

Members

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



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Friday, October 25, 2013
1:00 p.m. – 4:00 p.m.
Salishan Lodge
7760 Highway 101 North
Gleneden Beach, Oregon 97388

MEETING AGENDA

- | | |
|---|--|
| 1. Action Item: Approval of minutes - PDSC meetings held on September 24, 2013 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Contractor Reports on Management Conference Sessions and Budget Building for 2015-17 | Contract Providers |
| 3. Staff Recommendation to Approve Statewide Contracts (<i>Attachment 2</i>) | Caroline Meyer
Billy Strehlow
Paul Levy |
| 4. Public Comment on Staff Recommended Statewide Contracts | Chair Ellis
Contractor Comments
Bruce Lebowitz & Jon Martz |
| 5. Action Item: Approval of Contracts | Chair Ellis |
| 6. Action Item: Approval of OPDS Organizational Structure (<i>Attachment 3</i>) | Chair Ellis
Nancy Cozine |
| 7. Action Item: Approval of PDSC Biennial Report to the Legislature (<i>Attachment 4</i>) | Chair Ellis
Nancy Cozine |
| 8. PDSC Schedule for 2014 (<i>Attachment 5</i>)
Members | Chair Ellis
Commissioner |
| 9. OPDS Monthly Report | OPDS Staff |

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: December 12, 2013, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Tuesday, September 24, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Per Ramfjord
Janet Stevens
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Paul Levy
Caroline Meyer

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

Agenda Item No. 1 Approval of minutes – PDSC meetings held on July 17 and July 31, 2013

Chair Ellis welcomed everyone to the meeting and asked for any additions or corrections to the minutes from July 17th meeting in Astoria.

MOTION: Commissioner Potter moved to approve the minutes; Commissioner Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Chair Ellis asked for any additions or corrections to the minutes from July 31.

MOTION: Commissioner Potter moved to approve the minutes; Vice-Chair McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Agenda Item No. 2 Annual Performance Progress Report and Discussion of Key Performance Measures

Nancy Cozine provided a summary of the agency's performance on its three key performance measures (KPM). The first measures the median number of days for filing the opening brief in the appellate division. The second measures the percent of consumers rating satisfaction with the agency's customer service as good or excellent. The third measures the extent to which the Commission complies with best practices for boards and commissions. Ms. Cozine

began by calling the Commission's attention to page five of the report, where the median number of days for filing is at 223 days, a significant improvement from 2006, when the number of days was at 328. Ms. Cozine noted that the agency anticipates that it will potentially reach the goal in 2014. Chair Ellis asked why the agency would reach the goal next year if it has been constant during the last four years. Ms. Cozine explained that through the organizational restructure, they are hoping to capture efficiencies and increase production. Chair Ellis asked whether that was a hope or an expectation. Ms. Cozine read the language in the KPM report, saying that the agency expects to approach or meet the goal in 2014, but also reminded the Chair that there is a budget note requiring the agency to examine its key performance measures and report back to the Legislature in February 2014. She explained that the Appellate Division needs to consider whether the current goal should be adjusted. Chair Ellis asked about delay due to preparation of the transcript. Mr. Gartlan indicated that by statute, the transcript must be completed within 30 days, but that extensions can be granted. He also noted that the speed of the transcript production and the quality of the product is something that the agency tracks. He explained that years ago it took 400 or more days before filing of the brief, but also explained that the internal goal is 180 days, and that the division is not satisfied with 223 days. Mr. Gartlan further explained that in 2001 or 2002, the appellate division was filing about 300 to 325 merit briefs a year, and is now filing about 700 merit briefs per year.

Chair Ellis asked whether anything could be done to ensure that each time a new case comes in, the lawyer starts work on it that same day, so that the delay could be reduced to around 160 days. Mr. Gartlan indicated that it was a question of attorney power, and that it would take more attorneys to reduce the median days to filing to as low as 160 days. Mr. Gartlan also explained that the current measure includes Balfour briefs, which take additional time due to 35 days dedicated to client review. He noted that if the measure included only merit briefs, the median filing date would be close to 213 days.

Ms. Cozine said that OPDS staff would be examining the key performance measures and coming to the Commission's December meeting with recommendations. Commissioner Ramfjord expressed support for a review of the agency's key performance measures. Commissioner Potter indicated that he would be interested in hearing about what is done in other states, to the degree that there are parallels. Mr. Gartlan responded that this would require research, but that there has been focus on the time at which federal courts get involved. He explained that if, as a rule, a state appellate system is taking two years or more to resolve of its cases, then the federal courts take action. Commissioner Ramfjord noted that Oregon appellate caseloads significantly exceed national averages, suggesting that this would have an effect on the time required for filing the brief. Chair Ellis asked whether the office treated cases differently when the client is in custody. Mr. Gartlan responded that they follow a first in first out rule and that though there are some exceptions, in-custody cases are not treated differently as a rule.

Chair Ellis asked that the agency mission be amended to include language about providing services that are consistent with nation standards of justice when the KPMs are revised.

Agenda Item No. 3

October Conferences

Nancy Cozine provided an overview of the Juvenile Law Training Academy, which was started by Ingrid Swenson. She described the conference as a collaborative effort, including district attorneys, the Department of Justice, DHS, the Juvenile Court Improvement Program, CASAs, the U of O Law School, and Youths, Rights & Justice. She explained that while it was originally created to provide information on the basics of juvenile dependency practice for newer lawyers, it does include topics that are also intended for more experienced attorneys. OPDS and DOJ provide an appellate case update that covers new opinions and issues that they anticipate the court will be interested in hearing. This year, DHS will provide information on their Differential Response Program, which will require the agency to work

with families before filing a petition, to try to ameliorate the needs for juvenile court intervention. There will also be a legislative update, and a presentation by Joanne Moore, from the Washington State Parent Representation Program. Ms. Cozine reminded Commission members that in Washington there was a 25% reduction in number of dependency petitions that were filed and that 40% of the reduction was attributed to the Parent Representation Program. She also noted that the PDSC was given \$2.4 million during the last legislative cycle to launch an Oregon pilot program. Also on the agenda will be discussion of *Adopted Couple v. Baby Girl*, a recent Supreme Court case in which the court took jurisdiction over a Native American child, the father contested the jurisdiction, and the Supreme Court ultimately gave custody to the adoptive couple. She noted that the case is receiving a lot of attention, and that it is a very important case for practitioners to understand. Ms. Cozine described the last two components of the conference: using the evidence code in juvenile proceedings, and a presentation by Dr. Carl Hart, from Columbia University, who will share information about drug use and the impact on parents and on parenting. She concluded by expressing appreciation for the Juvenile Court Improvement Program's \$5,000 grant, and the Oregon State Bar Juvenile Law Section's \$1500 grant, both of which help defray costs and make the conference affordable for practitioners.

Commissioner Potter provided an overview of the management conference, noting that this particular conference is taking a slightly different format than in the past. OCDLA will have facilitators there to guide discussions with provider groups. Providers will be divided into groups of public defenders, private contractors, and the consortium administrators. Providers will discuss future planning, securing funds, and the direction of public defense in the future. While providers have had these discussions in the past, this is the first time it has been such a discrete focus with professional facilitators to help with the exercise. The facilitators will help the groups come up with a list of things that could be considered for incorporation into policy option packages that are developed by OPDS and the Commission. There will also be lots of nuts and bolts types of topics to help people currently manage their contracts. Commission members are welcome to attend.

Ms. Cozine added that Rosa Peralta, Director of Research from the NLADA, will be speaking at the Management Conference, and explained that Ms. Peralta heads up the research and data advisory committee that will be meeting in D.C. on October 15. Ms. Cozine suggested that Ms. Peralta will have information about what is happening on the national level, in terms of data collection and measuring performance.

Lane Borg added that in early September, he attended a formative meeting in Dayton, Ohio, of an organization called, "The National Association for Public Defense." The group is comprised of individuals who have become frustrated with NLADA's focus on legal aid, and NACDL's fairly narrow criminal law focus. The new group would focus specifically on Sixth Amendment issues; the right to counsel. The group is talking about how public defenders can define quality, and demonstrate what data is showing in terms of quality of services. Vice-Commissioner McCrea asked whether this group would include federal representatives as well. Mr. Borg indicated that federal practitioners would be included, but that there were very few at the organizational meeting.

Agenda Item No. 4

Clatsop County Peer Review – Final Report

Paul Levy summarized the final version of the Clatsop County Peer Review report, explaining that it includes the comments and directives of the Commission. He noted that OPDS would be working on the issue of waiver of counsel in that county, and with the providers and others in the county to get defense lawyers involved with the EDP program. He commented on Mr. Kaino's very appropriate response to the report, and said that OPDS would continue to monitor progress in the County. Chair Ellis expressed his hope that Chief Justice Balmer would focus on the waiver of counsel issue. Ms. Cozine explained that she met with Chief

Justice Balmer and that he is considering the matter, and might have juvenile judges address it at the Judicial Conference in October.

Commissioner Potter expressed his desire to have the new peer review “hybrid” process end with a final report that is adopted by the Commission. Ms. Cozine explained that with Clatsop County as the first attempt, there is still room in the future for service delivery review following the peer review. She suggested that with the Marion County follow-up next year, December might be the right time for Commission members to discuss the process, and how they would like it to proceed.

Agenda Item No. 5

Approval of 2013-15 Compensation Plan

Ms. Cozine summarized compensation plan increases being implemented for Executive Branch and Judicial Department employees, and asked the Commission to approve the proposed compensation plan for OPDS employees. She also asked the Commission to approve an OPDS compensation plan that includes new positions, so that as the agency moves through the restructure process, there are classifications for new employees and reclassified employees who are taking on new responsibilities. She then listed each of the new classifications, noting that they hope to have a finalized new structure by the end of October.

Chair Ellis summarized the key additions as human resources, information technology, and budget and finance. Commissioner Potter noted that in the new model, there are six people reporting to the Executive Director, rather than three, and asked whether that is a concern. Ms. Cozine replied that when the number of direct reports increases from three to six, it is an increased workload. She went on to explain that while there is an increased workload there, there are other responsibilities that will shift away. She noted that when Peter Ozanne started, the critical work that had to get done was getting out to each county, getting to know every single contractor, and designing the structured quality assurance programs - peer and service delivery reviews. Ten years later, and contract analysts are very knowledgeable about their counties, and taking a more active role with those providers and the justice systems in their counties. Ms. Cozine explained that she sees her role as making sure that each person in a leadership position is working in a coordinated way to meet the missions, values, goals, and objectives of the PDSC. Ms. Cozine went on to explain that with different people in charge of IT, HR, contracting, or budget development, the priority projects can be driven by the leaders in those areas, and won't get stuck in a long list of priorities that must all be driven by one person. Chair Ellis asked about the role of Deputy General Counsel. Ms. Cozine reviewed the responsibilities of General Counsel, and the vision for expanding upon those responsibilities, concluding with her concern that if the Deputy General Counsel position is not built into the structure, General Counsel will have far more work than he can possibly manage. Commissioner Ramfjord asked whether the IT Director would be performing typical IT work. Ms. Cozine described the first priorities as documentation of existing databases and upgrading to get everyone in the office onto the same operating systems and software versions, followed by an analysis of current systems and whether it would be advisable to migrate that data to new programs, and possible data collection and research development.

Chair Ellis asked whether the new positions were covered by the existing budget. Ms. Cozine explained that the new positions can be funded within the existing budget. Chair Ellis expressed support for the new structure, as did other Commission members. Commissioner Potter suggested that it might be wise to have the Commission approve the reorganization. Ms. Cozine welcomed the Commission's approval and indicated that, since the plan is still in the “comment” phase, she would add approval of the plan to the Commission's October agenda.

Commissioner Ramfjord asked about the extra .5% in the first COLA. Ms. Cozine explained that it is one small effort that the office can afford at this point. She indicated that OPDS lawyers are still about 14% difference from the top step at DOJ, and that the office would

continue to look for opportunities to reduce the disparity. She said that they might be able to make further improvements in the spring, through step adjustments, if current staffing doesn't change significantly, and that those changes could reduce the disparity closer to 10%.

MOTION: Commissioner Ramfjord moved to approve the compensation plan; Commissioner Potter seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Agenda Item No. 6

OPDS Monthly Report

Mr. Gartlan updated the Commission on work being done in the Appellate Division, and summarized cases that were argued to the Supreme Court the previous week, and one juvenile case that is being briefed for Supreme Court review.

Ms. Cozine introduced Cynthia Gregory, OPDS's new Human Resources Manager, and Angelique Bowers, who has been serving as the Budget Manager.

Ms. Cozine also gave an update on appointments to the Juvenile Dependency Task Force, which will meet in late October or early November. She also reminded Commission members that she would be going to Washington DC on October 15th to participate in the NLADA research and data advisory committee.

Mr. Levy concluded by reminding Commission members that when OPDS undertook a review of five death penalty providers in 2012, it did so with the promise that other death penalty providers would also be reviewed. He explained that as part of the certification process necessary for the granting of a death penalty contract, all providers were required to submit the materials that were required of the five during the earlier review. The new certification process was modeled after something developed in Louisiana and recommended by Matt Rubenstein and reviewed by the OPDS death penalty peer panel. He noted that while there was some grumbling, overall the process worked well and revealed that there is an excellent pool of qualified providers.

Agenda Item No. 7

Executive Session – Commission Review of Contracting Plan for Capital Contracts

Chair Ellis provided the following advisory:

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 cases beginning on January 1, 2014. 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.

Following executive session, the meeting was again opened to the public and Chair Ellis requested a motion to adjourn.

MOTION: Vice-Chair McCrea moved to adjourn the meeting; Commissioner Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Tuesday, September 24, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Per Ramfjord
Janet Stevens
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Peter Gartlan
Paul Levy
Caroline Meyer

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

Agenda Item No. 1 Approval of minutes – PDSC meetings held on July 17 and July 31, 2013

0:11 Chair Ellis Welcome everyone. Thank you for coming. Thank you for your attendance. The first item is the minutes from July 17, which was the meeting in Astoria. Are there any additions or corrections? If not, I would entertain a motion to approve the minutes.

MOTION: John Potter moved to approve the minutes; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

0:35 Chair Ellis The second is the minutes from July 31. Are there any additions or corrections to those minutes?

0:43 Hon. Elizabeth Welch I just want to say, Mr. Chairman, on page 15 – I think I am in the right set here. Never mind. That is the first set and it is not important anyway.

0:59 Chair Ellis Hearing none I would entertain a motion to approve those minutes.

MOTION: John Potter moved to approve the minutes; Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

1:14 Hon. Elizabeth Welch I apologize. I had to stop and take a nap.

1:19 Chair Ellis Rather you be safe.

1:19 Hon. Elizabeth Welch It was going to be a question.

Agenda Item No. 2 Annual Performance Progress Report and Discussion of Key Performance Measures

1:23 Chair Ellis Item No 2 is the Annual Performance Progress Report and Key Performance Measure, Attachment 3. Nancy, do you want to lead on that?

1:35 N. Cozine Yes. Good morning Commission members, Chair Ellis, you have probably all, I think, seen our annual performance progress report perhaps but for Commissioner Ramfjord. I was trying to recall – I think this might be the first time you have seen it. This Commission has three key performance measures. The first one measures the median number of days for filing the opening brief in the appellate division. The second one measures the percent of consumers rating satisfaction of the agency’s customer service as good or excellent. The third is that the Commission complies with best practices for boards and commissions. Our results this year were remarkably similar to last years. You will note on page five that the median number of days for filing is at 223 days. That is a significant improvement from 2006, when the number of days was at 328. The agency anticipates that it will potentially reach the goal in 2014.

2:44 Chair Ellis What makes us think we can reach that goal this year when the last four years have been constant?

2:55 N. Cozine Pretty static. We are hoping that with the additional increases in agency efficiency that we are hoping to capture this next year that we will actually be able to reach the goal.

3:04 Chair Ellis Is that a hope or an expectation?

3:10 N. Cozine I think the way we phrased it in this report was that we would be continuing to approach or reach it. So I think we will continue to make progress. I think one question that we need to get to is whether or not we want to continue this as a key performance measure. Are we so close to meeting it at this point that we want to make an adjustment and that is a conversation that needs to happen before February of 2014? You may recall that we have a budget note asking us to look at our key performance measures. So that is a discussion that the appellate division will need to be having to determine whether or not since we are very close we want to wait until we actually meet it before we make an adjustment, or do we want to reexamine our current processes and determine whether or not there is something that be a more important measure.

4:04 Chair Ellis That median number of days is measured from receipt of the final transcript to the filing of the brief?

4:13 N. Cozine It is.

4:13 Chair Ellis So when we look at the data and it says 220 something days, in terms of the pace of the appellate process you have to add probably several months for the transcript preparation.

4:35 N. Cozine Right.

4:35 Chair Ellis I don't feel great about that. That makes it pushing most of a full year between judgment and opening brief. If you are the guy sitting in a cell somewhere that is a long, long time.

4:53 N. Cozine That is. Mr. Gartlan may actually want to weigh in on this conversation.

5:02 P. Gartlan Mr. Chair, members of the Commission. I agree. I am not happy with that either. By the way it is 30 days for the production of the transcript by statute. So if the transcriptionist asks for an extension there will more extensions, but my statute it should be 30 days. Preparation on transcript is usually dependent upon the length of the trial, the length of the proceedings that is being transcribed, and what the workload is for the individual transcriptionist. This is an issue that has been our radar now for the last couple of months. That is the speed of the transcript production and the quality of it. That is just a side note. Back to the 223 days, we are not satisfied with that either. Internally we have a mark of 180 days. That is our goal. That is our internal goal. Now maybe I am weighted by the past. In the past I remember the times when we were filing briefs at 400 plus days. We were just buried. We have made historical progress. Are we satisfied with 223 days? No. We are not.

6:23 Chair Ellis How does our time of brief preparation filing compare with the AG time on the answering?

6:31 P. Gartlan Right now the AG is typically filing a little bit sooner than we are. Theirs are now in the 200 and teens in response to ours. I really do want to give you a historical picture. Our office was inundated with Measure 11 back in 1995 and it really does go back this far. So in 1995 was when there were more appeals and our office was inundated with them. The backlog was in our office until the Commission went and asked the legislature for more positions in this office. Once we got more positions we started cutting into the backlog until where we are today. When the backlog moved from us it moved to the attorney general's office back in early 2000. The attorney general went to the legislature and received more positions. Now that backlog is in the Court of Appeals. The Court of Appeals currently takes about six to eight months to set the case after a case is completely briefed.

7:42 Chair Ellis So it is the peristalsis.

7:46 P. Gartlan Right. It is moving through the system.

7:48 Chair Ellis The pig in a python.

7:50 P. Gartlan Exactly. I can tell you back in about 2001 or 2002, our office was filing what I would call merit briefs like briefs that raise issues in about 300 to 325 cases a year. That is now up to 700 cases a year, which is why we are kind of the cause for the backlog in the Court of Appeals. We are the primary cause for the Court of Appeals going to the legislature to get a fourth panel. The legislature funded that fourth panel and the Court of Appeals will have a fourth panel. It won't be up and running until December of this year. I have met with Chief Judge Haselton and he says that from December through June the Court of Appeals is going to be hearing 80 cases a month from this office. Currently the Court of Appeals has three dockets of 20 cases a month from this office. That is 60 cases. That fourth panel is also going to be hearing 20 cases. That is going to 80 cases a month. That will cut into the backlog at the rate of the extra 20 cases per month. Like I said it is taking six to eight months for the Court of Appeals to docket the criminal cases that are coming out of this office.

9:30 Chair Ellis I probably have an oversimplified belief. What I am about to describe you may correct. My guess is that our average appellate lawyer has briefs going on. The new case comes in and sits there for 30 to 40 days while they finish the briefs they were working on and then they pick it up. If that model is accurate, then isn't this one of things that if we could just get it going so that when that new case comes in they pick it up that same day, we could be down at 160 or something days. I do recognize that the appellate practice does take time. But isn't

there some way we can crack that nut and get it down? Once you get it down then everything will go for that.

- 10:33 Chair Ellis I agree. It is a question of attorney power. What are your resources and cases do sit on an attorney's tallies, on their workload, until they can get to it. We do transfer cases within the office so that cases aren't sitting on one attorney's caseload for 200 plus days. We do transfer cases around. All I can say is this is what this office is currently doing and probably capable of doing given the attorneys. I agree if we had more attorneys we could do more.
- 11:20 Chair Ellis I remember the days when each year you would come in and 2007 was 20% reduction from 2006, and 2008 was....and now we are finally doing it. So what did we do in those years where the lapse time declined to get that decline, and why can't we do it more?
- 11:50 P. Gartlan We added more attorneys. How can we get more? I remember back in 2002 – 2003, we were filing about 300 to 325 merit briefs a year. We are now filing around 700 merit briefs a year. That is more than double than we use to file. Perhaps one consequence of having more attorneys is that – and I think it is a beneficial consequence, is that we are filing more merit briefs and less *Balfour* or non-meritorious briefs. I was very uncomfortable with the *Balfour* rate 10 years ago, exceptionally uncomfortable, because the system was broken. The appellate system was broken. Our office, I think, was in a very dangerous spot with respect to what the *Balfour* rate was. The *Balfour* rate was pushing 50%. Not a place we want to be.
- 13:17 Hon. Elizabeth Welch What is it now?
- 13:17 P. Gartlan About 20 to 25%.
- 13:20 Hon. Elizabeth Welch That is an accomplishment in itself.
- 13:21 Chair Ellis Then my next question is it says here that the bar is actual but the line is target. The line just seems flat going out to 14. Is that really the best we can say in terms of our target?
- 13:41 N. Cozine I think that is the discussion moving forward is whether or not we want to change that bar.
- 13:50 Chair Ellis Or that line.
- 13:52 P. Gartlan Yes. That was the target. That is why it is static. That is where we have been trying to get to. Again, for me it is historical. As for quality, I think the quality is very good. The quality is there. That is the report that I get back from all the judges.
- 14:19 Chair Ellis If I were a legislator and I were looking at this KPM and I saw static performance and static target, I would be critical.
- 14:33 N. Cozine And February will be our opportunity to address the legislature to talk about whether or not this KPM needs to change. Just to lay it out I don't want to move us ahead of the appellate conversation, but I will jump to my concluding remarks which I think are that as this agency moves through its current restructuring, and I will have some information on that later in the meeting when we talk about the compensation plan. We intend to have smaller work units that are focused within specific work areas. So budget, contracting, appellate, and each of our work units will actually be analyzing the KPMs as they exist now and analyzing whether or not they need to change as it relates to the work that they are doing and whether or not they are still appropriate. I would like the product of those conversations to this Commission at our December meeting. The Commission can then have a conversation after hearing from the recommendations from the people who do this work day in and day out about what needs to be adjusted and whether or not we need to add or completely change any of our KPMs.

15:55 P. Ramfjord I would support that. I think looking at this data as a relative newcomer, I think it is very impressive the changes that were made early on. I think the fact that you have come within about 5% of your goal year in and year out shows that you have essentially come very close to meeting the goal. That begs the question of whether the goal itself is an appropriate one or whether the goal should be modified, as the Chair has suggested, to try to improve it beyond what we have right now. It also opens the door to the question or whether or not having largely met this goal, are there other goals that would be more appropriate that we could invest time and effort into at this point in time. I think that kind of a revisiting of the goals would be a great thing to do.

16:40 P. Gartlan Could I add one other comment. We would like to change how this goal is defined. This goal reflects the brief filing date. Right now it includes the *Balfour* brief. The *Balfour* brief ...

16:58 Chair Ellis Which would reduce the average substantially.

17:00 P. Gartlan Exactly. The *Balfour* brief is filed approximately 35 days after the attorney has made the decision that this is a *Balfour* case and sent out the letter to the client and is awaiting the client's response, if any, so you would take out 20 to 25 percent of ...

17:20 Chair Ellis If we were to look at a graph that had merit briefs and not all briefs the bar would go way up.

17:35 P. Gartlan The brief filing date would come down. The median filing date. I forget exactly but I think it was around 213 days or so. So in other words right now if we are filing at 223 according to this ...

17:53 Chair Ellis But that is a blended average of *Balfour* and merit.

17:56 P. Gartlan Right. If you take the *Balfour* cases out we are really filing the merit briefs at about 213 days.

18:07 Chair Ellis I don't understand.

18:08 P. Gartlan The *Balfour* briefs are filed later in time than the merit briefs. So if I have two cases and one is a merit ...

18:18 Chair Ellis Okay. I assumed just the opposite.

18:25 P. Gartlan If I have a merit brief and I have written it then I file it. If I have a *Balfour* brief and I have decided it is *Balfour*. Now I have written the client and I am waiting 35 days for the client to respond. When that 35 days elapses, then I can file a brief. That is pushing up the brief filing date. Does that make sense? If I am at 200 days and I have read two cases. I file a merit a brief at day 200. At day 200 in a *Balfour* brief, I have decided it is *Balfour*. I now write the client and explain to the client our analysis of the case. Now we wait 35 days for the client to respond to us if the client wants to file the client's part B *Balfour* brief. At that time then I can file a *Balfour* brief. So two cases and I have resolved them on the same day. This case gets filed at day 200. This brief gets filed at day 235.

19:34 Chair Ellis Now that you tell me that. That is counter intuitive to me.

19:40 J. Potter It is only counter intuitive to me in that it would seem like you would decide a merit less case earlier than a merit case.

19:49 P. Gartlan Right. We count cases by the resolution date is when we file it at the Court of Appeals. So we are not filing at the Court of Appeals. In a merit brief the clock stops at day 200. When we file a *Balfour* brief the clock is stopping at day 235, because that is when we file the brief.

20:07 Chair Ellis Do you have any management tools you use as incentive to the lawyers to make these filings sooner?

20:21 P. Gartlan Whips.

20:24 G. Hazarabedian Some of us would like to hear how that is implemented.

20:28 P. Gartlan Incentives? Promotions. We can't give bonuses. We can promote people. So production is an aspect of promotion. We are not going to promote somebody until that person has demonstrated that they can handle the work at the Deputy I level.

20:46 Chair Ellis Within the culture of the AD, do people feel proud and recognized if they are timely?

20:59 S. McCrea They don't get whipped.

21:00 P. Gartlan They don't get whipped. Historically, yes. They are probably most proud of the quality. Do we recognize or honor those people who are filing more? It is so hard. What is difficult about this is what is more important production or quality? For us it is quality.

21:29 Chair Ellis I understand that.

21:29 N. Cozine If I could chime in. There are explicitly stated production goals for each attorney types. So deputy I, deputy II, and seniors. They all have a production range. The expectation is very well defined and it is consistently measured and the attorneys are reviewed based upon that production performance as well as the quality. So there is some incentive in that attorneys really strive to meet those targets and produce a quality product.

22:03 Chair Ellis What is the significance of the year 2009 in the upper right corner? It is a different year on some of the other KPMs.

22:20 P. Gartlan I believe 2009 was the year when the legislature past the statute that affected release dates and it created a wave of cases for us. I can't remember the name of the enactment. Senate Bill 3508. For awhile we had a bump, we had a wave of cases that were challenging release dates. Then the Court of Appeals and the Supreme Court ultimately held that it was not appealable.

23:06 Chair Ellis So it reduced your volume.

23:07 P. Gartlan So that class of cases went away.

23:09 Chair Ellis Any other questions?

23:15 J. Potter We are obviously going to discuss more probably in December. We had picked this goal, this 210, through some process. I have heard you say that your internal goal is really 180 days. We will discuss whether or not that makes any sense, but for some background, for me at least, I would like to know where we stand within the sphere of other states to the degree that there are parallels that you can draw. Everybody counts things differently.

23:49 P. Gartlan I would have to do research on that. For me the big picture has been when do federal courts get involved? When is the appellate process as a system so slow that the Federal Appellate Courts get interested and step in? The rule has been two years. So if as a rule a state appellate system is taking two years or more to resolve of its cases, then the federal courts will step and say there is a problem here.

24:28 Chair Ellis That is the whole resolution process.

24:33 P. Gartlan Correct.

24:33 P. Ramfjord It is notable, though, that in the information that we were provided that the caseloads here significantly exceed national averages which would have an effect, presumably, on the time limit that we file. So if you have a caseload that is far above the average you would be slower than the average.

25:00 Hon. Elizabeth Welch If you know what would be a comparable number to that federal amount?

25:15 P. Gartlan Where is Oregon?

25:17 Hon. Elizabeth Welch Yes.

25:17 P. Gartlan I have watched it. We have always been around two years. It is interesting because first this office was creating the backlog. If you look at this it is say eight months for us. Then the state is taking seven months let's say, so that is 15 months. Then the court sets it on its docket six to eight months, so now we are at 21 to 23 months. Most of the cases are resolved by AWOP. A federal court looking at that would say that systemically Oregon is within the two year rule.

26:02 Chair Ellis What percentage of the clients, and I am guessing that it is quite high, are incarcerated pending appeal?

26:10 P. Gartlan I don't know the answer to that. Most of the misdemeanor clients would not be.

26:16 Chair Ellis Would I be right in assuming there is no culture that says a client that is not incarcerated it is fine to go slow because they kind of like that?

26:30 P. Gartlan No. We follow the first in first out rule. We will make exceptions but the general rule is first in first out.

26:45 Chair Ellis Did you have more you wanted to say on this or others?

26:47 N. Cozine No. We are meeting on the other two. You may have noticed page 8 and page 11, that we are meeting those targets. So it is time to take a look at whether or not these are the best KPMs for the agency.

27:03 Chair Ellis One thing I noticed would you change the agency mission to include the language in our statute about consistent with national standards of justice. This short hand that appears on page 3 and appears later on page 13, only emphasizes the costs and we have always balanced that with the consistent good quality. Then my memory is that the legislative note wanted us to craft a KPM that uses the magic word "impact."

27:54 N. Cozine I will have to look back at the language of it. I am not sure that it did.

27:58 Chair Ellis I thought it did and I thought we were going to go down the track of trying to fashion ways of measuring impact. I remember expressing the view it is a great word to say. It is a hard word to apply. Are we working on that?

28:20 N. Cozine We will be. It is our plan.

28:24 Chair Ellis And there is a typo on page 7. The first line the word "significant" probably needs to be cleaned up. Any other comments on the key performance measure issue?

28:55 J. Potter It looks like the board really can't do any better.

28:59 Chair Ellis Yes. We are perfect. What is the matter with you guys? Anything else? That is not an action item as such.

29:17 N. Cozine It is not an action item. We submit the APPR to the legislature at the end of July every year. So it is the perfect time to have the conversation especially in light of the budget note that we have. I felt it was a good opportunity to start the conversation about where we are currently, and I think we have had a very nice conversation about that and you understand probably exactly what the legislature was looking at when they put in that budget note to take a look at them and determine whether it is time to revise them. I think we have a good understanding and December should be a very fruitful conversation.

29:59 Hon. Elizabeth Welch I have a concern about this customer area. I thought customers meant people whose cases were being handled. I was surprised to find out that it was basically lawyers. There is nothing the matter with that but I wonder if that is what the legislature thinks they asked for.

30:23 N. Cozine Well because it is a measure of what has been called CBS, Contract and Business Services, the customers of that division really are the lawyers, versus the appellate division where the customers would be the client. So I think the legislature has been clear on that. The one of the things that this agency has provided itself on is the fact that it can retain lawyers and experts in these case types despite the lower pay by ensuring that the timeliness and the quality of services are very high.

31:05 Chair Ellis Okay.

Agenda Item No. 3 October Conferences

31:05 Chair Ellis Item 3 – October Conferences.

31:12 N. Cozine So I provided the agenda for both of the October conferences. Every year we have had these two conferences and I am not sure how much the Commission has discussed them in the past, but it seemed this year appropriate to discuss each of them and what is planned. Commissioner Potter, I don't know if you want to take the lead in setting forth your perspective on them, or if you want me to give an overview?

31:45 J. Potter I would like you to give an overview of the juvenile law training. I am happy to talk about the public management one.

31:51 N. Cozine Wonderful. So Juvenile Law Training Academy is something that was started by Ingrid Swenson years ago. This is the conference that is a collaborative effort. We involve in the planning committee district attorneys, Department of Justice, DHS, the Juvenile Court Improvement Program, CASAs, and I am missing someone.

32:23 J. Potter The U of O Law School.

32:21 N. Cozine Thank you. The U of O Law School and Youths, Rights & Justice. What is remarkable about this conference is that it really does bring together everyone, not just in the planning, but at the conference itself. It tends to have a fairly high rate of attendance. It was originally was geared towards providing sort of the basics of juvenile dependency practice for newer lawyers. Over time it has morphed and it includes topics that are also intended for a more experienced attorney. Our appellate lawyers and DOJ's appellate lawyers every year put on the appellate case perspectives. New cases that are coming up and cases that they anticipate the court will be interested in hearing in upcoming years. That is very, very well received by both prosecutors and defense lawyers in this area. DHS differential response is also on the agenda this year. They are implementing a new program where they will work with families

before filing a petition to try to ameliorate the needs for juvenile court jurisdiction. It is anticipated that we will have something of a dramatic effect on the cases that eventually are filed, because the cases will have had a lengthy history of voluntary involvement with the agency before the petition is filed, but we don't know enough about it yet as practitioners. They haven't started the first pilot program, so that is also on the agenda. A legislative update is planned and one of the things that I am most interested in, on day two, is hearing from Joanne Moore from the Washington State Parent Representation Program. This is the same organization that presented during our budget hearings. They were able to achieve in Washington, and I think it was a 25% reduction in number of dependency petitions that were filed in the State of Washington, and 40% of that reduction was attributed to this program where lawyers are not allowed to handle more than 80 cases per attorney and their contact with client is actually measured. They are required to have regular contact and they have quarterly meetings with the Office of Public Defense Services in Washington to demonstrate that they are meeting all the expectations for the program. So this is something that we intend to implement here with the \$2.4 million dollars that was granted by the legislature to OPDS during this last legislative cycle. So it will be nice for our practitioners and for district attorneys in the Department of Justice program before we launch our own pilot program. We will also be hearing about *Adopted Couple v. Baby Girl*. This is a Supreme Court case in which the Native American father – the court took jurisdiction over a Native American child. The father contested the jurisdiction and ultimately the Supreme Court decided that the adoptive couple would have custody of the child. It has been a much discussed case; in fact they were discussing it on NPR this morning. It is a really important case for all of our practitioners to hear. Then we will conclude with using evidence in juvenile proceedings and a discussion from Dr. Carl Hart. He is from Columbia University and he talks about drug use and the impact on parents and on parenting. He actually presented at the ABA conference for parent lawyers. We anticipate that it will be a very interesting presentation. So I wanted all of you to have that information. This is something that the Juvenile Court Improvement Program, every year, gives us \$5,000 to help defray the costs. It makes it affordable for our practitioners. It is also one that the Oregon State Bar Juvenile Law Section, provides a \$1500 grant to help defray the costs. So, it is an important conference and we are really hoping for a good turnout this year.

36:47 P. Levy

Can I add that, as in the past, Nancy has been the one who spearheaded the planning as Ingrid did before her.

36:55 N. Cozine

It is a pleasure. So the management conference.

37:00 J. Potter

The management conference. We have discussed this management conference before in general terms, but this particular one is taking a slightly different format than we have done in the past. We have hired professional facilitators to help us with this. Nancy had talked to Peter Ozanne about recommendations and found a firm that we have hired that will facilitate some of the discussion. It is the whole notion of future planning and how we want to approach public defense and the securing of funds and the direction of public defense in the future. We have had these discussions and sort of oblique terms in the past. I think it is safe to say that this is the first time we have really focused on it and brought in some outside people to help us with the exercise of doing that. Artie Trost will speak about building for the next decade and talk about it in a general session. Then on the second day we will have break outs that will focus on the three types of providers, breaking the providers between the public defenders, the private contractors, and the consortium groups. They have slightly different needs and different perspectives on what is needed and what their funding needs are and what the pressures are on them as providers. The facilitators will have had pre-schooling on these groups and will help those groups come up with a list of things that then can possibly be incorporated into the policy option packages that are developed by OPDS and this Commission. So we are hoping to come out with something concrete from this meeting. It is one of those that the way that the budget process is being scheduled that it seems like a long way away to be talking about 2015-17, but we are going to be talking about it in four weeks.

Getting people into that mindset might be a little difficult at first, but if preliminary numbers are any indication the attendance is going to be very strong at this program. I think the folks are getting the message that it is important to be there. We will also have lots of nuts and bolts types of topics to help people currently manage their contracts but the planning process will be slightly different.

- 39:36 G. Hazarabedian I have a question. According to the PDSC website, your Commission is scheduled to meet before that conference ends.
- 39:47 Chair Ellis I thought it is after.
- 39:48 J. Potter That would be an error. The Commission meeting would start at 12:30 on Friday after the Friday session.
- 40:00 Chair Ellis This has us starting at 1:00.
- 40:02 J. Potter Even later.
- 40:07 Chair Ellis Our session may be fairly lively. This groups will come out having met with each other and will probably have some thoughts they want to share.
- 40:18 G. Hazarabedian Somehow when I originally read things it looked like there was a conflict for those of us who wanted to attend both.
- 40:22 J. Potter It appears to be if you were looking at the agenda for today, may be at the bottom of the agenda when it said the next meeting, it is listed as 10:00 a.m. to 2:00 p.m. That should be 1:00 p.m. to 3:00 or 4:00.
- 40:43 N. Cozine I apologize.
- 40:46 J. Potter Good eye.
- 40:51 L. Borg If I could ask a question of Commissioner Potter. This is really future planning but we talked at the OCDLA board retreat about in 2015 moving the management conference. This might be a good time to get in people's mind what would be a good time.
- 41:11 J. Potter That is right. We did talk about that at the board retreat. My recollection was that there is no good time better than the time that we now have. By starting this process earlier than we normally do, the legislature keeps bumping their time frames around, so rather than chasing that just leaving it there. It is subject to revisiting again if we want to try to bump it. We had talked about moving it into an April timeslot or a May timeslot. Every date that we picked there is some conflict.
- 41:45 L. Borg And there is also discussion since it is more mandatory, of trying to change from the notion of being all over the state to being in a more central location so that it is more affordable for contractors.
- 42:06 Chair Ellis Okay. Anything else on October?
- 42:09 N. Cozine I think it is worth highlighting in talking with Commissioner Potter about this, this is something that if commission members want to go, I think there is an opportunity for participation. As a commission member you can attend.
- 42:30 J. Potter Are you trying to say free?
- 42:34 N. Cozine Yes.

- 42:35 J. Potter I think it would be a good thing if commission members could go. I think the whole conference would be of value, but in particular it might be interesting for commission members to sit in on some of the facilitative group discussions on the second day.
- 42:57 N. Cozine One of the things this Commission had mentioned at the least meeting was an inquiry about what was happening at the national level, and we were able to get Rosa Peralta, Director of Research from the NLADA. She heads up that research and data advisory committee that I am on and that will be meeting in D.C. on October 15. She can tell us a lot about what is happening on the national level in terms of data collection and measuring performance. That will be a very good presentation for us to hear. Then Lane Borg and Alex Bassos are presenting, I believe, on the data efforts being made at MPD. So some really nice tying together of efforts being made at the national level and here in Oregon and Lane may wish to address the Commission, not that I want to put you on the spot, about some of the conversations he has recently about data being used at the national level. I think it is interesting. This does seem to be sort of the next wave at the national level in terms of ensuring quality performance in the public defense arena.
- 44:18 L. Borg In early September, I went to a formative meeting of an organization that is attempting to start called, "The National Association for Public Defense." It is sort of born out of frustration within NLADA that the American Conference of Chief Counsel really was not – NLADA is really focused on legal aide. The Bush years crushed them. The recession crushed them. Sort of the point of how secondary we are within that organization. Their big selling the point is why they were serving defenders was they got Janet Reno to come to the formative organization of ACCD, and you have to explain to some of the young public defenders who Janet Reno is because that is 20 years ago. This organization pulled out – there were several people in the ACCD and they resigned from that and got this meeting going. We met in Dayton, Ohio, and talked about the idea about what this would be and what really is the service of it. It is different than any NACDL because that is more topic specific. That is criminal law specific and applies whether you are retained or whether you are appointed. This is specifically at Sixth Amendment issues. This is specifically having the right to counsel and was changed from National Association of Public Defenders to National Association for Public Defense to recognize the importance and predominance of assigned counsel around the country in various state models. One of the things they are specifically talking about is how can we define quality and how can we talk about what the numbers are showing, what the data is showing, to show how organizations aren't meeting their marks. I was talking with Nancy before the meeting about look at Kentucky. They have adopted the national standards, 200 felonies, 400 misdemeanors, but when you look at their annual report it more like 470 felonies and who knows, thousands of misdemeanors. They look at their pay scales. They will say Kentucky's pay scale, \$51,000 for a starting public defender. That is better than currently at my office and not a bad living in Memphis, Tennessee. Top end of \$90,000, but then you find out the legislature only guarantees you step one. They have to specifically approve anybody moving up beyond that. So everybody is at step one and nobody has gotten a pay raise in five or six years. So it is a real disconnect between what their aspirations are and what the data is showing. There is a recognition that we need to get ahead of the data to make the case. The good news is we look really good. Oregon looks really good for a lot of reasons. Mostly because of the independence of a commission controlling us rather than being within the courts or being strictly elected. A lot of public defenders are just elected. I have a lot of hope for this organization. I think they want to be membership all the way down to mitigators, investigators, support staff through attorneys, and administrators of law offices, but it is still a work in progress. That is a short report. Read the president's column in next months defense attorney from OCDLA.
- 47:54 S. McCrea Questions? Lane. Right now this is focused only on state public defense?
- 47:59 L. Borg No. Bob, and I forget his last name, who is the national trainer was one of the people there.

48:05 S. McCrea Bob Burke.

48:10 L. Borg He is in the Governor’s committee talking about that. This was right in the middle of everybody reeling over the sequester effects and what is going on and what they were doing. So while there was a discussion about that there weren’t a lot of federal defenders there. I think a lot of them were feeling like it might be a tough justification to go to Dayton for a weekend. Not an easy place to get to. There were very few federal defenders there. The majority of people there were state defenders. The majority was that core of Ohio, Tennessee, Kentucky, Mississippi, and Alabama.

48:55 S. McCrea Okay. Thanks.

49:00 Chair Ellis Okay. Anything else on that?

49:01 N. Cozine No. Thank you.

Agenda Item No. 4 Clatsop County Peer Review – Final Report

49:05 Chair Ellis Okay. Item 4, Clatsop County Peer Review – Final Report, Paul?

49:12 P. Levy Yes. That’s me. I have a cold and am a little jet lagged still from being away forever. So I basically added to what you had seen before a section entitled “Commission Review” summing up the meeting that we had here and addressing what you heard in Astoria and set out there really what the Commission is directing us to do, which is primarily to as the Chair said, “Get on it” which respect to the waiver of counsel in delinquency case issue. We heard that direction from the Commission quite clearly and we also see, quite starkly, the need for it as illustrated in Clatsop County. We will be working with the providers there to see if there is a way for them to get involved with the EDP program. The Commission’s concerns about defendants being unrepresented is absolutely appropriate. The other thing is just generally we will be following closely what is going on there because the consortium has made some good new steps in addressing the historic problems that they have there. They are basically starting over again and we need to make sure that we know that we have appreciated their responsiveness and we are going to continue to pay close attention.

51:05 Chair Ellis And you think Mr. Kaino is effective and working on those?

51:13 P. Levy Yes. I think he is. He was surprisingly I will say because his involvement with our agency, with OCDLA, had been rather minimal prior to this review. But afterwards he was really extraordinarily responsive and really did things that he said he would do and they were good steps and we expect that to continue. I think that he needs to know that we are watching and paying attention.

51:54 Chair Ellis Do you have any reaction from Judge Nelson on the waiver issue?

52:03 P. Levy I haven’t followed up with him since your meetings. As noted here you didn’t really have that discussion with him. He was the one you really need to hear from. We did and he is satisfied with how things are working.

52:26 Chair Ellis That may be the problem.

52:26 P. Levy Yes.

52:31 Chair Ellis I would really like Chief Justice Balmer to focus on that. He has more ability to persuade than we do.

52:44 N. Cozine Chair Ellis, I did meet with Chief Justice Balmer yesterday and we talked about this issue. He is aware of the significant need to continue to have the conversation and to address it. He has identified some steps that he wants to take in terms of communicating with his judges to determine what the extent of concern is around the state, both from the judge's points of view and from his own point of view. They have the judicial conference on the 21st and 22nd of October. I think that their juvenile group will be wrestling through some of these issues themselves and then we will work again with the Chief Justice to determine how to move forward on the next steps. I hadn't had a chance to share this with Paul because it was late in the day yesterday. As Mr. Levy mentioned he has been away. He was in France and ...

53:38 J. Stevens And now he is complaining about a cold?

53:43 N. Cozine He is back and we will continue the conversation. I shared with the Chief what we learned in Clatsop. I shared with him the concerns of this Commission and we talked about the task force, the timelines, the course of events on that task force and I sent him all the materials again last night so that he could review that history and make a decision on where he wants to go.

54:17 Chair Ellis I think that is a far better channel than any other I know of on this issue.

54:24 N. Cozine He was very receptive.

54:26 P. Ramfjord Did you also talk with him about the early disposition program which seems to be an issue that wasn't the same focus of the report, but still has some of the same types of problematic issues and could also be affected if the judges took a different attitude towards it.

54:42 N. Cozine I did not discuss the early disposition program and I think primarily because we have this long standing discussion on the dependency issue and I wanted to really focus on that. That is certainly something we can follow up with him.

54:59 P. Levy And the EDP issues, while the court certainly can have some influence on how they are structured and operate, it is largely how the DA agrees to operate. One of the challenges in Clatsop County is you have people who aren't really working very well together.

55:24 Chair Ellis Although I think they are working together better than the last time we visited there, at least between the judges I felt that.

55:33 C. Lazenby Did you ever get any substantial input from Mr. Marquis about this issue.

55:45 P. Levy We met with him as part of the peer review. It was a very good, productive meeting. Then Nancy, Billy Strehlow, and I met with him when we did a follow up prior to the Commission's meeting there. He is very accessible and actually supportive of efforts to improve public defense. He gets on his soapbox when it concerns the death penalty and some big issues. When it concerns what is going on in Clatsop County he works well with us. Not so well with others there. He had good input.

56:51 N. Cozine It may well be that as a follow up to the Clatsop County report, we will make another visit to Clatsop County and that would be the right time to visit with Mr. Marquis about whether or not he would change his policies. We haven't planned that yet. I do think it something that we have discussed and have on our agenda.

57:10 Chair Ellis Any other comments? If not this is an action item. We need a motion to approve the Clatsop County final report.

57:22 P. Levy I don't think it is.

57:24 Chair Ellis I thought it was.

57:29 P. Levy It is just a follow up report. That is a large part of the change in structure of how we are doing this. When the Commission was doing its service delivery reviews they concluded with a delivery plan. This is hybrid or new process where the Commission is following up on a peer review. There really isn't an action item.

58:02 Chair Ellis Alright. So we don't need to do that.

58:00 J. Potter So will there never be a plan in these various counties that the Commission reviews?

58:10 P. Levy No, not necessarily. There could very well be. The Commission could say that we need to change how public defense is provided here. That could be a recommendation of the peer review report. It has been in the past. This report concludes with identifying what the Commission has directed our staff to do and we understand that. The process is fluid as far as how we work out this hybrid of peer reviews and service delivery reviews.

58:49 J. Potter It seems that at some point – that hybrid I understand that melding. There should still be at the end of the day, at the end of some day, a plan that gets approved by the Commission. It would seem like that lends a little bit more credibility to the report as well.

59:10 P. Levy That is a good thought for future ones. In a way what we are trying to do is preserve some of the essentials of the peer review, which is that a group of peers goes to a county, works with the stakeholders there with the view of helping the provider there improve their performance, if that is identified as necessary. The primary purpose of peer reviews is not to look at the structure of public defense. What comes out of those reviews has been in the past a recommendation that the structure change. The problem was they were confidential reports and we couldn't even provide them to the Commission. The way it is structured now is we go through that process and we tell the providers that we will be reporting to the Commission and by the time that happens we expect to have a response from you. We will follow up and see how things are coming along. The goal and focus is still provider performance and not so much structure. A need and a plan for public defense in the county, but that could change from review to review.

1:00:40 J. Potter The service delivery aspect would still be of interest to us.

1:00:44 P. Levy Through this report I think you essentially got just as much information and maybe even more.

1:00:58 Chair Ellis I kind of like the dynamic aspect of it. By the time we got there changes were already being made in response to the peer review, which I thought was a good step.

1:01:10 N. Cozine One of the things that I was going to say is that we had wanted – Clatsop County was the first one that we tried where we started with the peer review and we moved that into what felt more like service delivery review. It had some of the same components. As we continue to explore this new model, it may well be that we want to add a component at the end that is the service delivery plan that is approved by the Commission. It seems to me that we have moved through this Clatsop County process. We have another process plan for next year. Excuse me, we have Marion County on the way and then next year we wanted to start on Washington County. Once we have begun our Marion County process that might be the right time to make some decisions about how the two will officially be melded, but also might be a nice topic for this Commission in December to put it on the agenda as an agenda item. To really list out what the stages are of the new process and decide how we want it to look now that we have moved through one.

1:02:20 P. Levy Just for the update on the Marion County review, the draft reports have been given to the administrators of the two criminal providers, MCAD and the public defender office, and we are waiting for responses and then we will finalize that report with them. Then we will find a place for the Commission to review some months down the line.

1:02:50 Chair Ellis Okay.

Agenda Item No. 5 Approval of 2013-15 Compensation Plan

1:02:51 Chair Ellis Item 5, the 2013-15 compensation plan.

1:02:58 N. Cozine Yes. This is an action item. It is attachment no. 5. I also have some handouts for your review. So what is in your packets is the compensation plan for the Office of Public Defense Services, or the proposed plan for the 13-15 biennium. It sets forth exactly what the executive branch is doing. They are implementing a 1.5% COLA on December 1, 2013. A 2% COLA in December 2014. That actually could be advanced to earlier than December depending on health care cost increases. A 5% employee contribution to the employee benefits premiums with the potential reduction in plan year 15. No furlough days. No regular step increases. The judicial departments plan is substantially similar. No. 3 on your list there is some variation there and, well, actually no. 2, and the 2% COLA is going to be implemented on December 1, 2014. There is no movement of that COLA. Then on no. 3, the 5% employee contribution has a subsidy for employees with a base monthly salary of less than \$3,000 per month. The PDSC has historically looked at both the executive branch and the judicial department plans to pick something that is similar for OPDS employees. When we looked at the two plans, the judicial department plan seemed like an appropriate methodology to follow. We did want to make one change which is that the first COLA on December 1, 2013, would be a 2% COLA. As we have moved through the agency restructure, we have been able to find ways to find that additional .5%. This agency was not granted a parity package from the legislature as some of our trial providers were. This is a very, very limited increase. It will not get us near parity, but it is something and it is something this agency can do. So we are asking that the Commission approve for the 13-15. The additional pieces that I have handed out over an abundance of caution. I handed to you the actual classification chart. As we move through the reorganization we will need some positions that aren't currently on our compensation plan. We will limit positions that are on our current compensation plan. I was hoping the Commission could approve the new compensation plan with the new additions. I will walk you through what those are. What is being circulated right now is our proposed structure so you have a visual of where these positions would land. This proposed structure is being considered by our staff now, so we have begun the conversations about this being a place that we could land. It has essentially a contracting unit and it has the appellate division. Below that you see what the base administrative services of the agency are really. So you have a budget and finance division. You have human resources and operations. You have general counsel and you have research and IT.

1:07:30 Chair Ellis Of those the research IT and HR are clearly new.

1:07:34 N. Cozine Those are clearly new. Some of the changes on the comp plan would be more accurately described as name changes, but we want to be very clear and make sure that we have the positions created so that there isn't any confusion. For example, our HR manager who you will meet today, we don't actually have a slot for that so we had to double fill a position and it is a little complicated. Once we have the positions in place it becomes a lot easier to make the changes. I put numbers to the right of each position so that I could walk you through it. The new positions are line 4, Budget and Finance Manager. No. 9, Contract Manager. No. 12, Deputy General Counsel. That is a position that we won't be able to fill immediately but we would like to fill at some point. No. 14 is Fiscal Analyst. No. 16 is Human Resources Manager. No. 23 is more of a name change, Operations and Desk Top Support Analyst. Line 25 is Research and IT Director. So those are the new positions. I would be interested in

Commission feedback on the proposed model, whether it is today or in October, but we would like to actually have a finalized structure by October, so that when we get to the management conference we have something that we can show as providers as the new structure.

- 1:09:12 Chair Ellis Reality is you had a very strong person in Kathryn who was doing a lot of these things in her role as head of the contract and business service group. I think what I am understanding is you are breaking out the sub-components of the multi-tasking that she did. The key breakouts are to have someone doing HR, someone doing IT, and a separate someone doing budget and finance, all of whom report to you. That is different than it was just because of the talent that we had.
- 1:09:55 N. Cozine It is different than it was before and as work through the various models it became clear – and we knew for a long time that Kathryn had a skill set that was so unique that it would be difficult, if not impossible, to replace her in one person. The other reality is that this agency has grown and we have 76 employees. This is a model that will actually allow us to enhance the services that we are providing, both within our office and to our customers outside of the office. Because of our size having an HR manager on staff is very helpful and will help this agency comply with all state laws and provide our lawyers and other non-lawyer staff with the HR support that they really need.
- 1:10:57 C. Lazenby Who was it that assisted you in setting the compensation levels for the new positions? Was that done through DAS?
- 1:11:04 N. Cozine We did comparisons with DAS compensation for each of the new positions, yes. We also looked somewhat at judicial. DAS has a much greater depth in terms of their compensation.
- 1:11:27 J. Potter The general counsel was always reporting directly to the executive director? Or was it reporting to Kathryn? We had a discussion early on and didn't remember if it had morphed.
- 1:11:40 N. Cozine So when I met with Ingrid and took this position she provided me with an organizational chart that had general counsel reporting to both the executive director and the CBS director. That was the operational model that I believed we were working under. I don't know that that was shared.
- 1:12:03 J. Potter So now lets assume they reported to you and Kathryn reported to you and we reported to you. So you have gone from three people reporting directly to you to six people reporting directly to you. Does that affect your job in any way? Does it create any concern on your part?
- 1:12:21 N. Cozine I certainly can't say that it doesn't affect my job. Clearly there is more involvement from the executive director than in the prior model, which didn't necessarily have to be the case. In other words you have a management team, or an executive team, that comes together weekly and reports on the details of office function. Whether it is the appellate division or what was CBS or anyone of these work units. In theory the critical decision points and the critical discussions should all come to that table and the decision requires the executive director and would require it under any model. There is no doubt that when your direct report increases from three to six you have doubled your workload. You are doing in person managing. You are managing the workload. You are making sure that people are meeting expectations in all of those different areas. It is certainly increases my workload and I think that with the history of this office and the role of the executive director, and when Peter Ozanne started the critical work that had to get done was getting out to each county, I think, and this is my impression. Getting out to each county and getting to know every single contractor so that we could have a better idea of how we wanted to structure our quality assurance. He was a big part of developing the peer reviews and the service delivery reviews. Here we are 10 years later and we have contract analysts who are very involved in their counties. We want to encourage the use of those positions to do more active engagement in the community. When you have four people who can do that instead of just one, you have really quadrupled your ability to interact

on that level. So I see there being a shift in where work is landing, and I view my role as making sure that all of these entities are working in a coordinated way to meet the missions, values, goals, and objectives of the PDSC. I think structure gives us some additional ability to meet demands as they roll in the door. We can be a little more nimble. We have a budget and finance manager, when there is a budget and finance issue it can get worked out in that small work unit and a solution can get implemented hopefully very quickly. The same is true in all the other areas. That might have been too long an answer.

1:15:08 Chair Ellis So the old division was Contract and Business Services. I remember that in part that Kathryn was providing a lot of business service support to the appellate side. So when we converted to paperless filing and all of the computer that went with that. The new model would be done really by the IT manager on that piece of it and not at all from this contract manager. That really becomes a separate unit dealing only with the contract providers.

1:16:05 N. Cozine Right. Just to provide a visual of why I think this structure will benefit us. At one point in time we sat down to really look at the OPDS to do list. When you put all of those things in a list and you added to the list what was the primary definition of the task, whether it was IT, or HR, or contracting, or a budget development, you ended up with a situation where you had all these priorities but each priority got shoved behind so many other priorities because they were all in the same bucket. Here there will be a list of priorities for each unit and they can move through fairly quickly, assuming that we have enough staff to move it through. If we don't then we know where that is a place where we need to increase our staffing. But we are not going to have a situation where all kinds of different types of tasks get buried under others. I think it gives us a little more flexibility.

1:17:10 Chair Ellis The new position of Deputy General Counsel, can you or Paul describe the concept?

1:17:17 N. Cozine One of the things that continues to arise, and I am sorry I am giving long explanations and I hope it is helpful, but I am going to give you the background because it is the way that we came to the decision. One of the situations that arises very consistently, or has over the last two years, is as an example; within CBS you have the payment policies and procedures. They have come to this Commission for review a few times now and every time they come to this Commission for review we say here in the office, "We really need to review those in an in depth way and determine whether or not they are meeting all the standards that we want them to meet. Whether or not they are too complicated and could be simplified." We never quite get to that. The same is true with the contract. Do we need to revise the contract? The model that I would like to see put in place for procedures is that we revise each of those within these work units, but they are then sent to general counsel for review. I think that is the right place to have those things reviewed. That has not been a process that we have consistently employed in this office. That would be a new process. We also have our quality assurance goals, and those are the continuation of peer reviews and perhaps an increase in the number of peer reviews as we move to a model where we begin with peer review and we end up with something that looks more like service delivery. Those peer reviews are very time consuming. We have our complaint system that needs to continue to operate and could probably use a little more development. We have the certification process. As you may recall death penalty providers – and we will talk about more in this meeting as well. Death penalty providers were required to submit a much more lengthy documentation of their qualifications. We intend to start enhancing our certification process in all case types one at a time. These are some very big projects and my concern is that we don't envision a deputy general counsel and get that position built into our structure; pretty soon Paul is going to have far more work on his desk than he can possibly manage.

1:19:42 P. Levy The way I describe it is the line flows from all of these units from the executive director and then back into general counsel. General counsel is involved in the work from the HR manager in operations, for instance, we need to do a comprehensive review of our personnel policies. There will be some general counsel role in that. To keep all of those functions

going with our quality assurance and on top of all of that the tremendous volume of our non-routine expense review that is sort of a crushing daily obligation. It is a position for the future not for the moment.

- 1:20:35 N. Cozine I think that the earliest we would be able to implement would be January of 2014. Let me add one more thing is that we have this dependency policy option package, which we will launch as a pilot program, but it will be another RFP that goes out where we request people to submit a proposal and then we will have to select pilot counties. In the Washington State model they have an attorney managing that program. I think that is something we want to replicate here. My view is that we would at least start it out of general counsel's office, but with involvement from the analysts and that assuming we get funding next biennium, the counties that are pilot counties during the first phase will actually move to being managed by the analysts and the new set of pilot counties will work directly with general counsel's office with the collaboration of the analysts. We will continue to build the program in that way so that there is a perhaps more intense level of scrutiny at the outset.
- 1:21:42 Chair Ellis So you shared with me last week a draft of this. The nerd that I am, I am looking at the changes that have happened since then. Most of them look to be almost vocabulary changes and probably not substantive, but let me just ask. On the draft you shared under contract manager you had senior analyst and contract analyst. Now you have taken out this notion of a senior analyst.
- 1:22:20 N. Cozine The other one didn't have a senior analyst. As we worked through the model we realized that having a senior analyst would be very helpful. There are oftentimes specialized requests that come into this agency. Whether it is a media request or a provider request but something that comes in that requires someone to be assigned to a special project. Our view is that it would be very helpful to have that as a recognized responsibility for a senior analyst. It also builds depth within this group.
- 1:22:57 Chair Ellis Then in the lower left what you showed me said, "Budget Staff" and now it shows "Fiscal Analyst." Is that a substantive change or a description change?
- 1:23:11 N. Cozine Description change.
- 1:23:11 Chair Ellis Then you had all in one box HR manager and operations staff. You have broken out that.
- 1:23:22 N. Cozine I think now I have HR manager and operations staff. That was just simplification.
- 1:23 30 Chair Ellis You now have legal support as a separate box, which doesn't exist on the draft, and these are technical people in the appellate group?
- 1:23:40 N. Cozine Right. At some point we realized that many of our org charts actually didn't include the paralegals and legal secretaries so we added that. This has been reviewed by the management team. These were largely outgrowths of those conversations.
- 1:24:00 Chair Ellis Okay.
- 1:24:00 P. Ramfjord Can you just describe a little bit what the work of the research and IT manager will be like? Is this just typical IT work, or are there things beyond that?
- 1:24:11 N. Cozine As this Commission may recall we have about 15 databases that are access databases. They are all programmed slightly differently. There isn't a really strong commonality between the way the different databases operate. We don't have user manuals; we don't have programming or user manuals for either one. You add to this the interesting complication where we are not all on the same operating system within the office. Some of the access databases work well in their old version with say Adobe, but we don't know that if we

upgrade the interface will continue to function. In fact, I think there is some strong suspicion that it won't. So the IT component of this will be to make sure that we can document the programming and do the upgrading. We really need to upgrade. We are actually going to lose service from OJD if we don't get everybody on the same platform. Some of the stuff that we are using is going to become obsolete. Then once we have cured some of those underlying issues, then we move into a phase where we are actually analyzing whether or not our current data storage programs are the best ones for the agency, and also to try to do a little bit of data warehouse collection. We have access to court data. We have access to our data. I think it will help us as we try to enhance our quality assurance programs in the office.

- 1:25:46 P. Ramfjord So are most of those databases having to do with the contract for the payment systems and things like that?
- 1:25:54 N. Cozine Some. We have an NRE database. We have a complaint database. We have an appellate database. So they really actually house quite a bit of the operations work for the entire office.
- 1:26:11 Chair Ellis Are you comfortable that these new positions we can fund them with the existing budget?
- 1:26:17 N. Cozine I am. We are meeting with our LFO analyst tomorrow and I have talked with him as we have been working through this process. We certainly cover these new positions. The positions that are eliminated are the CBS director, the business service manager, and the HR analyst. We certainly can do it. We have the funding available. I think we will not have as much flexibility in this biennium once we have done these. We will be fairly committed from a budget standpoint. We certainly have our cushion but we are using resources.
- 1:27:01 Chair Ellis Well personally I think it is much more rational structure than we have had. I commend you. I think it looks quite good.
- 1:27:13 J. Potter I think it does reflex the maturing and development of the organization over time. We have discussed all of these things individually, if I were in your position I don't see it as an action item, but if I were in your position then I might want the Commission to approve the reorganization of the office. Is that of something that is of any interest to you?
- 1:27:34 N. Cozine I would welcome the Commission's stamp of approval. If you are going to deny it then I am going to reverse that.
- 1:27:42 Chair Ellis Well we do need a vote on the compensation plan. Is there more discussion on that?
- 1:27:54 P. Ramfjord The only other question I had about that is there 1.5% increase in 2014, if there is a 2% COLA?
- 1:28:08 N. Cozine Yes. I will say that we are trying very hard to continue to work towards getting to parity. Right now we are about 14% difference from the top step. It looks like we may have an opportunity in March or April of next year where we don't have any Deputy I on step one. It may be that we could actually drop a step and add a step, which would help just get us 5% closer right there. We are continuing to work through option and, again, involving Mr. Bender in these conversations so that we can inch us closer to parity. Our hope is that we will be able to create something that by April of next year we have reduced our disparity to 10%. That is our objection. Again, we have to pay close attention to the finances.
- 1:28:59 Chair Ellis I would entertain a motion to approve the compensation plan.
MOTION: P. Ramfjord moved to approve the compensation plan; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**
- 1:29:11 Chair Ellis Then assuming it is positive, I would entertain ...

1:29:20 N. Cozine On the structure of our organization, we discussed it with the management team yesterday. I sent it out to staff last night. What I would like to do is actually make this an action item on October agenda. That way I have time for feedback including from all of you. If you continue to look at this and have questions, please feel free to contact me. I think October would be a wonderful time.

1:29:48 Chair Ellis But in the meantime you are filling some of the boxes.

1:29:48 N. Cozine The reality is we need the positions. The structure could still change. I hope it doesn't. We have worked really hard and Sue Wilson has been great.

1:30:00 P. Ramfjord I would echo the comments of other commissioners that this structure seems very rational and I think it is better and more organized and reasonable division of responsibilities. I think it is a real step forward.

1:30:15 C. Lazenby And my reaction to it when you were talking about how the priorities all got stacked in front of one another is that this will keep us from just dealing with the crisis de jour and the crisis of whatever the week is. We will be able to be more proactive and plan better.

1:30:34 N. Cozine I am hopeful that we will. I actually that this also provides the structure we need to have those KPM discussions. Now we have small work units to really make recommendations that will be very meaningful to their day to day work.

1:30:49 Chair Ellis Okay. Did you just kick me?

1:30:51 S. McCrea I did. Again.

1:30:57 Chair Ellis Okay. Why don't we take a five minute recess and we will pick up from there.

(Break)

Agenda Item No. 6 OPDS Monthly Report

1:41:00 Chair Ellis Okay. Can we resume? Next is the OPDS monthly report.

1:41:23 N. Cozine Yes. There is so much going on. Mr. Gartlan, do you want to start since you are standing?

1:41:35 P. Gartlan Yes. Good morning, again. I think I will give you a Supreme Court roundup. We had three arguments in the Oregon Supreme Court last week. We had a death penalty case. Meredith Allen argued *State v. Serrano* which is a death penalty case. Ernie Lannet, Chief Deputy, argued a very arcane, interesting question that is does somebody who menaces someone else with a gun, in addition to menacing are they also unlawfully using a weapon? That really turns on what the legislature meant in 1917, which is when the legislature enacted that statute. I argued a couple of cases that involved consent following an unlawful search or seizure, which is an issue that has been vexing this office and criminal defense lawyers statewide. It hasn't really vexed the rest of the nation as much as it affects this state, but be that as it may, that is what I argued. Dan Bennett had a really interesting argument. It involved the trial court failed to give a lesser included instruction. A greater offense and the trial court, by statute, is supposed to give a lesser included instruction if the record supports it and the party requests it. So the trial court did not give a lesser included instruction. On appeal, we argued that the trial court erred by not doing that. The state agreed, acknowledged, and conceded that it was error not to give the lesser included, but it argued that the error was harmless because there is another statute that the trial court is to direct the jury not to consider lesser included offenses unless it has reached a verdict and acquitted, actually, on the greater offense. So the state's position was that, yes, the trial court should have given that lesser included instruction, but it was harmless because the jury found the defendant guilty. So the jury found all of the

elements of the offense, so there was no harm because the jury never would have gotten to the lesser included instruction.

1:44:27 P. Ramfjord

Swallow the entire rule.

1:44:32 P. Gartlan

It is fascinating. There is a logic to the state's argument, but we think the court favorably received our argument that consider just means vote, reach a verdict on, and what the jury does is lesser included instructions are very helpful because it helps the jury evaluate the evidence and determine exactly what happened as a matter of historical fact. We think that the court was receptive to that argument.

1:45:00 Chair Ellis

So what you are really saying is there was a compromise they could have reached without having to go on the primary.

1:45:10 P. Gartlan

Yes. It is kind of how do humans make decisions? You make comparisons.

1:45:17 P. Ramfjord

You are saying that the state's interpretation would compel a compromise in the state's favor. It would essentially mandate the people who would prefer the lesser included offense but would still prefer a conviction would go for the lesser.

1:45:29 P. Gartlan

The all or nothing which was a concern, yes. The jury would think that this person did something wrong. It may not have done this exactly but we can't let him off. We are currently briefing a couple of issues. Right now we are in the briefing stage in a couple of cases. One involves the resisting arrest. Does a resisting arrest statute apply to someone who is being arrested for an oral violation? It is very technical and involves a statutory interpretation. In the other case the Oregon Supreme Court asked us to appear as amicus in a post conviction relief case. That case involves what is the attachment rule? There is a statute that says a petitioner in a post conviction relief case has to attach affidavits and documentary evidence that supports the claims being made in the petition for post conviction relief. So the question is going to be what satisfies that rule? The state is saying that rule is satisfied when the petitioner introduces or attaches documents that state it is a prima facie case. We are saying, no, it is not a prima facie standard. It is just some evidence to show that there is evidence to support the claims. I think I mentioned this last time. I want to mention it again and that is the juvenile appellate section. We recently filed a brief in a Supreme Court case. It is the second case that our unit is involved in. It is a very interesting issue. The juvenile court took jurisdiction over a child. The plan was reunification with parents, but then the department wanted to vaccinate the children and went to the court and asked the court for an order allowing the vaccination. The court issued an order allowing the vaccination. The question is does a court or the department have authority to vaccinate children over the parent's objection when the court has jurisdiction over the child. It is interesting because the Court of Appeals relied on a statute that addresses what a guardian's authority is. So, essentially, under the Court of Appeals interpretation, if a juvenile court takes jurisdiction over the child, the court or the guardian can give permission for the child to enter the Armed Services or to marry or truly large decisions. So our position is the legislature did not intend that such broad authority would be given to the guardian or the juvenile court this early in the proceedings, when the plan is still return to the parent. That is what we have been doing for the couple of weeks in the appellate division.

1:49:12 Chair Ellis

Good. Okay.

1:49:17 N. Cozine

Commission members, I wanted to start with some introductions. We have some of our new staff members with us. So Cynthia Gregory is our new HR manager. You want to come up? Cynthia joins us from DCBS, which is the Department of Consumer and Business Services. Cynthia's primary responsibility there was actually providing HR support to BOLI. So one of my favorite stories was your partying gift.

- 1:49:51 C. Gregory Commissioner Avakian decided to gift me with a complete set of the BOLI handbooks for employers.
- 1:50:03 N. Cozine Cynthia comes to us with a great background and experience. Before her work with DCBS, she was the HR manager at the Oregon State Hospital. She has a wonderful depth of knowledge on Oregon State laws, and before that she also worked in the private industry. She was the HR manager for a hotel chain.
- 1:50:26 C. Gregory A privately owned hotel operation.
- 1:50:27 Chair Ellis Welcome. How did we get along so long without an HR manager?
- 1:50:40 N. Cozine We are really thrilled to have her. Just wanted you to have a name and a face. Then I also wanted you to meet, re-meet, Angelique Bowers. So Angelique is here with us today. She was with our agency previously. Then she went over and worked for the Department of Administrative Services. She was most recently working on the Governor's budget and has been doing just a wonderful job analyzing and then analyzing again and then reanalyzing all the questions that I asked. During the contracting process, Angelique was continuously running and rerunning numbers. I think when we came out of those conversations that we came out with a very strong confidence that our contracting process is not only stable, but will provide us the funding we need to get through this biennium. Then working through the compensation plan for this office and how we are going to restructure and make sure that we have the funding available to achieve our objectives. I have truly asked questions in 15 different ways and she has responded very quickly and very thoroughly. It is a pleasure to have her.
- 1:51:57 Chair Ellis Welcome back.
- 1:52:03 N. Cozine Those are our new introductions. I also wanted to mention we had on the agenda last Commission meeting the Juvenile Dependency Task Force and the Oregon State Bar has appointed two representatives, Angela Sherbo and myself, and the Chief Justice is signing an order appointing Commissioner Welch to representative the PDCS. Bill Taylor will be heading up that work group. So, yes, we anticipate having some very good discussions on dependency law here in the next several months. Should be getting a letter soon and they have your contract. I had mentioned briefly that there is an NLADA research and data advisory committee coming up on October 15. We will hear at that meeting the outcome, or at least the start, of four pilot programs that have begun to try to document data points that can be used to help define and measure outcomes in criminal cases. It should be very interesting. They are also working to define data points to measure pretrial release outcomes. That committee is currently working the National Institute for Justice to try to secure funding so that some of these projects can actually get funded through the federal government. So we will keep our eye on what is happening with those developments. I think that is all I have.
- 1:53:42 Chair Ellis Okay. Before we go into executive session if there is anything else anyone wants to raise for the good of the order this would be a good time to do it. Otherwise, I will...
- 1:53:58 P. Levy Well, Mr. Chair, before we actually go into executive session on this next item, I wanted to make a few comments while you are still in the public meeting. I will be pretty brief. For those we are the executive session is the third and final one that we have had where staff reviews with the Commission the work that we have done in analyzing and coming to decisions about what we will be recommending to the Commission at a later public meeting concerning contracting. The executive session is to advise you on how we have been progressing and what our thoughts have been. It is an appropriate subject for an executive session because we are discussing responses to requests for proposal, which are not public records until the decision has been made to award contracts. It is an appropriate topic for an executive session. What I wanted to say with regard to death penalty contracts before we go

into that discussion is just to update you on the process that we used this time, which was quite different from previous contracting. As you know, two years ago we entered into one year contracts with five death penalty contractors, and then undertook an extensive review of their performance. The Commission made clear at the time that you wanted us to look at everybody. We completed that review and gave the Commission a report which included a recommendation that we undertake a much more extensive application process to do death penalty work, and modeled along the lines of a program that Louisiana developed in response to concerns there about the quality of representation. This was recommended to us by Matt Rubenstein and some others. We developed that process in conjunction with input from our death penalty peer panel, and unveiled it prior to the issuance of the request for proposal. It was not met with universal approval for a number of reasons. It required a lot of work. We asked people, as opposed to in the past, rather than just checking a box and saying I am qualified to do this work, we asked them to demonstrate that with writing samples, with letters of recommendation, and with a number of other substantive responses that were required. It turns out that this process that we used was very similar to the process that we used in the review of the five contractors whom we had reviewed previously. There was some grumbling and some resistance. Some people also said, "You know I am good. Why do you need me to waste my time demonstrating that?" But after all the grumbling the done, and this is really the point I want to make, people completed the process and they did it, from all appearances, in good faith and in many instances it looks like enthusiastically. We got really good information from the people who are proposing to do contracting, most of whom are current contractors. The letters of recommendations that some said would be meaningless, they were actually detailed, substantive, and useful. The responses in this new certification process were very helpful to us. I can in this public setting that we are able to have a very high degree of confidence in the group of lawyers that are doing capital defense now. We know anecdotally and we knew from various sources that they were doing a good job. We have other evidence now to indicate and support that. Even though it was difficult unveiling it and rolling out this process, it has proven to be very helpful. That is the introduction.

1:59:15 Chair Ellis

So can I read my piece now.

1:59:17 P. Levy

Yes. As the law requires.

1:59:18 Chair Ellis

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 cases beginning on January 1, 2014. 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. I take it the group we have here are designated staff and permitted to stay. Your daughter is not here so we can go ahead.

Agenda Item No. 7

Executive Session – Commission Review of Contracting Plan for Capital Contracts

21:20 Chair Ellis

I don't believe there are any other agenda items. If not, I would entertain a motion to adjourn. **MOTION:** Shaun McCrea moved to adjourn the meeting; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 7-0.**

Attachment 2

**Public Defense Contracts Recommended for Approval by the Public Defense Services Commission at its
October 25, 2013 Meeting**

LEGAL SERVICES CONTRACTORS	RATE	HOURS	VALUE
Andy Simrin, PC	\$98	1,800	\$175,078
Benjamin Kim	\$98	1,488	\$144,730
Bronson James, LLC	\$98	3,680	\$357,936
Christopher Edward Burris	\$98	3,680	\$357,936
Christopher M. Clayhold	\$98	3,680	\$357,936
Daniel J. Casey	\$98	3,600	\$350,154
Deborah Burdzik	\$98	3,680	\$357,936
Dianna J. Gentry, LLC	\$98	3,240	\$315,138
Duane J. McCabe	\$98	3,680	\$357,936
Eve A. Oldenkamp	\$98	2,880	\$280,124
Geoffrey J. Gokey	\$98	3,680	\$357,936
Gordon Mallon	\$98	3,680	\$357,936
Jeffrey Ellis	\$98	3,680	\$409,148
Jenny Cooke	\$98	3,680	\$357,936
Katherine O. Berger	\$98	3,680	\$357,936
Kathleen M. Correll	\$98	3,680	\$357,936
Laura Graser	\$98	1,800	\$175,076
Laurie Bender	\$98	3,680	\$357,936
Mark S. Rader	\$98	3,680	\$357,936
Mark Sabitt	\$98	2,000	\$194,530
Patrick Sweeney	\$98	3,240	\$315,138
Peter B. Fahy	\$98	3,680	\$357,936
Richard L. Wolf, P.C.	\$98	2,820	\$274,288
Robert L. Huggins, Jr.	\$98	3,680	\$357,936
Steven H. Gorham	\$98	3,680	\$357,936
Steven L. Krasik	\$98	3,680	\$357,936
W. Keith Goody	\$98	2,700	\$262,616
Wm. David Falls	\$98	3,680	\$357,936

MITIGATION INVESTIGATION SERVICES CONTRACTORS	RATE	HOURS	VALUE
Alice D. Ellis Gaut	\$62	As needed	
Andrea Titus	\$62	2,760	\$169,836
Carin J. Connell	\$62	As needed	
Christine L. Inglis	\$62	1,800	\$110,764
Joyce Naffziger	\$62	3,600	\$221,528
Julia B. Demorest	\$62	1,800	\$110,764
Laura Kathleen Rittall	\$62	3,600	\$221,528
Lisa M. Harmening Investigations, PC	\$62	As needed	
Mary C. Goody	\$62	3,600	\$221,528
Mitigation Services, Inc	\$62	3,600	\$221,528
Pacific Mitigation Specialists, LLC	\$62	3,600	\$221,528
Pamela L. Rogers	\$62	2,760	\$169,838
Rhonda L. Coats	\$62	1,800	\$110,764
Roger K. Harris	\$62	1,800	\$110,764
Teresa Ann McMahill	\$62	2,712	\$166,884

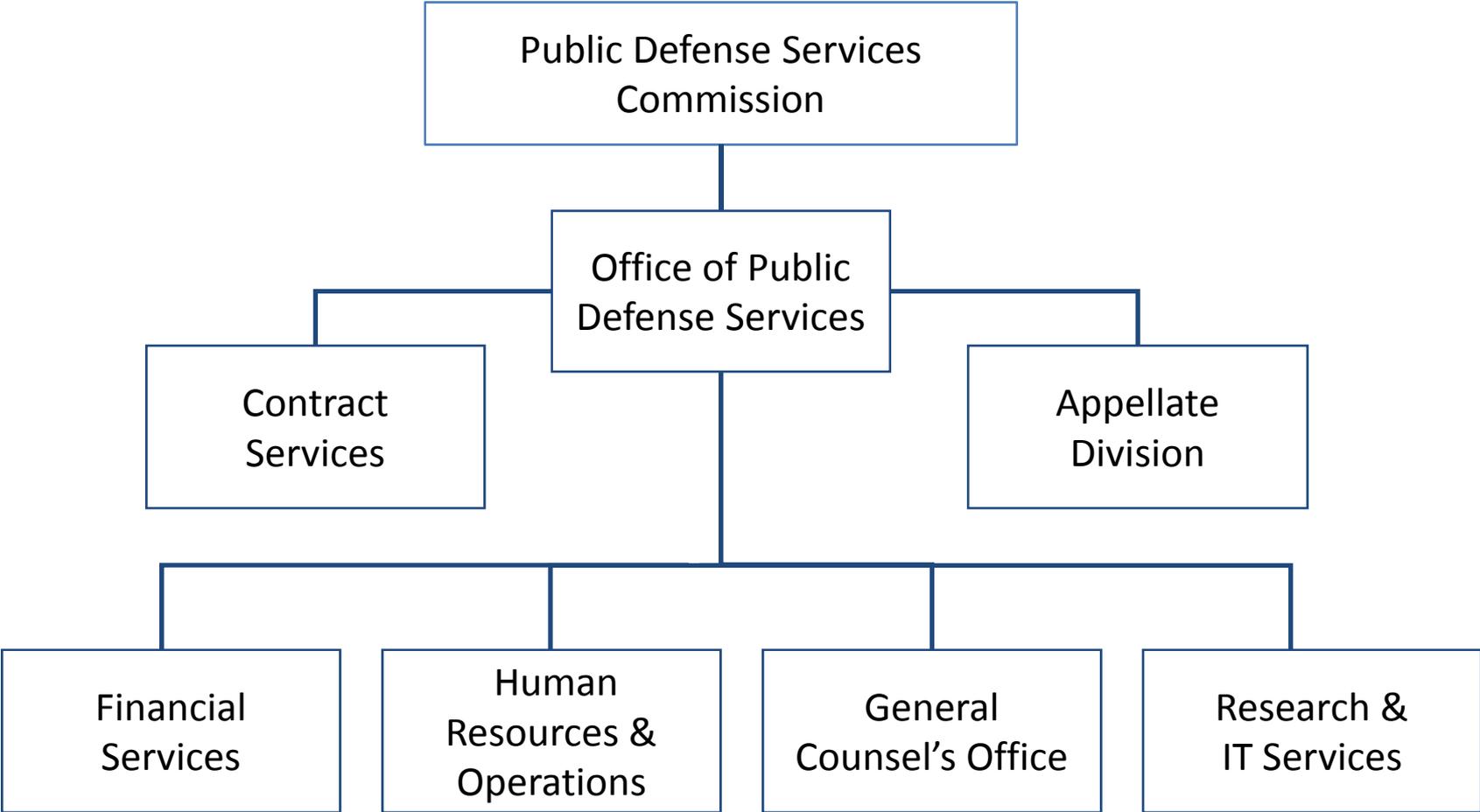
**Public Defense Contracts Recommended for Approval by the Public Defense Services Commission at its
October 25, 2013 Meeting**

COUNTY	PROPOSED CONTRACTOR	CASE TYPES	VALUE
Baker	Baker County Consortium	civil commitment, criminal, juvenile	\$671,634
	Daniel Cronin	juvenile	\$112,152
Benton	Benton County Legal Defense Corporation	civil commitment, criminal, juvenile	\$1,660,420
Clackamas	Clackamas Indigent Defense Corporation	criminal, specialty courts	\$5,986,990
	Indigent Defenders, Inc.	civil commitment, juvenile, specialty courts	\$3,301,880
Clatsop	Clatsop County Defender's Association	civil commitment, criminal, juvenile	\$1,265,956
	Mary Ann Murk	civil commitment, criminal, juvenile	\$440,186
Columbia	Columbia County Indigent Defense Corporation	civil commitment, criminal, juvenile, specialty courts	\$1,900,998
Coos	Coos County Indigent Defense Consortium	civil commitment, criminal, juvenile	\$885,896
	Southwestern Oregon Public Defender Services	civil commitment, criminal, juvenile, specialty courts	\$2,499,130
Crook/Jefferson	22 nd Circuit Defenders	civil commitment, criminal, juvenile, specialty courts	\$1,522,708
	Madras Consortium	civil commitment, criminal, juvenile	\$853,224
Curry	Curry County Public Defense, LLC	civil commitment, criminal, juvenile	\$937,916
Deschutes	Bend Attorney Group	civil commitment, criminal, juvenile	\$2,806,758
	Crabtree & Rahmsdorff	civil commitment, criminal, juvenile, specialty courts	\$5,418,966
	Jacques DeKalb	civil commitment, criminal	\$1,733,048
Douglas	James A. Arneson, PC	civil commitment, criminal, juvenile	\$1,037,352
	Richard Cremer, PC	criminal, juvenile	\$605,384
	Roseburg Defense Consortium*	civil commitment, criminal, juvenile	\$771,914
	Umpqua Valley Public Defender	civil commitment, criminal, juvenile, specialty courts	\$4,063,858
Grant/Harney	John B. Lamborn	civil commitment, criminal, juvenile	\$722,412
	Markku Sario	civil commitment, criminal, juvenile	\$99,250
	Robert S. Raschio*	civil commitment, criminal, juvenile	\$722,412
Hood River/Wasco	7 th Circuit Attorney Group*	civil commitment, criminal, juvenile	\$1,025,542
	Morris, Smith, Starns, Raschio & Sullivan, PC	civil commitment, criminal, juvenile, specialty courts	\$2,400,150
Jackson	Jackson Juvenile Consortium	civil commitment, juvenile	\$1,981,024
	Los Abogados, LLC	criminal	\$2,232,962
	Southern Oregon Public Defender, Inc	civil commitment, criminal, juvenile, specialty courts	\$5,952,158
Josephine	Josephine County Defense Lawyers, Inc	civil commitment, criminal, juvenile	\$1,436,944
	Southern Oregon Public Defender, Inc	civil commitment, criminal, specialty courts	\$1,814,324
Klamath/Lake	Klamath Defender Services, Inc	civil commitment, criminal, juvenile, specialty courts	\$6,098,466
Lane	Lane County Defense Consortium	criminal	\$1,580,560
	Lane County Juvenile Lawyers Association	juvenile	\$4,989,956
	Public Defender Services of Lane County Inc	civil commitment, criminal, juvenile	\$5,906,904
Lincoln	Lincoln Defenders & Juvenile Advocates	civil commitment, criminal, juvenile, specialty courts	\$2,530,628
Linn	Linn County Juvenile Defense Corporation	juvenile	\$2,335,540
	Linn Defenders Inc.	civil commitment, criminal	\$3,089,198
Malheur	David R. Carlson	civil commitment, criminal, juvenile	\$403,000
	Rader, Stoddard & Perez	civil commitment, criminal, juvenile	\$1,320,002
	Douglas J. Rock	civil commitment, criminal, juvenile	\$275,478
Marion	Andrew P. Ostitis	civil commitment	\$92,898
	Harris Matarazzo	PSRB	\$381,120
	Juvenile Advocacy Consortium	juvenile	\$5,644,070
	Marion County Assoc. of Defenders	criminal	\$5,589,618
	Public Defender of Marion County	criminal	\$3,222,912
	Susan Isaacs*	PSRB	\$42,876

Multnomah	Liebowitz & Associates	criminal probation violations	\$1,315,252
	Metropolitan Public Defenders	civil commitment, criminal, juvenile, specialty courts	\$13,320,710
	Multnomah Defenders, Inc.	appeals, criminal, juvenile, specialty courts	\$8,483,840
	Multnomah Juvenile Defense Consortium	juvenile	\$3,302,430
	Native American Program/Legal Aid Services OR	juvenile	\$803,780
	Portland Defense Consortium	criminal	\$4,172,658
	Troy & Rosenberg	juvenile	\$756,602
	Youth, Rights & Justice	appeals, juvenile	\$4,670,270
Polk	Chris Lillegard	civil commitment, criminal, juvenile	\$1,460,844
	Polk County Conflicts Consortium	criminal, juvenile	\$941,546
Tillamook	McIntosh & Long/Sarre Consortium	civil commitment, criminal, juvenile	\$683,056
Umatilla/Morrow	Blue Mountain Defenders	civil commitment, criminal, juvenile	\$1,318,040
	Intermountain Public Defenders	civil commitment, criminal, juvenile	\$1,216,843
Union/Wallowa	Grande Ronde Defenders	civil commitment, criminal, juvenile, specialty courts	\$1,266,800
Washington	Brindle, McCaslin & Lee	criminal, juvenile	\$911,576
	Hillsboro Law Group, P.C.	criminal, juvenile	\$1,082,650
	Karpstein & Verhulst	criminal, juvenile	\$1,353,278
	Metropolitan Public Defenders	civil commitment, criminal, juvenile, specialty courts	\$6,843,872
	Oregon Defense Attorney Consortium, Inc.	criminal, specialty courts	\$2,953,998
	Ridehalgh & Associates, LLC	criminal, juvenile, specialty courts	\$1,428,930
Yamhill	Justice Alliance Center	criminal, juvenile	\$3,380,634
Statewide	O'Connor Weber LLP	post-conviction appeals	\$1,357,606
	Oregon Post Conviction Consortium	post-conviction & habeas corpus appeals	\$2,078,144
		Total	\$165,470,133

*New contracts

Attachment 3



Attachment 4



Public Defense Services Commission ♦ Office of Public Defense Services
1175 Court St. NE ♦ Salem, OR 97301 ♦ www.oregon.gov/opds ♦ Phone: 503-378-3349 ♦ Fax: 503-378-4463

Public Defense Services Commission

Office of Public Defense Services

Executive Director's Biennial Report to the
Oregon Legislative Assembly
July 1, 2011 – June 30, 2013

Nancy Cozine
Executive Director
(October 2013)

Contents

I.	Introduction	4
(a)	Agency Mission	4
(b)	The Right to Counsel	4
(c)	Role in Juvenile and Criminal Justice Systems.....	4
(d)	Oregon’s Public Defense Delivery Model.....	5
II.	Agency Organization and Operation	6
III.	PDSC’s Accomplishments in 2009-2011	8
(a)	Contract and Business Services Division (CBS)	8
(b)	Appellate Division (AD)	10
(c)	Service Delivery Reviews.....	11
(d)	Peer Review Site Visits	12
(e)	Efficiency of Operation.....	13
IV.	PDSC’s Challenges in 2009 – 2011	13
(a)	Quality Issues.....	13
(b)	Recruitment and Retention.....	13
(c)	Compensation Issues	14
(d)	Funding for 2011-2013	14
V.	Conclusion.....	15

The Right to Counsel

The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Gideon v. Wainwright, 372 US 335, 344 (1963)

Fifty years ago this Monday – writing for a unanimous Supreme Court – Justice Black observed that: it “seems to us to be an obvious truth” that “in our adversary system, any person haled into court, who is too poor to hire a lawyer, cannot be assured of a fair trial unless counsel is provided to him.” This constituted a watershed moment – and a critical step forward – in our nation’s enduring pursuit of equal justice for all.

In the decades since this remarkable case – and Gideon’s retrial, at which he was found not guilty – public defender systems have been established in some states and strengthened in others... And our nation has made significant strides in fulfilling the promise of Gideon – and ensuring quality representation for more of those who need it.

Yet, despite half a century of progress – even today, in 2013, far too many Americans struggle to gain access to the legal assistance they need. And far too many children and adults routinely enter our juvenile and criminal justice systems with little understanding of the rights to which they’re entitled, the charges against them, or the potential sentences they may face.

As a judge on the District of Columbia Superior Court – and, later, as United States Attorney for the District of Columbia – I frequently witnessed the devastating consequences of inadequate representation. I saw that wrongful convictions and unjust sentences carry a moral cost that’s impossible to measure – and undermine the strength, integrity, and public trust in our legal system. I also recognize that, in purely economic terms, they drain precious taxpayer resources – and constitute an outrageous waste of court funds on new filings, retrials, and appeals just because the system failed to get it right the first time.

Written Testimony by Attorney General Eric Holder at the Justice Department’s 50th Anniversary Celebration of the U.S. Supreme Court Decision in Gideon v. Wainwright Committee, Washington, D.C. ~ Friday, March 15, 2013

“The right to representation by counsel is not a formality. ...It is the essence of justice.”

Kent v. United States, 383 U.S. 541, 561 (1966).

I. Introduction

The Public Defense Services Commission (PDSC) is an independent commission within the judicial branch of state government. In July of 2003 it assumed full responsibility for administering Oregon’s public defense system. That system delivers trial level and appellate legal services in criminal, juvenile, civil commitment, post conviction relief, and habeas corpus cases across the state.

(a) Agency Mission

In carrying out these responsibilities, PDSC’s mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.¹

(b) The Right to Counsel

The legal services provided by PDSC represent an essential component of Oregon’s public safety system. Under the United States Constitution, the Oregon Constitution and Oregon statutes, financially eligible individuals charged with a crime, parents and children in abuse and neglect cases, and individuals facing involuntary commitment due to mental health concerns are entitled to representation by court-appointed counsel at trial and on appeal. During the biennium, circuit and appellate courts appointed attorneys to represent clients in more than 342,000 cases.

(c) Role in Juvenile and Criminal Justice Systems

The state cannot prosecute crime,² remove children from their parents, or involuntarily commit those in need of treatment without

¹ ORS 151.216(1)(a).

² In the 01-03 biennium in several special sessions the Public Defense Services Account was reduced by \$27.6 million (17%) from the legislatively adopted budget. Although \$5 million of that cut was subsequently restored, these cuts occurred so late in the biennium that public defense funding was virtually eliminated during the last quarter. Crime rates increased, repeat property offenders could not be held. Fox Butterfield reported in the June 7, 2003 edition of the *New York Times* that “[b]ecause [there is] little money for public defenders, Mark Kroeker, the Portland police chief, said officers were now giving a new version of the Miranda warning when they arrested a suspect in a nonviolent crime. “They effectively

providing constitutionally mandated representation to financially eligible individuals subject to these proceedings.

Court appointed attorneys defend the rights of all Oregonians by asserting the constitutional and statutory protections afforded to the criminally accused, family members who are involved in juvenile dependency or delinquency proceedings, and the rights of allegedly mentally ill persons, to ensure that they are not inappropriately deprived of their liberty or fundamental rights.

In addition, defenders contribute directly to public safety by (1) advocating for effective criminal sanctions that help clients avoid future involvement in the criminal justice system; (2) finding resources for families involved in dependency cases that help them avoid or limit disruption of the family unit, lead to reunification or, when reunification is not possible, help children find permanent safe and supportive homes; and (3) assisting allegedly mentally ill persons find safe and effective alternatives to involuntary hospitalization.

On the appellate level defenders play a critical role in clarifying the law and ensuring its consistent application across the state. On both the state and local level defenders participate in public safety planning groups and provide valuable input to policy makers regarding effective approaches to controlling crime, protecting children and providing for the mentally ill, and facilitating the efficient operation of the courts and the public safety system as a whole.

(d) Oregon's Public Defense Delivery Model

The PDSC provides representation in most criminal and juvenile dependency appeals directly through state employee lawyers and staff in its Appellate Division (AD). PDSC approves and provides representation for all trial level cases and appellate cases not handled by AD through its Contract and Business Services Division

have to say, 'If you can't afford a lawyer, you will be set free. Enjoy.'" Chief Kroeker said. Noting a significant increase in shoplifts, car break ins and other crimes, Kroeker said, "The scary thing is that the worst results are still six months down the road, as the bad guys realize nothing is going to happen to them...."

(CBS), which negotiates and administers contracts with private contractors and administers payments to hourly providers.

II. Agency Organization and Operation

The Public Defense Services Commission is a seven-member commission that serves as the governing body for Oregon's public defense system. It provides policy direction and oversight for the administration of the system. The commissioners are civic-minded, uncompensated volunteers who are appointed by the Chief Justice who serves as an *ex officio*, non-voting member. By statute, two members must be non-attorneys, one must be a former prosecutor, and another must be an attorney engaged in criminal defense practice who does not serve as a court-appointed attorney compensated by the state. The current members of PDSC are listed in Appendix A.

The Commission established the Office of Public Defense Services, as required by ORS 151.216(1)(b), as the administrative agency responsible for carrying out the Commission's directives and other statutorily defined duties. The Commission appoints the agency's executive director. Ingrid Swenson served as the executive director and retired on July 31, 2011. The Commission hired a new executive director, Nancy Cozine, who joined the office on September 7, 2011.

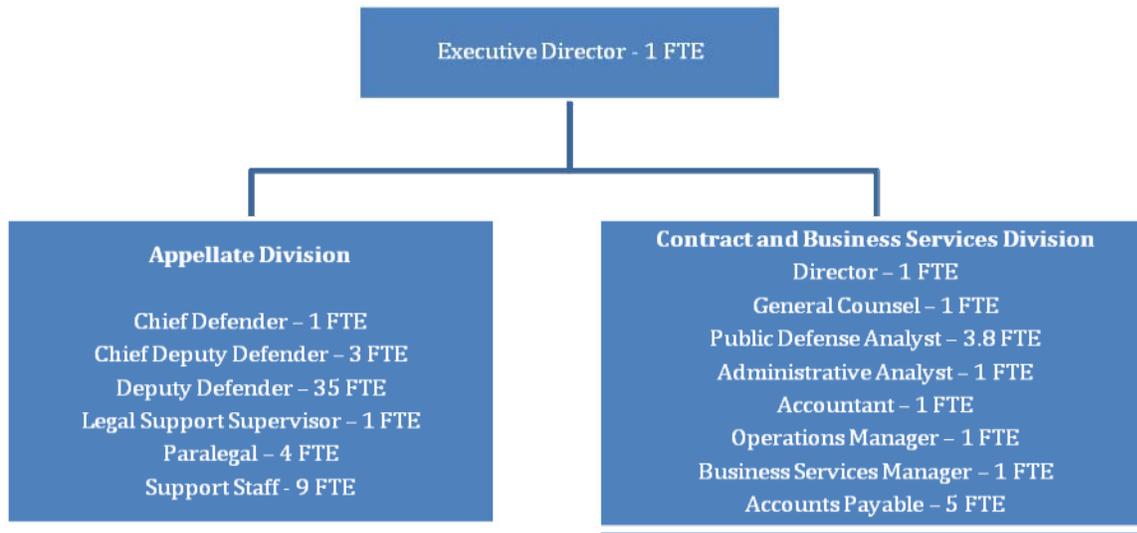
As shown on the Organizational Chart (next page) for 2011-2013, the Office of Public Defense Services has been comprised of two divisions, the Contract and Business Services Division (CBS),³ and the Appellate Division (AD).⁴ CBS manages the business operations of the two divisions. CBS also negotiates with private contractors and administers the Public Defense Services Account which funds representation and related services in all criminal, juvenile, and civil commitment cases at the trial level and in those appeals not assigned to the Appellate Division. Finally, CBS processes all expenses related to representation in public defense cases. The Appellate Division (AD) provides direct legal representation in the state appellate courts in criminal cases, juvenile dependency and termination of parental rights cases, and parole

³ Prior to the creation of PDSC, the responsibilities of the Contract and Business Services Division were managed by the Indigent Defense Services Division of the Oregon Judicial Department.

⁴ Formerly the State Public Defender's Office.

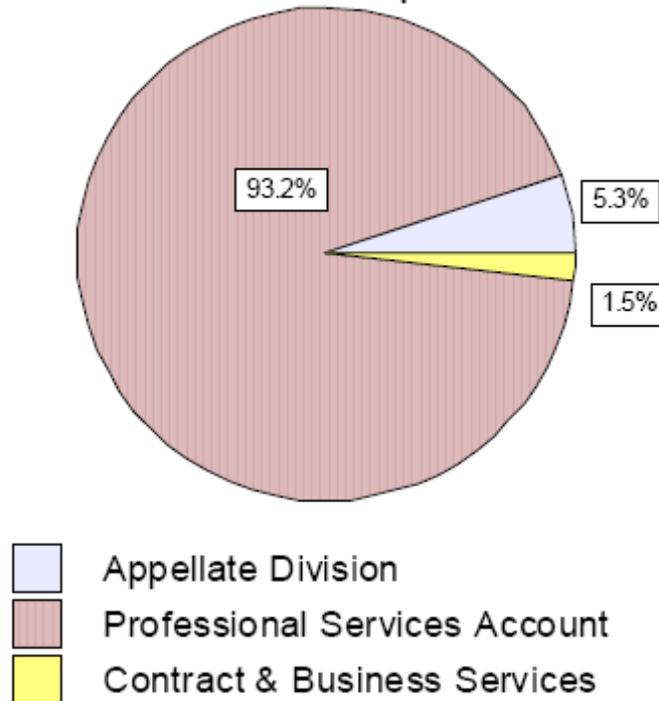
cases. The Agency's General Counsel serves as legal counsel for the entire agency.

Kathryn Aylward was the Director of the Contract and Business Services Division until her retirement in May 2013. Peter Gartlan is the Chief Defender and manager of the Appellate Division. Paul Levy is the agency's General Counsel, and served as Interim Director of the Contracts and Business Services Division following Ms. Aylward's retirement.



The chart below sets forth the 2011-2013 funding allocations for the two divisions and for the Public Defense Services Account which funds private contractors, hourly rate attorneys, and other private service providers such as investigators and expert witnesses.

2011-13 Total Expenditures



III. PDSC's Accomplishments in 2011-2013

(a) Contract and Business Services Division (CBS)

With respect to the provision of trial-level representation, the agency's Contract and Business Services Division was able to successfully negotiate contracts with more than 100 private providers in every region of the state to ensure representation in over 342,000 cases during the biennium. The division also monitored performance under these contracts by performing a monthly reconciliation of case counts from contractors and data from the Oregon Judicial Department regarding court appointments.

In addition to negotiating and administering contracts for the provision of legal services, the Contract and Business Services Division manages the non-routine expense authorization process that was formerly overseen by Circuit Court judges in Oregon's 27 judicial districts. The expense authorization process requires OPDS to review each request for approval of fees for investigators, expert witnesses, discovery materials provided by other parties, and other expenses necessary for the preparation and presentation of an adequate defense. The agency uses a peer-review process in public defender offices to obtain input from experienced attorneys about which expenses are truly "reasonable and necessary," as required by ORS 135.055. There were more than 34,000 such requests in 2011-2013. It is important to process these requests for services and the more than 50,000 invoices for completed services as promptly as possible. By assuring prompt and reliable payment the agency finds that providers are more willing to work at the below-market rates paid by PDSC. Responses to OPDS's Customer Service Survey in 2012 rated the agency very high in helpfulness, accuracy, timeliness, knowledge and expertise.

In addition to serving as the agency's legal counsel, OPDS's General Counsel provided oversight on quality of representation issues for public defense providers statewide. He worked closely with the agency's advisory group, the Public Defense Advisory Group, to assemble teams of volunteer lawyers to perform intensive three-day site visits to public defense contractor offices to review the quality of services provided. When a peer review team identifies significant quality issues, General Counsel assists in outlining and implementing quality improvement measures. In 2011-13, he completed two site visits, in Clatsop and Marion counties. He also conducted two statewide public defense performance surveys and worked with CBS contract analysts to follow up on concerns raised in responses to the survey. General Counsel also oversaw the agency's complaint process that permits judges, district attorneys, clients and members of the public to bring complaints regarding the cost or quality of public defense services to the agency's attention.

The agency's General Counsel is a frequent presenter at continuing legal education training sessions for public defense attorneys statewide. He also organized a diversity training focused on the topic

of implicit bias for all OPDS employees in May of 2013. Additionally, as mentioned earlier, he served as Interim Director of the Contracts and Business Services Division when the Division Director retired in mid May 2013.

In addition to managing the division and overseeing the work of her staff, the CBS Division Director served as the agency's Chief Financial Officer. She prepared the draft budget proposal for the 2013-15 biennium for approval by the Commission.

(b) Appellate Division (AD)

During the 2011-13 biennium the Appellate Division maintained its performance on PDSC's Key Performance Measure No. 1, which is to file opening briefs in criminal cases earlier in the appellate process. In 2006 the median number of days to file the opening brief was 328. In 2012 it was 223 days.

The division's juvenile unit, first approved by the 2007 Legislative Assembly, continues to receive high praise for its work in refining the way courts analyze and apply dependency statutes. The Juvenile Appellate Section represents parents in the majority of appeals in juvenile dependency and termination of parental rights cases. The Attorney General and Oregon trial and appellate court judges and staff report that the unit has provided superior representation that has enhanced and guided the development and application of juvenile dependency law statewide.

The criminal and parole section had many successful appeals, several of which established important new legal principles, such as the complete revision of the trial court's analysis of eyewitness identification evidence.

In October 2012, the Appellate Division undertook the project of revising and expanding its employee manual. The manual addresses AD policies, procedures, and commonplace issues that arise daily for attorneys and legal secretaries.

Division managers continue to meet regularly with the Chief Judge of the Court of Appeals and the Solicitor General of the Department of

Justice to advance and promote practices that improve the appellate process without prejudicing the rights of clients. For example, to address the growing backlog of cases scheduled for docketing in the Court of Appeals, the court progressed from scheduling 40 agency criminal cases per month in 2011, to 60 agency criminal cases per month in 2012, and expects to temporarily increase that number to 80 criminal cases per month from December, 2013 to June, 2014, after the fourth panel of Court of Appeals judges assumes the bench in late 2013.

In addition, the two offices and a representative from court operations meet quarterly to address operational issues that affect system efficiencies, such as issues concerning the quality and timeliness of transcript production, access to trial court files through the Odyssey system, efilings, and appellate case docketing.

The Appellate Division provides ongoing support to trial level public defenders. Criminal section appellate lawyers regularly present at continuing legal education seminars sponsored by the Oregon State Bar and the Oregon Criminal Defense Lawyers Association (OCDLA) and the Oregon State Bar. The division's criminal law attorneys field email and telephone inquiries from the criminal defense trial bar on a daily basis and provide briefing and memoranda for distribution through the OCDLA Library of Defense website that is available to criminal defense practitioners.

Similarly, lawyers from the Juvenile Appellate Section (JAS) are at the cutting edge of the legislative and case law development of juvenile dependency law, assisting the Oregon Law Commission and legislative workgroups address systemic juvenile dependency issues, in addition to appearing regularly before the appellate courts. Like their counterparts in the Attorney General's Office, the JAS lawyers routinely present at CLE seminars concerning juvenile dependency law, and they are in daily contact with and provide regular assistance to defense practitioners litigating juvenile dependency cases in the trial court.

(c) Service Delivery Reviews

In pursuit of its mission to assure high quality, cost-effective public defense services in 2011-2013, PDSC conducted service delivery reviews in Douglas and Linn counties. The service delivery review process includes holding public meetings in various locations in the state, gathering information from judges, prosecutors, other officials and citizens, evaluating the need for changes in the structure and delivery of local public defense services and directing the Commission's management team to implement needed changes.

There are three phases in the process. The Executive Director and other agency representatives perform an initial investigation. The Commission then meets in the region to hear directly from the stakeholders in the local justice system. The Commission then develops a service delivery plan, which is incorporated into a final report. This report serves as a blueprint for agency staff contracting with providers in the region. All of these reports appear on the agency's website.

In previous biennia, PDSC completed investigations in, and evaluations of, most of Oregon's local public defense systems.⁵ It developed service delivery plans to improve the structure and operation of local systems, and to raise the quality of legal services in those jurisdictions.

(d) Peer Review Site Visits

As noted above, during 2011 - 2013, the OPDS General Counsel organized two peer reviews. The peer review process provides an extensive examination of the quality of services within the county. Historically, the reports generated by peer review teams were confidential, available only to the peer review team and contract providers who were being reviewed. This approach worked well in counties with few problems and motivated administrators who were interested in implementing suggested improvements, but was less effective when providers were reluctant to implement changes. As a result of concerns that the confidentiality component was making it difficult to achieve desired changes, the PDSC decided to remove the promises of confidentiality. This decision was made after discussion

⁵ As they are completed these plans are posted on the PDSC website: www.oregon.gov/OPDS/PDSCReports.page.

in several public meetings, and after consultation with the Public Defense Advisory Group – a group of dedicated contract administrators from around the state who meet quarterly to discuss matters of importance to public defense providers.

The preliminary findings suggest that the removal of confidentiality component has created more efficient and timely responses to suggested improvements, and that the PDSC is better able to achieve its goal of ensuring the provision of quality representation.

(e) Efficiency of Operation

With two management level retirements within the Contracts and Business Services Division in May of 2013, the management team began a review of the current organizational structure to identify efficiencies that could be captured through modest reorganization efforts. While this process is still underway, it is expected that the agency will restructure in order to better serve agency employees and contract providers. Changes will be implemented in phases, with a new organizational model implemented throughout the end of 2013 and into early 2014.

IV. PDSC's Challenges in 2011 – 2013

(a) Quality Issues

The PDSC continues to actively administer a variety of programs and services to ensure that Oregon citizens receive high quality legal representation. As mentioned, recent changes in peer review confidentiality provisions have increased responsiveness to peer review findings, and stakeholders in those counties report that there has been a correlating increase in the quality of representation. While that is very positive progress, the PDSC will continue to explore additional ways in which quality might be measured and evaluated in order to increase statewide oversight capacity.

(b) Recruitment and Retention

Public defense providers continue to experience difficulties attracting and retaining lawyers. Over the course of the biennium,

several lawyers presented information to the PDSC and the Legislature regarding public defender compensation. Younger lawyers explained that it is impossible to purchase a home, have a family, or achieve other life ambitions as a public defender due to the low compensation and high law school debt. A career services specialist from Lewis and Clark Law School told Commission members that average student loan debt for law students is over \$100,000, making it very difficult for these lawyers to meet their financial obligations on their public defender salaries.

(c) Compensation Issues

PDSC has advocated for increased compensation for Oregon's public defense lawyers each biennium in an effort to reduce caseloads and improve quality of representation. Reduced caseloads improve representation and case outcomes in juvenile dependency cases,⁶ but are possible only when case rates are increased to amounts that allow attorneys to handle fewer cases. PDSC submitted three policy option packages (POPs) in the 2011-13 agency request budget, all of them addressing compensation issues.

- POP 100: Increase in compensation necessary to achieve a 20% caseload reduction in juvenile dependency cases
- POP 101: Increased compensation for appellate division attorneys (to match Department of Justice attorney salaries)
- POP 102: Increased compensation for public defense provider compensation

These policy option packages were not funded by the legislature as part of the 2011-13 budget .

(d) Funding for 2013-2015

The PDSC included the same policy options packages described above in its 2013-15 agency request budget, but reduced the amount requested by two thirds – requesting only one third of what would be

⁶ Mark E. Courtney, PhD., Jennifer L. Hook, PhD., and Matt Orme, "Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for Children in Foster Care," Partners For Our Children at the University of Washington, Discussion Paper Volume I, Issue I (February 2011). This report is available electronically at: <http://partnersforourchildren.org/pocweb/userfiles/PRP%20Discussion%20Paper.pdf>

required to achieve the desired outcome. The Legislature authorized partial funding of two requests - \$2.4 million for reduced dependency caseloads and \$3 million to increase public defender compensation. The \$3 million dedicated to public defender compensation will help address pay disparity issues. While some public defender lawyers were being paid over 40 percent less than prosecutors with the same level of experience prior to the appropriation of those funds, that disparity will be decreased to closer to 35 percent during the next contract cycle. The \$2.4 million dedicated to reduced dependency caseloads will be distributed through a pilot program. The PDSC will measure outcomes in the selected counties to evaluate the importance of additional funding for reduced dependency caseloads in future biennia.

In addition to partial funding of policy option packages, the PDSC received amounts close to current service level for both operating and contracted services. Appropriation of the two percent hold back, taken from agency budgets with an indication that it would be returned dependent upon statewide economic circumstances, will be critical to maintaining services and implementing continued improvements in public defense.

V. Conclusion

Oregon's public defense system has long been considered a national leader in the provision of effective, cost-efficient representation to qualified individuals. With a slightly improved economy and partial funding of policy option packages, the PDSC is now in a position to begin enhancing its quality assurance mechanisms, which will allow it to remain a nationally recognized model. While the peer and service delivery reviews are unquestionably very effective, the agency cannot fund or organize more than several per year, making it difficult to consistently cover and revisit every region of the state. The agency will be exploring ways to assess quality through less intensive, costly mechanisms that can be administered with greater frequency as a way to augment its quality assurance programs. The current effort to reorganize the office will assist with this goal by adding one full time position dedicated to quality assurance efforts. The structural changes will also facilitate increased capacity within the office, as it allows lawyers to focus on the practice of law and individual cases rather than also spending time addressing human resources and information technology matters.

The agency will begin to develop the pilot dependency program once the Commission has approved a statewide contracting plan in late October 2013. Once that is achieved, the agency can start identifying specific counties that would be appropriate for the pilot program.

As the agency begins the 2013-15 biennium and starts to prepare for the 2015-17 biennium, it will continue to examine the needs of the agency, contractors, and clients, to ensure that the agency's key performance measures, policy option packages, and quality assurance mechanisms are designed to efficiently address the most significant challenges in public defense.

Appendix A

Oregon Public Defense Services Commission Members

Chief Justice Thomas A. Balmer
Ex-Officio Permanent Member

Barnes H. Ellis, Chair
General Counsel & Corporate Secretary, Mercy Corps

Shaun McCrea, Vice-Chair
Partner, McCrea PC

Per Ramfjord
Partner, Stoel Rives LLC

Henry H. Lazenby, Jr.
Lazenby & Associates

John R. Potter
Executive Director, Oregon Criminal Defense Lawyers Association

Janet C. Stevens
Co-Editor, Bend Bulletin

Hon. Elizabeth Welch
Senior Judge

Attachment 5

PDSC
2014 Draft Meeting Schedule*

January 16

ED's 2013 Annual Report to the PDSC
Oregon Parent and Children Representation Pilot Program
Revised Certification Process for Non-Capital Providers
OPDS Budget Update & Schedule for 2014
Contract Services; Review of 2013 Contracting Process and Plans for 2014
OPDS Monthly Report

February

No meeting

March 20

OSB – Revised Performance Standards – criminal, delinquency, dependency
Representing Veterans in Oregon
District Attorney Charging Practices – Is anything changing in light of HB 3194 and Benoit?

April 17

Clatsop County Update
Contractor Comments and Commission Review of 2-15-17 Draft Policy Option Packages
Commission Training: Public Officials, Public Meetings, & Public Records Laws

May 15

Marion County – Commission Service Delivery Review
PDSC Review of 2015-17 Agency Budget Request

June 19 - Bend

PDSC Approval of 2015-17 Agency Budget Request
OPDS Monthly Report

July & August

No Meeting

September 19

OPDS Monthly Report

October 1 – Location TBD

PDSC Schedule for 2015 Meetings
OPDS Monthly Report

November

No meeting

December 18 - Hillsboro

Washington County – Commission Service Delivery Review
OPDS Monthly Report

* All meetings will be held in Salem unless otherwise noted