Progress Report (APPR) for Fiscal Year (2010-2011)

Original Submission Date: 9/14/2011

Finalize Date: 9/14/2011

2010-2011 KPM #	2010-2011 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.

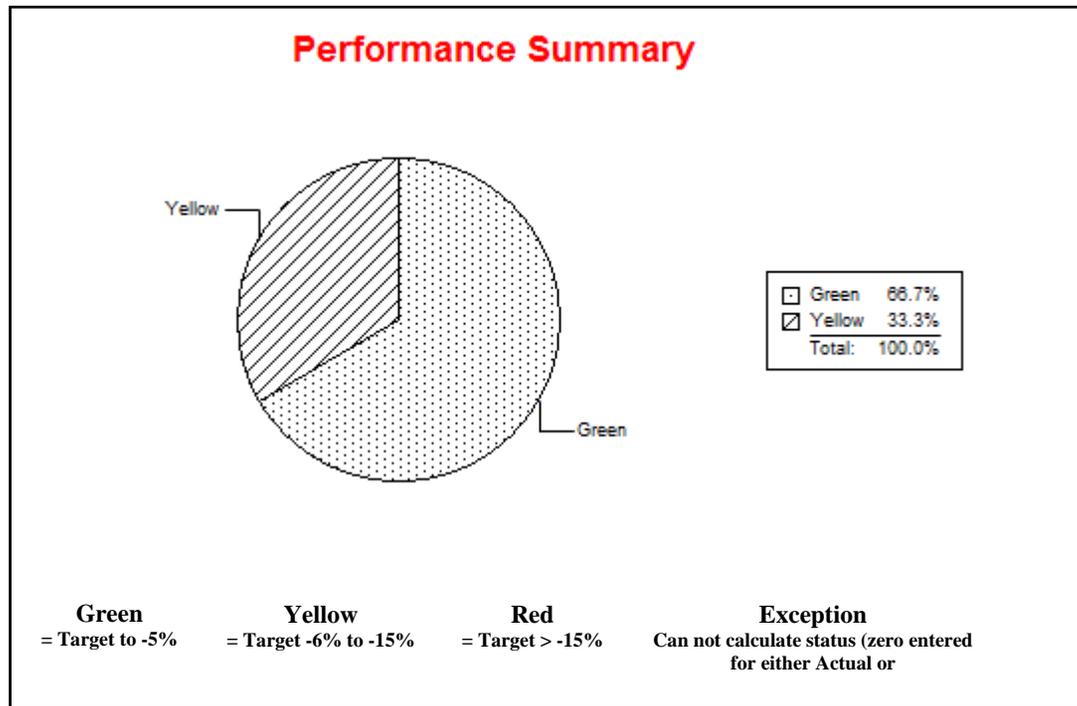
Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Contact: Kathryn Aylward

Contact Phone: 503-378-2481

Alternate: Peter Gartlan

Alternate Phone: 503-378-2371



1. SCOPE OF REPORT

Key performance measures address all agency programs.

2. THE OREGON CONTEXT

The Public Defense Services Commission is responsible for the provision of legal representation in Oregon state courts to financially eligible individuals who have a right to counsel under the US Constitution, Oregon's Constitution and Oregon statutes. Legal representation is provided for individuals charged with a

crime, for parents and children when the state has alleged abuse and neglect of children, and for people facing involuntary commitment due to mental health concerns. In addition, there is a right to counsel in a number of civil matters that could result in incarceration such as non-payment of child support, contempt of court, and violations of the Family Abuse Prevention Act. Finally, there is a statutory right to counsel for petitioners seeking post-conviction relief.

3. PERFORMANCE SUMMARY

The agency is making progress in all of its Key Performance Measures.

4. CHALLENGES

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. Prior to fiscal year 2008, the hourly rate for an attorney appointed on a non-Aggravated Murder case was \$40 per hour (the rate established in 1991). Over time, the skills, abilities, and experience-level of the attorneys willing and able to work at that rate had steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, this still represents a decline in real dollars based on Consumer Price Index increases over the 17-year period. Contractors who are paid a flat rate under a contract are assigning excessively high caseloads to their attorneys in order to cover operating expenses. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys in some cases from being able to provide an acceptable level of representation.

Another challenge for the agency is that workload is driven by a variety of factors outside the agency's control. The enactment of laws that create new crimes or increase penalties for existing crimes impact the agency's expenditures and workload. Federal requirements have shortened the timelines and increased the complexity of cases involving abuse and neglect of children. If additional funding is not provided to address such changes, the quality of representation is further eroded.

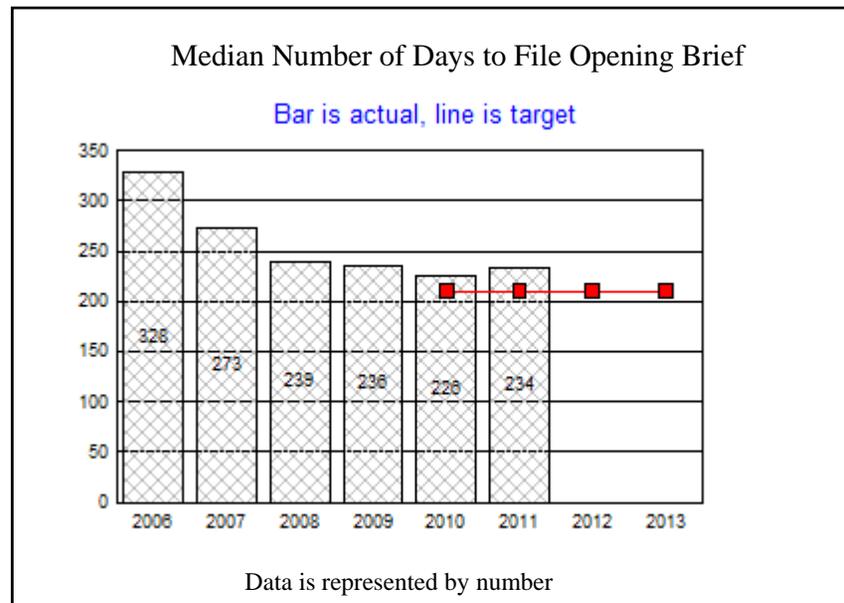
5. RESOURCES AND EFFICIENCY

The agency's 2011-13 Legislatively Adopted Budget was \$223,717,479.

Within existing resources, the agency continues to convert to electronic storage and retrieval of documents; has further automated document production with improvements to the case management database; and has expanded use of email instead of regular mail.

With the implementation of e-filing, the agency continues to move toward a largely paperless office. In addition to saving paper and file storage costs, it saves attorney and staff time by having files instantly available at the click of a button.

KPM #1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.	2009
Goal	GOAL 1: Reduce delay in processing appeals. GOAL 2: Ensure cost-efficient service delivery.	
Oregon Context	Mission Statement.	
Data Source	Case Management Database Reports.	
Owner	Appellate Division, Peter Gartlan, (503) 378-2371.	



1. OUR STRATEGY

Our goal is to reduce the delay in the appellate system. Reducing the number of open cases in the pre-briefing stage enables Appellate Division attorneys to address and resolve cases more efficiently, instead of "managing" – without resolving – an ever-increasing caseload.

2. ABOUT THE TARGETS

The Appellate Division wants to file the opening brief within 210 days of record settlement. The 210-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than seven months for an appellate attorney to advise the client concerning the viability of an appellate challenge to his conviction and/or sentence. Second, past budget reductions in the Attorney General's Office caused the Solicitor General to slow its briefing schedule in criminal cases, which causes additional delay in the appellate process and additional delay for the client. Third, federal courts have intervened when a state appellate system routinely takes two years to render decisions in criminal appeals. The 210-day target represents a reasonable attempt to meet various systemic considerations.

3. HOW WE ARE DOING

The agency has made significant progress. In 2006, the median number of days to file the opening brief was 328; in 2011 it was 234. The agency anticipates reaching the target by 2013 assuming adequate resources.

4. HOW WE COMPARE

Appellate Division attorneys significantly exceed national caseload standards. Nationally, the appellate public defender workload ranges from 25 to 40 cases annually. For example, Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney; Nebraska sets the maximum annual appellate caseload at 40 cases per year. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). The average annual caseload for an Appellate Division attorney in fiscal year 2011 was 55 case assignments per year, well above recommended standards and actual practices nationwide.

5. FACTORS AFFECTING RESULTS

Clearly the ability to meet and exceed the target correlates positively to the number of attorneys and negatively to the number of cases. The agency experienced a significant increase during 2009 and 2010 in the number of appeals being referred to the office. The 2011-13 Legislatively Adopted Budget includes the addition of six attorney positions and one support staff position. These positions are intended to keep pace with new caseload and were not provided based on reducing the time to file an opening brief. If the positions cannot be filled due to reduced funding, then the agency would expect to see an increase in the median number of days to file an opening brief.

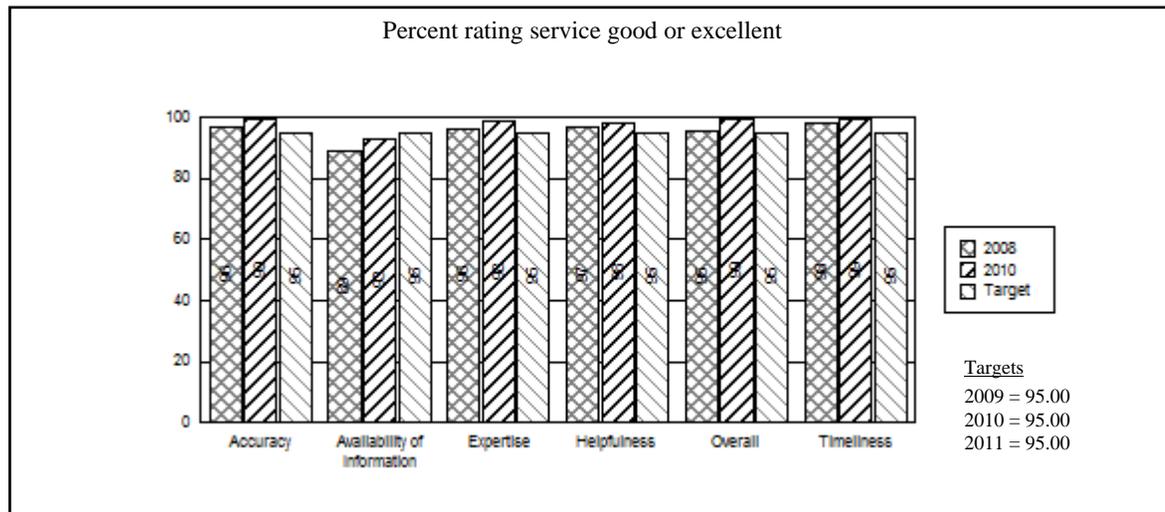
6. WHAT NEEDS TO BE DONE

The agency has nearly completed its conversion to a paperless file system which will improve case management, case tracking, and document production. The agency's brief bank is now sufficiently populated to improve research and writing capabilities. The agency continues to work closely with the appellate courts and the Attorney General's Office to identify lead cases with recurring issues for more efficient treatment of categories of cases.

7. ABOUT THE DATA

The data is derived from the agency's case management database. The strength of the data lies in historical comparison with prior years. The weakness is attributable to the inherent difficulty in quantifying appellate caseloads. The agency continues to refine caseloads based on case type, transcript length, and issues presented.

KPM #2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	2007
Goal	To provide greater accountability and results from government by delivering services that satisfy customers.	
Oregon Context	To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.	
Data Source	Customer Service Surveys (survey and results stored on SurveyMonkey).	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The general strategy is to utilize feedback to address cited problems and improve the general level of service provided by the agency.

2. ABOUT THE TARGETS

Targets for 20-13 have been set at 95% of respondents rating the agency as good or excellent.

3. HOW WE ARE DOING

The survey results indicate a high level of customer satisfaction with the agency. Service was rated as good or excellent by more than 98% of the respondents in all categories except the Availability of Information (93%). Although the standard reporting measure for state agencies groups both "good" and "excellent" into one category, the more telling aspect of the agency's results is the percentage of respondents who rated the service as excellent. In the categories of Timeliness, Accuracy, Helpfulness, Expertise and Overall, over 64% of respondents rated the agency's service as excellent.

4. HOW WE COMPARE

Services and customers differ greatly among state agencies, so a direct comparison to other state agencies may lack validity. Similarly, comparisons to public defense systems in other jurisdictions would not be useful due to variations in the survey questions, the survey pool, and the types of services provided. Given the high percentages of positive ratings received by the agency, we would likely compare favorably were such a comparison possible.

Some of the survey responses included references to how the agency compares to other entities:

"It is hard to overstate just how efficient OPDS is when it comes to receiving, handling, and responding to my requests for unusual expenses. I have never dealt with a state agency anywhere near as efficient and timely as them. If all state agencies were this good, government would not have a bad name."

"I have worked for the State my whole life and OPDS functions better than any other part of State Government that I was involved with."

"PDSC is the best and most responsive state agency with which I deal in a professional capacity."

"I've dealt with Washington State on indigent matters and You folks take the cake!!!"

"The PDSC is the most competent, efficient and professional agency I have ever dealt with in a government bureau in the State of Oregon."

5. FACTORS AFFECTING RESULTS

The agency is fortunate to have dedicated, knowledgeable employees and low turnover.

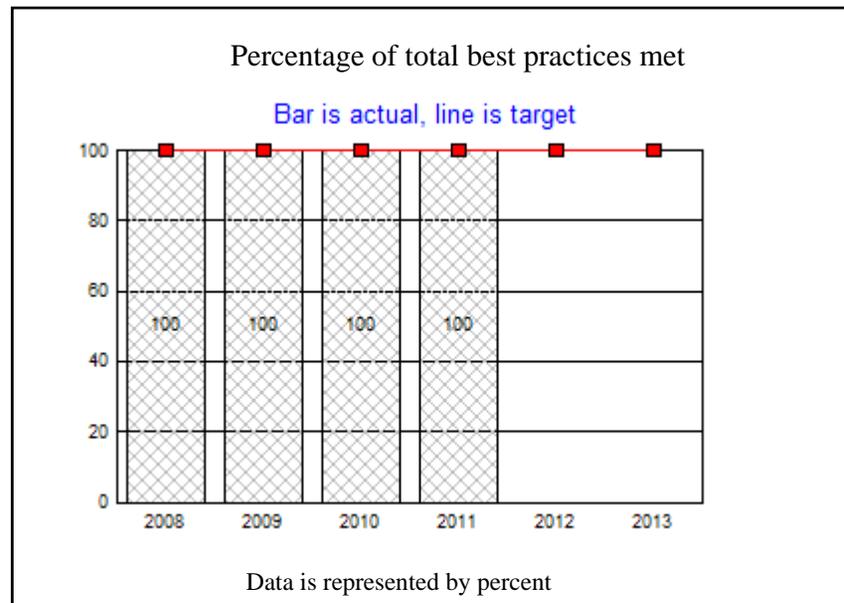
6. WHAT NEEDS TO BE DONE

In the 2008 survey, the agency's lowest satisfaction rating (89%) was in the category of Availability of Information. In order to improve this rating, the agency restructured its website so that information is better organized and easier to locate. The agency is pleased that the 2010 survey results show that 93% of the respondents now rate the Availability of Information as good or excellent. The agency will continue to make improvements in this area.

7. ABOUT THE DATA

A total of 900 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in July 2010 as a snapshot for fiscal year 2010. There was a 37% response rate (332 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in July 2012.

KPM #3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.	2007
Goal	Best practices as a pathway to improved performance and accountability.	
Oregon Context	Required KPM for all Oregon boards and commissions.	
Data Source	Commission agendas and minutes.	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The agency's commission currently follows all of the best practices.

2. ABOUT THE TARGETS

The agency anticipates meeting all of the best practices for boards and commissions.

3. HOW WE ARE DOING

The Commission's minutes provided in the materials for its October 2010 meeting included the self assessment confirming that the agency met all of the best practices for boards and commissions.

4. HOW WE COMPARE

The agency assumes that most boards and commissions will be able to implement all best practices.

5. FACTORS AFFECTING RESULTS

There are no factors that would prohibit the agency from meeting all of the best practices.

6. WHAT NEEDS TO BE DONE

No change is needed.

7. ABOUT THE DATA

The Commission continues to meet all of the best practices as documented in the Commission meeting minutes.

PUBLIC DEFENSE SERVICES COMMISSION	III. USING PERFORMANCE DATA
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Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Contact: Kathryn Aylward	Contact Phone: 503-378-2481
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Alternate: Peter Gartlan	Alternate Phone: 503-378-2371
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The following questions indicate how performance measures and data are used for management and accountability purposes.

<p>1. INCLUSIVITY</p>	<p>* Staff : The agency's Management Team drafted initial performance measures.</p> <p>* Elected Officials: The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. After five years of data collection, it was apparent that some performance measures were not providing useful information and were eliminated by the Legislature during the 2009 session.</p> <p>* Stakeholders: Input was received from the agency's Contractor Advisory Group comprised of public defense service providers.</p> <p>* Citizens: The agency developed, discussed and revised its performance measures during two public meetings.</p>
<p>2 MANAGING FOR RESULTS</p>	<p>The agency's lowest customer service rating in 2008 (89% good or excellent) regarding availability of information caused us to restructure our website so that more information is available and is easier to locate. As a result, the rating for 2010 improved to 93%.</p>
<p>3 STAFF TRAINING</p>	<p>The agency has advised staff of the goals outlined in the performance measures and staff is directly involved in the data collection and/or direct daily implementation of the measures. The performance measures serve as important tools for the agency's managers as they identify and develop necessary staff skills as well as determine the best use of overall resources in order to attain the goals enumerated in the measures.</p>
<p>4 COMMUNICATING RESULTS</p>	<p>* Staff : The Annual Performance Progress Reports are posted on employee bulletin boards. The results and future plans are discussed at staff meetings.</p> <p>* Elected Officials: The agency communicates results to the Legislature through the Executive Director's biennial report to the Legislature, and by the inclusion of the APPR in the Agency Request Budget binder.</p>

	<p>* Stakeholders: Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.</p>
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* **Citizens:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

Attachment 4

Office of Public Defense Services
Recommended 2011-13 Compensation Plan

1. Across-the-Board Salary Adjustments (COLAs)

- 1.5% effective December 1, 2011
- 1.45% effective December 2, 2012

2. Annual Salary (Merit) Increases

Step increases will be frozen from July 1, 2012 through June 30, 2013.

3. Benefit Contribution

- For calendar year 2012, a pretax 3% employee contribution of his/her monthly insurance premium cost will be required.
- For calendar year 2013, a pretax 5% employee contribution of his/her monthly insurance premium cost will be required.
- OPDS will provide a monthly \$30 subsidy for employees with gross monthly salaries under \$3,000.

4. Furlough Days and Office Closures

All OPDS employees will be required to take mandatory furlough days during the 2011-13 biennium. The plan includes:

- 8 days for salary ranges 40 and below (fixed dates)
- 14 days for salary ranges 41 and above (8 fixed dates and 6 variable dates)

Fixed furlough dates as currently planned are:

2012

Friday, March 23, 2012
Friday, May 25, 2012
Friday, August 17, 2012
Friday, October 19, 2012
Friday, November 23, 2012

2013

Friday, January 18, 2013
Friday, April 19, 2013
Friday, May 24, 2013

The office will be closed on fixed furlough dates.