

**Members**

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



**Ex-Officio Member**

Chief Justice Wallace P. Carson, Jr.

**Executive Director**

Peter A. Ozanne

**PUBLIC DEFENSE SERVICES COMMISSION**

**Thursday, November 10, 2005 Meeting**

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

Yamhill County Courthouse  
Room 32, Lower Level  
535 East 5th Street  
McMinnville, Oregon 97128

**AGENDA**

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|--|------------------------|
| 1. <b>Action Item:</b> Approval of the Minutes of PDSC's September 14 and October 21, 2005 Meetings ( <i>Attachment 1</i> )  | Barnes Ellis           |
| 2. Review and Approval of Proposed Contracts ( <i>Attachment 2</i> )   | Kathryn Aylward        |
| 3. Discussion and Comments re. a Service Delivery Plan for Yamhill County ( <i>Attachment 3</i> )  | Barnes Ellis           |
| <ul style="list-style-type: none"> <li>• Judicial Perspectives</li> <li>• Prosecutor's Perspectives</li> <li>• Justice System Perspectives</li> <li>• YCD's Perspective</li> </ul> |                        |
| 4. <b>Lunch Break</b>  |                        |
| 5. <b>Action Item:</b> Review and Approval of Appeal Process for OPDS's Decisions re. Attorney Qualifications ( <i>Attachment 4</i> )  | Ingrid Swenson         |
| 6. OPDS's Monthly Report   | OPDS's Management Team |
| 7. Proposed 2006 Meeting Schedule and New Business ( <i>Attachment 5</i> )   | Barnes Ellis           |

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

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

September 14, 2005 Meeting of the Commission

Klamath County Courthouse  
316 Main Street  
Klamath Falls, Oregon

MEMBERS PRESENT: Barnes Ellis, Chair  
Shaun McCrea  
John Potter  
Jim Brown  
Mike Greenfield  
Janet Stevens

STAFF PRESENT: Peter Ozanne  
Kathryn Aylward  
Ingrid Swenson  
Peter Gartlan  
Rebecca Duncan

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The meeting was called to order by the Chair at 11:00 a.m.

**Agenda Item No. 1** The Commission approved the minutes of its August 11, 2005 meeting.

**Agenda Item No. 2 Review of Klamath County's Public Defense Delivery System**

The Commission received comments and discussed the state of public defense services and the services delivery system in Klamath County with Presiding Circuit Court Judge Cameron Wogan, Circuit Court Judges , Rodger Isaacson, Roxanne Osborne, Marci Adkisson and Richard Rambo, District Attorney Ed Caleb, Denise Rowan from the Department of Human Services and Dick Garbutt from Klamath Defender Services.

In light of these comments and discussion, the Commission directed OPDS to revise its report and proposed Service Delivery Plan for Klamath County and submit a revised report and plan to the Commission at its next monthly meeting.

**Agenda Item No. 3 Qualification Standards for Court-Appointed Counsel**

After discussing the details of the proposed Qualification Standards and considering a proposal by Jim Hennings to exempt public defenders offices from application of the standards, the Commission refused to amend the standards to exempt public defenders offices and directed OPDS to revise the Qualification Standards and resubmit them for the Commission's adoption at its next monthly meeting.

**Agenda Item No. 4      OPDS's Monthly Status Report**

In light of the time remaining, and because the Commission will be holding its Annual Retreat tomorrow, OPDS agreed to defer its Monthly Status Report until the Commission's next meeting.

The meeting was adjourned at 4:15 p.m.

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

October 21, 2005 Commission Meeting  
Mt. Bachelor Village  
19717 Mt. Bachelor Drive  
Bend, Oregon 97702

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Jim Brown  
Michael Greenfield  
Chip Lazenby  
John Potter  
Janet Stevens  
Chief Justice Wallace P. Carson, Jr.

STAFF PRESENT: Peter Ozanne  
Kathryn Aylward  
Peter Gartlan  
Becky Duncan  
Ingrid Swenson  
Caroline Meyer

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**The Chair called the meeting to order at 1:00 p.m.** Due to technical problems with the recording equipment and delay in transcription of the record of the Commission's September 14, 2005 meeting in Klamath County, approval of the minutes of that meeting was deferred until the Commission's next meeting.

**Agenda Item No. 1 OPDS Monthly Status Report**

OPDS reported on its investigations in Yamhill County in preparation for the Commission's November 10th meeting in McMinnville, the October 20 and 21 Annual OCDLA Management Conference, the Contract and Business Services Division's progress with contract negotiations, the Legal Services Division's personnel changes and progress in reducing its appellate backlog, including problems caused by the parole appeals process and the affects of *Blakely v. Washington*, the Division's upcoming CLE program with the Court of Appeals and Attorney General's Office, the progress of OPDS's contractors site visit process and the Juvenile Training Academy's recent CLE program in Eugene.

**Agenda Item No. 2 Review and Approval of Preliminary Agreements**

The Commission reviewed and approved Preliminary Agreements with Gerald Peterson and David Falls for capital defense contracts and with the Marion County Juvenile Advocacy Consortium.

**MOTION;** Shaun McCrea moved to approve the preliminary agreements; John Potter seconded the motion; with no objection the motion carried: **VOTE 7-0.**

**Agenda Item No. 3**

**Approval of the Qualification Standards for Court-Appointed Counsel**

042 Chair Ellis

The Commission reviewed OPDS's revisions since PDSC's last meeting on September 14, 2004 in Klamath County, confirmed that it should adopt Qualification Standards without further delay and approved them with the understanding that OCDLA and other interested attorneys could propose revisions in the Standards to the Commission at any time.

**MOTION:** Janet Stevens moved to approve the Qualification Standards as amended. John Potter seconded the motion. Hearing no objection, the motion passed: **VOTE: 7-0.**

**Agenda Item No. 4**

**Review of OPDS's Report to the Commission & Approval of a Service Delivery Plan for Marion County**

The Commission reviewed OPDS's final report and proposed Service Delivery Plan for Marion County, discussed approaches to gain community support for the plan and strategies to implement it, and approved OPDS final report, including the Service Delivery Plans, subject to minor editorial changes.

**MOTION:** John Potter moved to approve the report; J. Stevens seconded the motion; hearing no objection the motion carried: **VOTE 7-0.**

**Agenda Item No. 5**

**Review of OPDS's Report & Approval of a Service Delivery Plan for Klamath County**

The Commission reviewed OPDS final report and Service Delivery Plan for Klamath County, heard from Dick Garbutt and Tom Della-Rose of Klamath County of Klamath Defender Services (KDS), directed OPDS to change wording in its report from "directing" to "requesting" or "urging" KDS to take certain actions and correct references in the report to KDS's bylaws and past negotiation strategies and, subject to those changes, approved OPDS's final report and the Service Delivery Plan for Klamath County.

**MOTION:** Shaun McCrea moved to adopt the report with the language changes; John Potter seconded the motion; hearing no objection the motion carried. **VOTE 7-0**

**Agenda Item No. 6**

**Meeting Schedule for the Remainder of 2005 and 2006 & New Business**

The Commission agreed to cancel its December 1, 2005 meeting and to meet on the second Thursday of each month in 2006, subject changes for holidays and to accommodate joint meetings with OCDLA.

The meeting was adjourned at about 3:00 p.m.

**MOTION:** John Potter moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection the motion to adjourn carried: **VOTE 7-0**

PUBLIC DEFENSE SERVICES COMMISSION

EDITED MEETING TRANSCRIPT

October 21, 2005 Meeting  
Mt. Bachelor Village  
19717 Mt. Bachelor Drive  
Bend, Oregon 97702

MEMBERS PRESENT: Barnes Ellis  
Shaun McCrea  
Jim Brown  
Michael Greenfield  
Chip Lazenby  
John Potter  
Janet Stevens  
Chief Justice Wallace P. Carson, Jr.

STAFF PRESENT: Peter Ozanne  
Kathryn Aylward  
Peter Gartlan  
Becky Duncan  
Ingrid Swenson  
Caroline Meyer

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**TAPE 1, SIDE A**

**[PLEASE NOTE: Technical problems with the recording equipment made portions of these proceedings inaudible. As a result, this transcript of the record is incomplete.]**

- 001 Chair Ellis [The Chair called the meeting to order at 1:00 p.m.] I don't see minutes from the prior meeting?
- 001 P. Ozanne Yes, my apologies Mr. Chair. We had technical difficulties with our recording device in Klamath County. As you may recall, we moved to another courtroom in the Courthouse and asked the county's Circuit Court staff to turn on their recording equipment. We also asked if the court's staff would transcribe the recording. They did transcribe it, but it took longer than we expected. Kathryn received the transcript earlier this week and sent it out to you by e-mail. We did not have time to prepare minutes from that transcript.
- 005 Chair Ellis This is the Klamath Falls meeting?
- 006 P. Ozanne Yes. I would propose that you review and approve those minutes at our next meeting.
- Agenda Item No. 1 OPDS Monthly Status Report**
- 008 Chair Ellis The first item on the agenda is the monthly status report.

- 013 P. Ozanne The major activity that I have been involved in, and John Potter was good enough to join me, was to visit Yamhill County to conduct an investigation in preparation for the Commission's November 10th meeting in McMinnville. We spoke to a variety of folks and spent a day and a half there. We were, in general, favorably impressed. I will have a report ready for your November meeting. We also just completed a Management Conference in cooperation with OCDLA and I think it went very well.
- 024 Chair Ellis That was certainly my reaction.
- 027 J. Potter I think the format, while maybe needing to be tweaked the next time around, improved the dialogue between people.
- 033 K. Aylward We had a vacancy at CBS that we were keeping open in our accounting staff. We have now filled it, so everyone can breathe a little easier. We are renegotiating contracts. It is a little bit problematic for us when the Management Conference falls when it does because we do need to spend a lot of preparation time for the conference. We tend to say, "Let's get past the conference and then we will really roll up our sleeves and start working." We have done a little bit of the preliminary work. One of the things I should have mentioned this morning at the conference was that we are going to be going through these contracts in a rather linear fashion. There will be a two-week window of negotiating in which, when you get the call and it starts, we are hoping contractors won't end up saying, "Well, I have two months, I can take my time." Of course, there will be some people who don't get that first contact, other than an acknowledgement that we received their proposal, until mid-November, late November or the first week in December. I have a great bunch of analysts and they are doing a great job.
- 054 P. Gartlan With respect to personnel at LSD, the theme is turnover. We have had a lot of turnover within the past two months. We had two new attorneys start at the end of September and the beginning of October. Since June, we have had five new attorneys. We have also replaced one secretary, who has gone out on sick leave with cancer, and another secretary, who recently left to go to the Judicial Department to clerk for a judge. We are in the process of hiring for that position. With respect to parole, which is another issue that is definitely on our radar screen, we have restructured the handling of parole cases. In the past year or so, parole cases have grown into a backlog problem. What we had been doing is having two attorneys working full-time on parole cases only, along with a third part-time attorney.
- 070 Chair Ellis These are appeals from revocations?
- 071 P. Gartlan Revocations, exit interviews, post-prison supervision decisions and denials of requests for rehearing. Parole is its own special area.
- 079 Chair Ellis Has something happened to increase the backlog, or was it not a first priority before, or what?
- 080 P. Gartlan What happened was, before the 2001 legislative session, parole cases had been dealt with as habeas corpus actions, so they had been done in the trial courts statewide, or at least in court where the correctional institutions were located. The trial courts didn't want to be doing parole cases, so the system was changed. Instead of parole cases being done on a habeas level, the law was changed so that appeals from the Parole Board would come through our office. The legislature gave us one attorney, a half secretary, a paralegal position to handle the new caseload. We ended up over the last couple of years dedicating, as I said, two attorneys full-time and probably half of another attorney. Another factor was, at the same time, the legislature created a new motion practice and inserted it into the parole appeals. What they did is they said, "Generally, before you can proceed with your appeal, you have to identify that there is a substantial question of law in this appeal." If you do that with your motion, then the Court of Appeals will allow you to proceed and file a brief. That added another layer of litigation for us. We went to the Legislature in 2003 and tried to get that removed. The legislature at that time told us, "We are not going to do anything unless you

have everybody on board and everybody agrees that we should remove this motion practice.” At the time, the Board of Parole was against it because they thought it would save them money if briefs were not filed and the appeals were kicked out during this motion stage. In the past two years, we have convinced the Court of Appeals and I think the Attorney General’s Office that we need to get rid of this motion practice. The motion practice ended up growing in and of itself. We file a motion, the state responds and asks to dismiss the case, and, in a lot of those cases, we file a respond or reply. Then the court takes it under advisement for several months. So there is a built-in delay not necessarily attributable to us, but a lot of it is attributable to us, no doubt. But also the system has a layer which adds delays to the process. We will be meeting with the AGs on Tuesday to go over some proposed legislative amendments to improve the parole appeal process.

132 Chair Ellis

Is that it for your report?

132 P. Gartlan

I have more, if you want more. We also met with the Court of Appeals and the AG to work out some processes to improve the parole system without legislation by working around the motion practice and putting parole cases on the same kind of track as regular direct appeal cases. We will know now, when we look at a parole case and see that it is 400 days old and suspect we are responsible for those 400 days, we can see, no, we may be responsible for 250 or 300 days, but not all of this delay. Now, it will be all our responsibility if the case is a certain age and we haven’t briefed it. We think it will help us track data regarding delays, and it will also speed up the process. As part of this meeting, we discussed Blakely cases and other important issues coming up because Senate Bill 528 is in effect. So we will have issues arising from that. We have a lot of challenges on the horizon. I mentioned at the last meeting that the Attorney General had adopted a new policy of requesting 270 days on its appeal cases to respond to our briefs. That was part of the discussion with the Court of Appeals and the AG’s Office two weeks ago. By the way, we have been filing a response that says, if we institutionalize this kind of delay, the federal courts are going to get involved. That got the attention of the court, which I think resulted in this meeting. The court is very interested in having the AG reduce its request from 270 days to a shorter delay, and wanted to know if we would have a problem with that. We said we couldn’t agree to that. I have been attempting to contact Mary Williams, the Solicitor General, to see where this whole situation is going. Commissioner Brown, I wanted to apologize because at the last meeting you asked me what the backlog was and I never got around to that. I think the entire Commission should be aware of some historical data. On August 31, 2003, our backlog was 189 cases and that was very high. Backlog to us means any case over 210 days old from when the briefing period starts.

193 Chair Ellis

The 210 days starts with the filing of the transcript?

195 P. Gartlan

Yes. So if we haven’t gotten to the case within 210 days, we consider it part of the backlog. Last August 31, 2004, we had reduced the backlog to 115 cases. Right now, as of September 30, 2005, the backlog is up to 255 cases, which is an historic high.

202 Chair Ellis

Why is this?

203 P. Gartlan

Three reasons, I think. Blakely has just thrown a huge monkey wrench into how we can process cases. Let me see if I can explain this. We really have two types of cases. We have trial type cases and plea type cases. Before Blakely, Becky or I would deal with all the plea type cases because, in order to file a notice of appeal in plea type cases, we would have demonstrate in the notice that there is a colorable claim of error. Becky and I would process all these cases and send out letters to counsel and to clients and get information about whether or not there is a colorable claim of error. If there was a colorable claim, we would assign the cases out to an attorney. With Blakely, virtually every plea type case has a potential Blakely issue so it became unfeasible for us to be handling it the way we used to. So we distributed all the guilty plea type cases to the attorneys. It was extra work on top of what they are

already doing. So the attorneys are handling these plea type cases, going through the process of finding out if there is a colorable claim of error. As part of this, attorneys will find other errors that need to be corrected. So essentially, it means more cases in our caseload. Another contributor is attorney turn-over. That turn-over has slowed things down a little bit, but I'm really optimistic that attorneys who are coming in can get up to speed quickly. Third, are the parole cases. As I explained before, the parole system has built-in delays, and the parole cases just get older and older. Not just the systematic delay because that is built in. But we also had personnel who caused parole delay and those difficulties I think will be remedied, or are being remedied, with personnel changes. We have now distributed the parole cases, not just to two attorneys, but we have distributed them to all the Deputy I attorneys. That is seven attorneys who will be getting a smattering of parole cases. We them told to put those on the top of their priority list, at least for the older cases, and get them processed and filed. Finally, we have joint CLE scheduled for November 17 with the Attorney General and the Court of Appeals. All of the judges on the Court of Appeals will be presenting to us.

263 Chair Ellis They are the presenters and you are the audience? That is pretty good. What subjects are you going to cover.

266 P. Gartlan How does the court work? How does it address motions? What are the internal workings of the Court? How do they decide cases? What is their process? For whom should an appellate attorney write? Should an appellate attorney write for somebody who knows a lot about criminal law or knows next to nothing about criminal law, or something in the middle?

276 Chair Ellis You will have your whole office and the AG as well? I don't think I have heard of this happening before.

279 P. Gartlan We often have in-house CLEs and we invite judges. So on several occasions we have had Court of Appeals judges and Supreme Court justices come and address us. But this is the first time we will have a whole court. We will have all 10.

282 Chair Ellis Will you notify our contractor appellate lawyers?

284 P. Gartlan They are notified. Finally, the speakers spoke about quality at the conference this morning and yesterday. I think the Commission should know that our office just won what I think is a huge case, and several attorneys joined in the case. Senior Deputy Robin Jones did a great, great job. You will even notice a comment in the opinion about that. It is a really important case that sets us apart from the rest of the nation with respect to the opinion and the effect of the opinion on how our courts address expression.

318 J. Potter Is it typical for a court to pass judgment on how well a case is briefed?

319 P. Gartlan No it is not.

**Agenda Item No. 2 Review and Approval of Preliminary Agreements**

321 Chair Ellis Are we ready for Action Item 2, which is Attachment 1, the preliminary agreements?

325 K. Aylward I know it is only three, but there are more back at the office. I had to prepare this a week in advance of the meeting. We have two death penalty preliminary agreements. One is with Gerald Peterson and the other is with David Falls. Each of these agreements have no change in the rate per hour -- no increase. The Marion County Juvenile Advocacy Consortium, which the Commission has heard quite a bit about in the last few weeks, we have reached agreement with them with no increase in their rates either, but a whopping 45 percent workload increase. This is just to match the work that they have actually been doing during the last contract period.

348 Chair Ellis So it is not a transfer of workload?

349 K. Aylward No, and they are the only provider in Marion County and it is not anticipating further growth. It is simply setting their quota at what they are actually doing.

362 Chair Ellis We heard very positive things about them.

364 K. Aylward That is why we did them first. We figured they would be easy.

365 Chair Ellis I take it you are recommending that we approve these three.

367 K. Aylward That is my recommendation.

368 Chair Ellis Any questions or comments?

370 J. Potter What is the rate right now in the death penalty contracts? There is no change in the rate, but what is that rate?

372 K. Aylward They fluctuate a little bit, but it is \$80 to \$83, in that range. What we do with them is consider 1800 hours a year full-time. Then we calculate a monthly amount. But originally the way the death penalty contracts were negotiated was with an eye on the budget. We would say “How much money do you need to run your office, show us all those things and, okay, that is how much money you need.” So 1800 hours is full-time. You can divide the two and sometimes get the same number or a slightly different number. We haven’t actually set them up with an hourly rate.

387 Chair Ellis On the JAC, have we have been paying an overage for the cases over the contract?

389 K. Aylward That is correct. We have been topping them up periodically when it gets to be unmanageable for them. During periodic reviews, I don’t know if we have given them additional funding every six months, but we have certainly looked at it.

395 Chair Ellis So from a budgeting point of view, there is no real change in the costs we are incurring?

397 K. Aylward That is correct. These are only comparing what their old contracts looked like compared to their new contract. But we fully anticipated needing the \$2.3 million to cover that contract.

401 Chair Ellis Any other questions?

402 J. Potter It just occurs to me when you were talking today on the conference panel about approaching the funding of the defense system in a different way, that we do it differently in death penalty work then we do in general trial level work. That is, it is not caseload in death penalty contracts. It is based on something else: what it takes to do the job, that kind of analysis. Is there anyway to transfer that kind of thinking to the entire caseload? Or is that one of your models that you were already thinking of?

414 K. Aylward That is exactly one of the things that you can do: simply say, “How much more can you do and how much does it cost you to do that much work, given that you have to pay salaries, rent and a reasonable salary for yourself?”

420 Chair Ellis The death penalty unit is so large though.

421 J. Potter I understand that. But I was just wondering, and I am not advocating for that at all. I am advocating for considering this kind of a model, or at least exploring this kind of a model and applying it to larger numbers of cases. What is it going to take to handle 300 felonies, 250 misdemeanors for an office? Rather than to try and assign a dollar value to each one of those

cases, which is what we do now. To look at it that way, we would look at death penalty contracts.

432 K. Aylward We used to do that with public defenders a lot more closely. They would complete a budget and they would say, "This is every penny we need to do the work, and for this number of attorneys this is the caseload we can handle." We have moved away from that because they would give us the budget and we would say, "Well, just don't spend so much." So we would end up negotiating down, nit picking their budget and saying, "Well, why is your long distance telephone bill so much and why can you reduce salaries?" -- that sort of thing. It is difficult when you compare people who aren't 100 percent funded by their contract.

**MOTION:** Shaun McCrea moved to approve the preliminary agreements. John Potter seconded the motion. Hearing no objection the motion carried: **VOTE 7-0.**

473 P. Ozanne Mr. Chair, I asked Ingrid to talk about the site visits and our schedule of them for next year. I thought the Commission would be interested in hearing about that.

477 Chair Ellis We would be interested.

478 I. Swenson Very quickly, I will just say that we have completed our seventh site visit in a period of 16 months from the time we started. There are more site visits on the calendar for 2006. At this point, in January, we are planning on going to Multnomah County to review the juvenile contractors. In March, we plan on going to Linn County. In May, we will return to Multnomah County to visit the criminal firms.

500 Chair Ellis So that would be MPD and MDI?

501 I. Swenson Yes, but there are two other contractors there too.

**TAPE 1; SIDE B**

001 P. Ozanne We will have information that I can communicate in general terms, without disclosing the contents of the reports, about what the problems, what the strengths and weaknesses are in the juvenile justice system, based on the visits to Multnomah and Linn Counties in preparation for your juvenile service delivery planning process next year. We also want to have a large portion of the state's caseload that we've looked at through the planning process by the end of 2006, in time for the next legislative session.

009 Chair Ellis I think personally it is one of the really good programs that is going.

016 I. Swenson Mr. Chair, may I just take one minute to tell you about a CLE which occurred this last week. PDSC was a co-sponsor, and I'm happy to report to you that it was a phenomenal success. On Monday and Tuesday, during the course of the Judicial Conference, we gave a CLE for juvenile attorneys, attempting to address some of the issues that we have heard about around the state regarding quality and performance. It was co-sponsored by the Juvenile Court Improvement Project, the Oregon State Bar, the University of Oregon Law School, Juvenile Rights Project and the Oregon Criminal Lawyers Defense Association. People worked very hard to put this together. It was focused on attorneys who have practiced somewhere between zero and three years in juvenile court -- very intensive training that lasted two complete days and covered as much subject matter as possible, and included comprehensive written materials so that new lawyers would know where to go for questions. The Chief Justice very kindly made the introductory remarks, unfortunately by video, since he was otherwise occupied.

029 Chief Justice  
Carson Was it okay?

- 030 I. Swenson It turned out fine. I especially wanted to thank John Potter and OCDLA.
- 033 P. Ozanne It was also offered at an affordable price, which made it accessible to everyone. What was the number you expected and what was the numbers you got?
- 034 I. Swenson We had planned it for 50 people, being a little optimistic, we thought. However, we had 130 people.

**Agenda Item No. 3 Approval of the Qualification Standards for Court-Appointed Counsel**

- 042 Chair Ellis Okay, lets move on to the Qualification Standards.
- 042 I. Swenson Mr. Chair, as everyone will recall, we looked at these standards in Klamath Falls. During that discussion, a number of people talked about some issues that they identified and some amendments have been made to the draft as a result. We are certainly aware that the document is far from perfect and still needs considerably more consideration in order to establish the appropriate standards to qualify to handle certain types of cases. I think it is appropriate for the Commission to go forward by adopting the draft you have in front of you today which, except for the death penalty area, doesn't include major changes of any kind from what has been in effect for the last decade or more. But I think it would be appropriate to revisit these standards in three to six months, after people have had a chance to get together and look at changes and consider them. I have talked with a couple of attorneys who have some suggestions, which I think would be helpful. I do think we need to have something in place, however, so I do think it is appropriate to vote on these standards. The changes should be fairly visible to you. The amendments are in paler type.
- 068 K. Aylward The insertions are all underlined.
- 069 I. Swenson One has to do with the effective date, so obviously if we adopt these today, that would be the effective date. We talked about whether the appointing authority should be the receiver of this information. [Inaudible discussion of the underlined amendments.]
- 153 Chair Ellis I have two questions. If you look at page 3, after paragraph B, you have a conjunctive and after E you have a disjunctive. [Inaudible.] I would like to create a little legislative history.
- 168 I. Swenson In the provisions with respect to lesser felony cases, which starts on page two and continues on page three, it is intended that we comply with A, B, C, D and E. So it should say A and B and C and D and E.
- 180 Chair Ellis You might be able to amend that and say, "in lieu of above qualification described in paragraphs A through E." Now, my next question is documents like this are not self-executing and I am going to use as an example Tillamook County. How do we communicate these standards to the practitioners in Tillamook County and the court in Tillamook County, and how do we make sure they are applied? Because we can say a lot of things, but if we don't implement them and communicate them, it doesn't matter.
- 194 K. Aylward That is part of the reason that the effective date keeps getting pushed back because one component of this is notifying the courts. Many of the attorneys will be relieved that they are off the list and some might not be so happy about it. They are used to having to fill out a form annually to get on the list. And sometimes it wasn't annually. Sometimes we skipped a couple of years; and now it has been three years. So I don't think the practitioners will be too surprised that there is a process where they are going to have to apply again. They may have the original September date stuck in their heads. But I'm not sure it is going to be that difficult to just send out notices to the court and our providers.

- 209 Chair Ellis We are going to get a form from each of these lawyers where an application for qualifying has occurred?
- 211 K. Aylward That is our intent and that is what we have done in the past.
- 213 Chair Ellis Do we in turn respond to the courts and say, "Here are the ones who have submitted the qualifying standards and are eligible? They can appoint other people, but they are not going to get paid.
- 216 K. Aylward That is correct. In addition to that, during the four month period, we are going to be looking at how we decide, if someone has just been certified as meeting the qualifications, whether we want to accept that at face value. We are going to be taking a look at them and, to start with, we are going to focus on the people who state that they meet minimum qualifications in capital cases and to be co-counsel in capital cases -- murder, aggravated murder -- because those are the ones that we want to make absolutely sure are qualified. Those will get a lot more scrutiny than someone who says they are misdemeanor qualified. We know they have been doing that for years and have had no complaints.
- 242 Chair Ellis Other questions?
- 244 C. Lazenby So, with these rules in place, will you screen lawyers for eligibility to take court appointments and get paid for them by us?
- 251 K. Aylward That is our goal. Input from the court is beneficial and helpful, but the bottom line is that it is our money to spend. And we have to spend it carefully by picking and choosing and setting standards for quality. I hope we make good decisions. I think what I had always envisioned is not just, "Do you meet the minimum qualifications?" but "Will we put you on the list?" and they really are two separate things. We don't need 500 names on the list in Polk County. And we don't want attorneys in Pendleton saying, "I will take cases all over the state." We have had this happen before, where Coos County will say, "Give us a list of attorneys who will do terminations," and then they call people from Hillsboro to drive down there. We want to have a little more control over that.
- 284 Chair Ellis Any further questions or discussions?
- 289 J. Brown Have you thought if there ought to be any mechanism for review, other than appeals to the courts?
- 290 P. Ozanne We could do it on your behalf and we could come here with appeals.
- 304 J. Brown I assume that this decision could be construed as an order. Should we consider whether the policy ought to have some other mechanism?
- 316 C. Lazenby I don't want to step up and volunteer for it either, but I think it appropriate to have some kind of review of the agency's decisions. I don't know if that should be just a paper review on our part.
- 336 Chair Ellis We could submit it here, but I don't want to have open hearings here. Just a review of the paper.
- 345 S. McCrea Kathryn, you were talking about not having Hillsboro attorneys going to Coos Bay. Do we need to have something in there about the presumption of geographical location because you don't have anything in there in terms of the geography? It is something that we need to make clear?

- 359 K. Aylward I think we do that if we are providing the service cost-efficiently. It does talk about a list of attorneys for each county. It may be that in some counties we do include neighboring county attorneys because we know there are a lot of attorneys available. So for Coos, obviously, they get Curry attorneys, but do we pair Klamath and Lake? I don't know.
- 371 Chair Ellis I have a feeling that is a problem that will work itself out.
- 390 S. Gorham I have just a few things; one on the geography. On page 12, you just talked about it. I think it is a good idea if you think geographically. Unfortunately, sometimes for various reasons, there are two attorneys doing a certain type of case in a particular geography. For example, I know Coos County and Curry County may unfortunately use Marion County attorneys to do PCRs because they can't find attorneys in Coos County willing to do them. So, in that sense, you have to be expansive in regards to that. I know in the last three years even Deschutes County has had to go to Marion County to get qualified attorneys. So there is that fortunate or unfortunate occurrence. So geography, while you want to have somebody qualified close by, you don't want to be too exclusive in regards to that.
- 415 K. Aylward One of the things is, we don't like to give counties a list of people because, once they get a name, they will always call that person, because that is the person that they called the last time. We want them to call us because we know if we have a contractor who is under quota, and we give priority to contractors first of all, which has been our policy, and if we have somebody who is under quota and if we have somebody we know really needs the case, then we might be willing to spend money to have them travel a little further because, otherwise, they are not going to meet their quota. Also, in Marion County, MCAD's contract has a clause that relates to whether or not we could ask them to travel. If we ask them to take cases in another county, they get their higher contract rate. If they just go take a case in another county, then they only get the regular \$40 an hour rate. So we do want to be in the loop for the appointment process.
- 437 Chair Ellis There must be a way to communicate directly with presiding judges and put in some written form about how to proceed.
- 481 J. Hennings I agree that the standards need to be in place. But I think there are some major systemic policy issues that need to be addressed.

**TAPE 2; SIDE A**

- 001 J. Hennings In Multnomah County, there is a minor felony layer that starts with the district attorney assigning attorneys to those types of cases. It is basically all drug cases, manufacturing, delivery and all property cases. This type of provision is going to make it difficult for any provider to provide the right kind of people, the people who are qualified. I think those kind of policy decisions need to be looked at. I think there are others to be looked at: for instance, bias toward jury trials. Personally, my experience has been, whether it's a jury trial or bench trial, the results end up roughly the same. But these standards require experience in a jury trial. It also requires experience of calendar time. Quite frankly, someone in my office who handles 400 cases at a misdemeanor level in a year, and somebody who is on a list who handles 30 cases, I can sneak that in under that presumption that this means calendar time alone. It doesn't say anything about quality and maybe it ought to. Maybe OCDLA ought to put a group together to review the policies and report back to this Commission no more than six months from now. One other area, with the geography, there are some built in problems there.
- 041 Chair Ellis Let me make a suggestion. I think this is the third hearing we have had and part of me wishes these things would have come out at the first hearing and not at the third hearing. But nothing we do is frozen. It can be modified and amended as appropriate. I would certainly encourage what you suggest, which is that an OCDLA group review these. If there are problems or

suggestions for change, put them in written form, run them through Ingrid and, if changes need to be made, we are prepared to look at them.

066 S. Gorham On page one, 2(b) is this self-demonstration or does the person before they assume they are qualified have to get something back from OPDS?

080 Chair Ellis I would read this as requiring OPDS to affirmatively say that we agree. It says "to OPDS's satisfaction." There is no way to know that if they don't affirmatively respond.

084 S. Gorham So when that happens, the person can expect to get something back from OPDS.

085 Chair Ellis Yes. Any other questions or comments?

**MOTION:** Janet Stevens moved to approve the Qualification Standards as amended. John Potter seconded the motion. Hearing no objection, the motion passed: **VOTE: 7-0**

**Agenda Item No. 4 Review of OPDS's Report to the Commission & Approval of a Service Delivery Plan for Marion County**

094 Chair Ellis The next item on the agenda is the Approval of a Service Delivery Plan for Marion County, which is Attachment 3 in the materials. We have had two public meetings in Marion County and then we had discussion but not action at the Retreat. Peter and his staff have put together a fairly lengthy report and their proposal is on page 34. Peter, do you want to walk us through that proposal?

103 P. Ozanne I think you are all aware the new materials start on page 31. I summarized the discussions at your last meeting in Salem. As you know, there are voluminous appendices, which contain blow-by-blow descriptions of our proceedings in transcript form.

107 Chair Ellis I want to commend you, by the way. I thought having those transcripts was really helpful. When you try to listen, when you attend the meetings and try to make notes, minutes help. The transcripts really brought it back.

111 P. Ozanne Well, I also hope that these reports are educational for other interested parties following the Commission's work. I think we need to try to preserve a record so that observers understand the bases for your decisions. By the way, while we are talking about voluminous records, I sent out electronic copies of today's meeting materials to you prior to last weekend, in case you wanted more time to read the reports. Is that useful to anyone? I don't need to know that now, but if you tell me before our next meeting that it's helpful to get the meeting materials electronically in advance of our meetings, I am happy to make it practice to do that.

122 Chair Ellis I like it.

123 P. Ozanne The proposed service delivery plan begins on page 34. I tried to describe what I heard from the Commission's deliberations and discussions in past meeting and to derive principles that would lead to a set of recommendations. I listed them on page 34 and 35. The first one is, in a large county like Marion, there should be alternative models or modes of delivering services in a large caseload. Second, I indicate that there were discussions about Marion County being the seat of government and the importance of having the presence of full-time public defense office with a professional manager at the state capitol. This could promote the interests of the entire public defense system -- to have someone to help with the legislature, to follow issues in the county and the state. The third principle emphasizes that there is always a role in every county, and certainly in Marion County, for qualified consortia and private attorneys to provide public defense services. The fourth principle is that MCAD may continue to serve as a public defense contractor in Marion County if its members and management demonstrate to the satisfaction of the Commission that MCAD can address its

management and quality assurance problems. Item C under that fourth principle is a series of what I think are the Commission's main concerns about MCAD. The report states or infers that addressing these concerns is entirely up to the creativity and initiative of the board and the management of MCAD. Then the recommendations flow from these four principles. The first recommendation is to establish a high qualify, cost efficient, public defenders office in Marion County. That recommendation is followed by proposed processes for establishing the office. We could use OPDS's normal RFP process to either seek responses from potential managers, or ask for responses from groups of attorneys. I suggested that we may want to use both approaches. A third way that is not in the report, based on my recent discussions with people who have had experience establishing such offices, is to form a charter board of directors or group of founders first, who would then recruit the office's director and oversee the development of the office. I also mentioned an advisory group in the report, which could be used to review the office's proposed design and give us input on the design. Then we could proceed with the RFP process. This advisory group could also become the Board of Directors for the office. Perhaps a Commission member could serve on that Board. This part of the report is oriented toward process. With regard to the substance, such as the number of attorneys in the new office, I wanted to make clear to the reader, including concerned MCAD members and local judges, that we would be starting relatively small and building the office slowly in order to do it right. Do you want me to finish reviewing the report or do you want to start discussing this portion of the report?

- 207 Chair Ellis Why don't you finish.
- 208 P. Ozanne The second recommendation is to provide MCAD with the opportunity to respond to this report. The bullets on page 37 happen to be what I derived as concerns of the Commission and how the MCAD Board and management should proceed with addressing those concerns, including reporting back to the Commission within the coming year. That is the end of my review of the report.
- 217 Chair Ellis What I am going to suggest is to break our discussion into two or three areas. One is, does the Commission agree with the fundamental proposal that, given what we learned in Marion County – including the demographics of Marion County, the size of Marion County -- do we want, if we can get there, establish a PD's office? Let's take that topic separately. If that seems to be where the Commission wants to go, then I think we ought to address those questions of how do we want to get there from here. Then the third portion of our discussion would be the MCAD piece, as Peter described it. If that is satisfactory, I would be interested in comments from the Commissioners on the question of moving in the direction of causing a PD to emerge here. Or are there those of you who think we should leave well enough alone?
- 242 S. McCrea I missed one of the meetings, but I was interested in the comments at the meeting and have now had time to review the transcripts. I am now persuaded that having some type of a public defenders office in Marion County would be beneficial. I would say my concern about the report on page 35 is the phrasing of paragraph four in saying that MCAD "may be able to continue serving if its members." My concern is that we encourage and we don't discourage the members of MCAD about the fact that we are making changes because, as a private attorney who has been in Marion County for a couple of hearings recently, I have been hearing a lot about MCAD feeling threatened by the possibility of change. So I want to make sure that we maintain our policy of transparency.
- 273 Chair Ellis One thought that I had is that formation of a PD in Marion County may really help MCAD. Part of the problem I see with MCAD is trying to be too much to too many. I think if we are successful in getting a PD office started, then I think what would happen would be more energy, more focus on public defense. I honestly believe that a scaled down MCAD as a supplement to a PD would be a real improvement. Any other thoughts?
- 289 J. Brown [Inaudible.]

- 309 Chair Ellis Any other comments? Do we have consensus on the Commission? OK, so that takes us to the next piece, which is how we get there from here. There is a certain chicken and the egg issue here. The ideal thing would be for people in the community to form and organize the office and want to see it happen. I don't know how we can get a responsible group within the community to be what I'll call "incorporators." The alternative, and maybe they can be done simultaneously, is that we try and attract potential management for the office. Again, if they come from within the community, that is the best -- if people say, "You know, if you are going to go that way, I would really like to be a part of that." I thought, Peter, your suggestion of getting the Contractor Advisory Group to recommend a design has worked so well in other areas, so it makes sense to try and get a template out there with their help.
- 351 P. Ozanne Subject to the Commission's review and approval too.
- 352 Chair Ellis I want this to happen in a way that it is not just coming from this group. I want the provider community and the legal community in Marion County to participate in this. At the end of the day, when the dust settles, you want this new entity to be community-based, that is the real objective. How to get there from here is a challenge and, Steve, I hope you will be a part of this. I know this probably hasn't been your favorite few months, but you have been a significant contributor in the past and we are trying to make this a process that is not aimed at criticism. Any other thoughts people have? Then I would suggest that we go forward.
- 373 J. Potter I think you have said it, but the Commission is not going into this with blinders on. We know that making a change of this nature will create anxiety among the players within the system and players outside the system. There may even be people who may try to sabotage the effort. I also support the notion of having the community convey to us the kinds of things they want. Having said that, I think we should also provide some direction to it. We don't have as you alluded to the lure of a federal grant to start an office. But we can come up with things in our vision that might invigorate the community. We could say this new public defender office has a salary structure based on the DA's salary structure, or this office should work closely with Willamette Law School. We have a law school in Marion County that could participate in this process. It might be an incentive for the community to participate. We could come up with a list of things that might help motivate the community to be thinking about our vision in a grander scope, without telling them how to design it. I don't want to tell them how to design the office, but I would like to say, "Here is our vision." I don't want to see a public defenders office in the basement of some building three miles away from the courthouse. We would like to have a public defenders office that is a real presence in the community. It has to have access to the courthouse and standing in the community. If we can convey that message, then that may help spur the community's backing.
- 404 Chair Ellis One thought I had is that we have two of our voting members here in Salem.
- 411 M. Greenfield I just moved to Portland.
- 411 P. Ozanne Maybe you should have said "ties to the community."
- 422 Chair Ellis What I was trying to get at is, would it be helpful to have a subcommittee involved here that could help jump-start the process by getting the right kinds of folks in the community involved? I haven't heard any volunteers. Part of what I want is to make it clear that we aren't just passing some abstract motion here and say, "You all go do it."
- [The Chief Justice, Jim Brown and Mike Greenfield agreed to serve on a subcommittee.]
- 440 P. Ozanne I'm not going to talk in more detail about this process here in the limited time we have. But it would certainly help if I could confer with the three new subcommittee members to talk about the process.

- 446 Chair Ellis I am just trying to get something started here.
- 448 P. Ozanne The other question I have is do we separate the design phase of this project from what I would call the recruitment or start-up phase? What I mean by design is the development of a plan for the new office with technical input from the Contractor Advisory Group. As John said, we need to generate an idea or a concept of the office and then attract community interest, either through RFPs or through the identification of incorporators. That is what I mean by the recruitment or start-up. We could devote the next few months to these processes.
- 467 Chair Ellis If it takes that long. Two months seems like a long time.
- 468 P. Ozanne Well, we know from Commissioner McCrea's experience, it took a lot longer than we expected to make progress in Lane County. By the way, Judge Norblad and I had a telephone conversation yesterday and I just want to pass on this information. He expressed his belief again that a public defender system wasn't the way to go in Marion County, and that MCAD, in his opinion, was proceeding with addressing some of the Commission's concerns. He still supports the notion of an oversight committee that would substitute for MCAD's Board of Directors. It would also have at least one member of the Commission and two local judges on it.
- 511 S. Gorham I think we wanted to see where you wanted to go. I think, certainly, since Klamath Falls, the message to my membership was that there was going to be a public defenders office. When remains to be seen, but I think that message got through.
- 518 Chair Ellis Do you have any suggestions, Steve?
- 520 S. Gorham You won't see any sabotage from me. I'm not in the sabotage business. I am in the business of making sure that the indigents in Marion County who we serve are given the best possible representation, whether it is through MCAD, individual attorneys or through a public defender. You have to understand though that I am the Executive Director of MCAD and have a fiduciary responsibility to MCAD. I think that is what you will see from me, and have seen me doing in appearing before you. So, within the bounds of that, I and other MCAD members will be as above-board as possible with your goals. I think, in particular, when you talk about how a public defender will look in Marion County, you have to start with the community, like you said. I think Commissioner Brown brought this up in Klamath Falls. If you start by imposing something from Portland or Lane County, the legal community as I know it will react negatively to that. Certainly, putting something out and getting as much input as possible from the Marion County Bar or the judiciary is important. One of the problems that we all see, and it is reflected in the report, is the diversity of the judiciary. In the report, and I made a note of this especially on page 24, OPDS says that they are going to help us do that and I think that is essential.
- 586 Chair Ellis I assume that this planning stage is going to include more of the judges.
- 593 S. Gorham Certainly, you need buy-in from the judiciary if you say to the court, "You must appoint a public defender in this type of case."
- 603 Chair Ellis Let's take it one step at a time. Is there more at this point that people want to say about the process?
- 635 T. Sermak Mr. Chair, Tom Sermak from Lane County. I am a member of the Quality Assurance Task Force, and we have several other members of that body here. They have directed me to offer their services to assist in any way.
- 641 Chair Ellis That's great. You guys have been extremely helpful.

680 J. Hennings [Inaudible.]

686 C. Lazenby I am sympathetic to what you are saying, Jim, but I just don't think it applies in this particular situation. You are talking about systems design as opposed to appointing individual lawyers. I think judges are an essential component of this process and they need to be involved in this. I think it is important that they be involved.

701 J. Potter I tend to agree with Chip on this. If we are talking about a design process and the political realities in Marion County, and maybe any county that doesn't have a public defender system, you want to have the judiciary involved. Jim's points are well taken, and I don't know where we draw the line, but this kind of initial design process involving broad conceptual thinking doesn't threaten the independence of the defense function by having judges involved.

## **TAPE 2; SIDE B**

001 Chair Ellis The third section of the report, which I wanted to get comments on before we vote on the report as a whole, is the section that begins in the middle of page 36 and goes over to 38. It contains suggestions for MCAD between now and a report date, which I believe is about August 1, 2006. Do any of the Commissioners have a reaction to that? Do you support what the staff is proposing? Any thoughts or comments? Steve, do you have any thoughts or comments?

010 S. Gorham First of all, I welcome having the opportunity to do that. I am sure that we will be able to do that in the time frame that you have set. I certainly hope that, while whatever process is going on for the public defenders office, that everybody is encouraged to help us to get our house in order -- certainly, the Contractor Advisory Group and Quality Assurance Task Force. We have some of our own ideas, but we want any ideas that come up. I have already started to get ideas from others to help us improve, including from OPDS, so I hope OPDS helps as well.

022 Chair Ellis I think that is a good concept. I also want to say that we recognize that efforts are being made during this period while we have been holding these hearings. You guys were listening and were trying to respond to what came out. Any comments from any Commissioners, or questions before we have a motion on this?

**MOTION:** John Potter moved to approve the report. Janet Stevens seconded the motion. Hearing no objection, the motion carried: **VOTE 7-0.**

032 Chair Ellis Peter, thank you. I thought that this process was a constructive one and I thought the report was good. I thought it fairly reflected what we have heard and fairly reflected the right way to move on it.

## **Agenda Item No. 5 Review of OPDS's Report & Approval of a Service Delivery Plan for Klamath County**

057 P. Ozanne In the interests of time, I will only focus on page 20 of the report on Klamath County, which is Attachment 4 in your packet of materials. Page 20 contains the four components of the proposed service delivery plan for the county. I would say, in general, that these four components are partly educational for readers about what we think are some concerns regarding the management of consortia. The report concludes that things are going well in Klamath County. Most of the issues that are flagged are also generic to consortia -- the challenges they face in terms of management. I will go through them. The first one started with a discussion we had with the KDS consortium in Klamath Falls about the consortium being the lowest cost provider around. We certainly appreciate their efforts to be cost-

efficient, but there was a sense during our discussions that, if their rates were so low, then maybe KDS's attorneys were tempted to handle too many cases to make a living wage. Then we heard from judges that there were certain unique ways they were handling their docket that was generating a lot of court appearances for KDS's attorneys. That whole dynamic, however, had already been accounted for by CBS in the course of negotiating contracts with KDS over time. In other words, CBS is trying as best it can to match caseloads with attorneys and not overload them while negotiating contract rates. CBS has also taken into account the unique practices of the court in terms of setting hearings. So the report simply highlights these issues as things that we want to keep monitoring. Item No. 2, again, is something affecting all consortia, which we just talked about during our Management Conference. I think it is particularly helpful for a rural county consortium like KDS, especially when they have a lot of experienced people with strong relationships in the community like KDS, to help us with community and political outreach. Thus, we recommended an outside board member, and KDS has already accepted the idea. I know some of KDS's current board members are willing to help with outreach to the larger community and to inform the public about the mission of public defense in Klamath County. But an outside board member would help with this effort. Dick and his Board have recognized that. If they can get the message out about what KDS does in the community, then the better off we all will be in terms of carrying our message to the legislature. Legislators and other officials in more rural areas of the state, like Klamath County, have great influence beyond the numbers of residents in their areas. With regard to recommendation No. 3, Dick Garbutt and his colleagues have recognized that there have been communication and logistical problems in parts of the juvenile process, particularly with the Citizen's Review Board. Again, this is a common issue across the state. CRBs want to see more lawyers in their hearings. Dick has already explained to you that KDS is implementing an idea for improving communication between CRBs and the consortium's lawyers. The fourth recommendation was made in response to specific directions from the Commission to tone down the comments regarding an individual lawyer in KDS. The Commission's concern was about involving itself in specific personnel matters and about being careful to avoid confusing someone who may be disagreeable but is an able and zealous advocate and someone who is both disagreeable and incompetent. The view of the Commission is that this is a matter for local contractors like KDS to sort out for themselves. Accordingly, I remove references in the earlier version of this report to assertions of fact about the lawyer in question. I did, however, retain the notion in this recommendation that KDS has more work to do in developing a process to identify and address potential problems of underperforming members. I expect that they will look at this issue too. Again, this is a management concern, as you all know, that is not unique to KDS. It is problem for consortia across the state, where one lawyer is trying to manage the business and services of professional peers without the authority of an employer. We have discussed at the Management Conference the possibility of forming a task force of consortium managers to address the unique problems of consortia. We often talk about public defenders offices, but here we have a different kind of structure. Again, recommendation No. 4 is meant to remind KDS that we think a quality assurance process is something they should pay more attention to.

142 Chair Ellis

If they go toward one or more outside directors, would it make this a lot easier?

144 P. Ozanne

I would think so. That was also discussed at the Management Conference that just ended, and you were there for much of it Mr. Chair. We talked about the advantages to someone in Dick Garbutt's position, trying to administer a group of peers, or trying to herd cats, as we sometimes say. Outside board members could help initiate a quality assurance process for addressing the problem of underperforming consortium members.

151 Chair Ellis

We should make two word changes in your report? It is on page 22. Twice you had the Commission directing KDS to do something and I feel uncomfortable with that language. So if you could in the first paragraph strike the word "direct" and insert the word "request," I would feel better about that. In the other paragraph on page 22, strike the word "direct" and

insert the word “urge.” I think that is a lot more diplomatic. Then in the first line of paragraph four, strike “direct” and replace it with “request.” Any comments or questions from Commissioners? I do want to say I really felt very welcome in Klamath County. I thought everyone who spoke to us seemed prepared and interested and I enjoyed our time there. If either Dick or Tom or both of you want to come forward and comment, you are welcome to.

- 174 D. Garbutt I just have a couple of things to say. One of things was that it was really satisfying to have you here because some of things that were pointed out, we weren't confronted with before and had never gotten around to. But since you have been here, Tom and I have taken steps and talked with the city manager, who has agreed to be a member of our oversight committee. He is also an attorney, as well as connected politically. We were going to ask Tom Crandell, who is also well-connected in the community. He is also an attorney. I am also hopeful to get the head of the Chamber of Commerce, who is also wired into the politics of Klamath County, to be on that oversight board. One of the things they are going to do is review all of our bylaws and come up with a plan to handle the problem attorney issue, should it come up. So we are already starting to work toward this goal. One of the things that I think is a misconception on Peter's part is that we have an attorney contract that, among other things, talks about alcohol abuse, missing court dates, violating ethics, all that kind of stuff. It is part of our contract.
- 192 Chair Ellis So it is a contract with the individual lawyers.
- 193 P. Ozanne I will make that correction.
- 194 Chair Ellis Have you had a chance to look at the Clackamas County consortium contract?
- 196 D. Garbutt We have not.
- 196 Chair Ellis They have a pretty good form contract too.
- 196 D. Garbutt We hired an outside attorney to go over our contracts.
- 200 Chair Ellis Any other comments or questions?
- 202 T. Della-Rose Looking at the first recommendation, I think it may be a misconception, which may be historical. Our wanting to offer cut-rate services or the lowest price services, I think it is just from the past. We were really urged to. We were in a position once, but for a little fancy footwork at the end, to lose our contract to a bidder just because they were lower priced. So we had always been concerned with that throughout our history. Now, with the creation of this entity, I don't think that is as much of a concern to us. I think quality is more important than price for this entity. I know it is an important consideration because you are responsible for public funds. I think we have tried to respond to that –
- 222 D. Garbutt We have indicated if we get any kind of excess money -- we have been paid for overages over the past year anyway -- that the money would be solely dedicated to additional criminal attorneys, as well as funding a new program that has come up here. We call it DCM or Dependency Case Managers, which solves a big problem with the CRB. It gives the parent's attorney and the children's attorney a much better feel for what is going on with their clients.
- 231 P. Ozanne I will make the change you suggested regarding KDS's historical experience.
- 234 D. Garbutt We are proud of delivering a good service at a good price.
- 235 Chair Ellis Any other comments or questions.

**MOTION:** Shaun McCrea moved to adopt the report with the proposed language changes. John Potter seconded the motion. Hearing no objection the motion carried: **VOTE 7-0.**

**Agenda Item No. 6 Meeting Schedule for the Remainder of 2005 and 2006 & New Business**

242 Chair Ellis Are there any new business items?

243 P. Ozanne Other than talking about the upcoming schedule for rest of the year and the schedule for Commission meetings in 2006.

246 Chair Ellis When do we need to talk about it?

246 P. Ozanne Well, I propose canceling your December 2005 meeting, which is currently scheduled for December 1. I think we have had you on the road a lot and that we all could use a breather. And the holidays will be coming up.

253 Chair Ellis Any objections? Be sure to get a written notice out though.

258 P. Ozanne Then the presumed schedule for 2006 will be the second Thursday of every month. We haven't formally adopted that schedule yet, but that is what we will be proposing if it works out for you. I will talk with John about coordinating with OCDLA events, as we did this year.

264 Chair Ellis That seems to be working about as well as anything. So you envision more regional meetings?

266 P. Ozanne That is, of course, up to this group. We will be doing a juvenile service delivery plan in probably two meetings in 2006. We will be inviting people to those meetings who will be talking to you about the quality of juvenile law practice across the state and how to improve it. So we could meet in other parts of the state then. But frankly, I don't know at this point, until I work up a proposed agenda for that process. But the juvenile planning process will probably take place in the middle of next year. Other than that, we don't have any other regional reviews or planning processes to propose yet.

274 Chair Ellis The next region I thought you have said will be Yamhill County.

274 P. Ozanne Well, we are on for a November 10 meeting there. That ends the year with the number of regional reviews or plans that we targeted for 2005. But we haven't yet scheduled any reviews or planning processes for 2006.

281 Chair Ellis Any other business?

**MOTION:** John Potter moved to adjourn the meeting; Janet Stevens seconded the motion; Hearing no objection the motion to adjourn carried: **VOTE 7-0**

# Attachment 2

Presenter: Kathryn Aylward

**Public Defense Services Commission**  
**Meeting Action Item**  
November 10, 2005

**Issue**

PDSC approval of Preliminary Agreements (PAs) and Proposed Contracts.

**Discussion**

All PAs have been reviewed in detail and approved by the Director of the Contract and Business Services Division. Actual contract documents will be signed pending approval from the PDSC.

	County	Contractor (Kor)	Status	2005 total value	2006 total value*	Comments
1	Death Penalty	Michael D. Barker	PA to 12/31/07	\$155,210	\$155,220	No change in rates or hours. (\$10 difference due to rounding monthly payments.)
2	Death Penalty	Laurie Bender	PA to 12/31/07	na	\$137,700	New contractor. (90% of full time.)
3	Death Penalty	Kathleen Bergland	PA to 12/31/07	\$102,480	\$102,480	No change in rates or hours. (75% of full time.)
4	Death Penalty	Geoffrey J. Gokey	PA to 12/31/07	\$148,872	\$148,872	No change in rates or hours.
5	Death Penalty	Wm. Timothy Lyons	PA to 12/31/07	\$155,052	\$155,052	No change in rates or hours.
6	Death Penalty	Duane J. McCabe	PA to 12/31/07	\$155,710	\$155,712	No change in rates or hours. (\$2 difference due to rounding monthly payments.)
7	Death Penalty	Ralph H. Smith, Jr.	PA to 12/31/07	\$116,407	\$116,407	No change in rates or hours. (75% of full time.)
8	Death Penalty	Randall Vogt	PA to 12/31/07	\$112,832	\$123,000	\$67.50/hr increased to \$75/hour. (90% of full time.)
9	Clatsop	Clatsop County Defenders Association	PA to 12/31/07	\$360,780	\$422,220	4% rate increase; 13% workload increase.

10	Curry	Curry County Consortium	PA to 12/31/07	\$290,160	\$311,820	4.4% rate increase (M11 rate change only); 4.7% workload increase.
11	Malheur	Michael R. Mahony	PA to 12/31/07	\$122,000	\$108,000	PCR only. No change in rates; 11.5% workload decrease.
12	Marion	MCAD	Proposed contract to 12/31/06.			No change to any terms.
13	Marion	Andrew Ositis	PA to 12/31/07	\$20,160	\$18,144	Civil commitments only. 5% rate increase; 15% quota decrease.
14	Washington	Karpstein & Verhulst	PA to 12/31/07	\$464,820	\$565,380	4.3% rate increase; 17.3% workload increase.

\* Terms for 2007 are the same as 2006 in all PAs.

**Recommendation**

Approve all preliminary agreements listed above.

**Required Commission Action**

Vote to approve all preliminary agreements listed above.

# Attachment 3

# ***PRELIMINARY DRAFT***

*(November 3, 2005)*

## **OPDS's Report to the Public Defense Services Commission on Service Delivery in Yamhill County**

### Introduction

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

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

This report presents the results of OPDS's preliminary investigation of conditions in Yamhill County's public defense delivery system. It also represents the first step in PDSC's service delivery planning process.

### PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and a report such as this, the Commission will review the condition and operation of local public defense delivery systems and services in each region by holding public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's report and public comments in response to that report and during its meetings in the region, PDSC will develop a Service Delivery Plan for the region. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's Service Delivery Plans will (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

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

#### Background and Context to the Service Delivery Planning Process

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

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

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

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

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the Quality Assurance Task Force is planning site visits of the largest contractors in counties across the state, including Columbia, Jackson, Klamath, Multnomah and Umatilla Counties.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers.

In accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services. Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and

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

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

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

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

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

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

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

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

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

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they

work operate under contracts with PDSC and have organized themselves in the following ways:

- Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.<sup>2</sup> Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

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

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

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants

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<sup>2</sup> Spangenberg and Beeman, *supra* note 2, at 36.

or former clients, no county can operate with a public defender office alone.<sup>3</sup> As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

- Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC’s RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for “succession” in the event that some of the consortium’s lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

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

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

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<sup>3</sup> *Id.*

has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

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

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receiving court appointments.

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

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

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

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

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

- Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

#### OPDS's Preliminary Investigation in Yamhill County

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

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

On November 10, 2005 from 11:00 a.m. to 4:00 p.m., PDSC will hold a public meeting in Room 32 in the Lower Level of the Yamhill County Courthouse in McMinnville, Oregon. The purpose of that meeting is to (a) consider the results of OPDS's investigation in the county as reported in a preliminary draft of this report, (b) receive testimony and comments from the Commission's local contractors, prosecutors, judges and other justice officials and interested citizens regarding the quality of the county's public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission's Service Delivery Plan for Yamhill County.

The preliminary draft of this report is intended to provide a framework to guide the Commission's discussions about the condition of Yamhill County's public defense system and services, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county's delivery system. This preliminary draft also offers guidance to PDSC's invited guests at its November 10th meeting, as well as the Commission's contractors, public officials, justice professionals and other citizens that may be interested in this planning process, about the kind of information and comments that will assist the Commission in improving Yamhill County's public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Yamhill County's justice system may be the single most important factor contributing to the quality of the final version of this report and the Commission's Service Delivery Plan for Yamhill County. OPDS welcomes written comments from any interested public official or private citizen, which should be mailed no later than November 7, 2005, to:

Peter Ozanne  
Executive Director  
Public Defense Services Commission  
1320 Capital Street N.E., Suite 200  
Salem, Oregon 97303

or e-mailed no later than November 9 to [Peter.A.Ozanne@opds.state.or.us](mailto:Peter.A.Ozanne@opds.state.or.us).

## A Demographic Snapshot of Yamhill County <sup>4</sup>

Founded in 1843 as one of four original Oregon Counties, Yamhill County lies in the northern end of the Willamette Valley. According to its official website, the county's "718 square miles contain lush farmland, fine wineries, the world famous "Spruce Goose" and a historical heritage unsurpassed in Oregon."

Yamhill was the second of the four original districts created by the Provisional Legislature in 1843. Its boundaries were drawn to include all of the area from the Willamette River west to the Pacific Ocean and from the Yamhill River south to the California border. The Yamhill district consisted of 12,000 square miles from which twelve counties were eventually created. The county shares borders with Washington County to the north, Tillamook County to the west, Polk County to the south, and Marion and Clackamas Counties to the east.

The county was named for the original inhabitants of the area, the Yamhill Indians, a tribe of the Kalapooian family, who lived around the Yamhill River. The tribe was moved to the Grand Ronde Reservation in 1855. The earliest non-native settlers entered the area in 1814. Most were employees of the various fur companies operating in Oregon. Many of the American immigrants who came over the Oregon Trail during 1843-1844 settled in the Yamhill region, which became the agricultural center of the Willamette Valley.

With a 2003 population of 88,150, including 29,000 in McMinnville and 20,000 in Newberg, Yamhill County counts agricultural crops, lumber, education, international aviation, dental equipment, manufactured homes, pulp and paper and steel among the principal products of its commerce and industry. From 1990 to 2000, the county's population grew by 30 percent.

One-third of Yamhill County is covered with commercial timber, the economic mainstay of the western part of the county. Agriculture is the primary commercial activity in Yamhill County, however, with an agricultural labor force twice the state average. The county ranks seventh out of the Oregon's 36 counties in the annual market value of agricultural production, including wheat, barley, horticulture, and dairy farming. Yamhill County is also the center of Oregon's wine industry, with 19 wineries making up the largest concentration of wine makers producing the greatest number of award-winning wines in the state. Manufacturing jobs comprise 18 percent of the labor force, and service jobs make up about 28 percent.

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

Although Yamhill County is the home of Linfield College and George Fox University, the higher education level of its residents is relatively low, with 13.4 percent of its adult population holding a Bachelor's Degree and 7.2 percent with a graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent). The county also has a relatively small proportion of professionals, scientists and managers in its workforce (6.5 percent in 2000, compared to a state average of 8.9 percent). But 76 percent of the county's population of adults (25 years old or older) completed high school or received a GED, nearly the same as the statewide average of 78.6 percent.

In 2000, Yamhill County had one of the lowest unemployment rates in the state at 3.9 percent, compared to the statewide rate of 4.9 percent. The county also ranked 12th in per capita income among Oregon's 36 counties and had the fifth lowest percentage of residents living in poverty 9.2, compared to 11.6 percent in Oregon and 12.4 percent in the United States. Yamhill County has an average teen pregnancy rate of 16.4 per 1,000 residents (the statewide average is 16.7), but the fifth highest high school dropout rate in Oregon over the past decade.

The diversity of Yamhill County's population is slightly below average. Its non-white and Hispanic residents make up 15.7 percent of the county's population, compared to 16.5 percent for Oregon as a whole. With juveniles (aged 18 years old or younger) making up 26.9 percent of its total population, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is larger than the state's at-risk population of 24.7 percent.

In 2000, Yamhill County ranked 16th in "index crimes" among Oregon's 36 counties with a rate of 36.1 index crimes per 1,000 residents,<sup>5</sup> compared to a statewide rate of 49.2 (and compared to Marion and Lane Counties' rates of 58 per 1,000 and Multnomah County's at 74.8). The public defense caseload in Yamhill County is 1.4 percent of Oregon's total caseload.

### OPDS's Preliminary Findings in Yamhill County

Most public defense services in Yamhill County, as in Klamath County, are delivered under contract with PDSC by a single consortium, Yamhill County Defenders, Inc. (YCD).<sup>6</sup> Incorporated in 1996 as a 501(c)(3) tax exempt,

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<sup>5</sup> "Index crimes" are those crimes reported by the Oregon State Police in the Oregon Uniform Crime Reports, including murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft and arson. Oregon: A Statistical Overview at p. 122.

Index crime rates in Yamhill County have not been dropping as fast as in the state as a whole. From 1990 to 2000, the index crime rate in Yamhill County dropped by only 4 percent, while it dropped by 14 percent across the state. On the other hand, more serious crime rates of crimes against persons have been dropping faster in Yamhill County, with a decrease of 41.8 percent between 1990 and 2000 compared to the statewide decrease of 24.5 percent.

<sup>6</sup> The following information is based upon YCD's answers to the "Questionnaire for Administrator of Consortium" developed by OPDS's Quality Assurance Task Force for use in its contractor site

nonprofit corporation, YCD was awarded its first contract in 2002, modeling its organizational structure and operations after Marion County's consortium, Marion County Association of Defenders, Ltd. (MCAD), apparently at the urging of the Indigent Defense Services Division (IDSD) of the State Court Administrator's Office. In particular, YCD adopted MCAD's hourly rate billing system and accounting methods.

YCD has a seven-member Board of Directors made up of consortium members and an Executive Director. Bob Suchy is currently YCD's Executive Director, having succeeded Carol Jones, who is now a Circuit Court Judge. The consortium has 24 members.

YCD's Board of Directors meets regularly throughout the year to conduct the consortium's business and "when needed, will also consider and follow-up on membership performance concerns, up to and including mentoring, monitoring, training, reprimanding or expelling a member."<sup>7</sup> The Board is currently "taking into consideration the addition of a 'lay' member," pending discussions with the State Bar and other consortia about "how privacy interests are addressed."<sup>8</sup>

In addition to overseeing the management of the consortium,<sup>9</sup> YCD expects its Executive Director to communicate effectively with its members, the courts and OPDS, mentor and train new members, identify and address problems with the conduct or performance of its attorneys, and inform members of relevant developments in the law. This half-time position is paid \$1,720 per month.<sup>10</sup>

According to YCD, the consortium originally included all of the attorneys in the county who practiced juvenile or criminal defense law in Yamhill County.<sup>11</sup> Apparently, YCD's membership still represents the vast majority of juvenile and criminal defense lawyers in the county. Among the consortium's 24 members, nine attorneys devote 75 percent or more of their time to the legal work of the

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visit process (Questionnaire), YCD's Corporate Bylaws (Bylaws) and its Articles of Incorporation (Articles), all of which are attached in Appendix A.

According to YCD, attorneys outside the consortium, rather than YCD's attorneys, are appointed to represent allegedly mentally ill persons in civil commitment proceedings. Appendix A, Questionnaire, p. 4.

<sup>7</sup> Id. at 1.

<sup>8</sup> Id. This concern has been expressed by other consortia asked to consider outside or independent members on their boards of directors. Given the need for consortium members to preserve the privacy interests of their clients when talking among themselves, OPDS expects that YCD and other consortia should be able to address this privacy concern. After conferring with a number of consortium administrators at this year's annual Management Conference, OPDS is planning to form a Consortium Advisory Group in which administrators can share their experiences and insights for the purpose of addressing these kinds of concerns unique to consortia.

<sup>9</sup> YCD's highly regarded office manager, Susan Hoyt, handles the day-to-day business operations of the consortium, including the administration of its contract with PDSC and dealings with CBS.

<sup>10</sup> Appendix A, Questionnaire, pp.1-2.

<sup>11</sup> Id. at 2.

consortium, 17 devote 50 percent or more of their time and only three spend as little as 20 percent of their time on consortium cases.<sup>12</sup> Most of YCD's need for new members appears to have been filled in the past by experienced public defense attorneys returning to the area or by additions to the law firms of existing consortium members. Additions to YCD's membership are subject to a majority vote of the Board of Directors and approval by the Presiding Judge.<sup>13</sup>

In response to the questionnaire provided by OPDS, YCD reports that the consortium, in close collaboration with the Circuit Court, has established or is developing a variety of practices and procedures to improve the quality of its lawyers' performance and delivery of its legal services:

. . . The presiding judge determines the level of proficiency [of YCD's new attorneys] and assigns cases appropriately. The [E]xecutive [D]irector monitors and observes the performance of [new] attorney[s] and discusses [their] performance with the court and sometimes the DA. The [E]xecutive [D]irector may recommend mentoring for individual attorneys when appropriate. Mentoring needs are determined from direct observation by the Executive Director; frequent discussions with judges about attorney performance and appropriateness. When an attorney is determined to be in "over his/her head," that attorney is counseled by the [E]xecutive [D]irector to accept cases at a lower level until sufficiently experienced. Formal Board action can result if an attorney does not respond to this informal prompt, but the judges maintain ultimate authority to assign cases commensurate with the attorney's ability.<sup>14</sup>

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Currently there is a very strong and active collaborative environment among consortium attorneys. Newer attorneys are encouraged to seek help from the more experienced attorneys, and judges may appoint a more experienced attorney as a "second chair" when requested and appropriate. . . .

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Adoption of a more formal mentoring system is in the development stage. The Board has authorized the Executive Director to study and propose a mentoring system and quality control measures for adoption by the [B]oard of [D]irectors. . . . A training manual is in the process of adoption and supplemental funding is necessary and

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<sup>12</sup> Id. at 3. OPDS understands that eight of YCD's attorneys handle juvenile delinquency cases and four handle juvenile dependency cases.

<sup>13</sup> Id.

<sup>14</sup> Id. at 4.

has been requested for use in a mentoring program in the current contract proposal.<sup>15</sup>

Cases are assigned by the court based on the court's determination of the skill level of the particular attorney. Attorneys are assigned cases at a higher level when the court feels they are competent to handle them. This is further monitored by the Executive Director through personally observing the attorney directly whenever possible; by the Presiding Judge; and by [the] Verification Specialist.<sup>16</sup>

The [E]xecutive [D]irector directly monitors attorney performance by reviewing dispositions and observing court performance. Routine informal meetings with the judges are conducted on a regular basis to obtain performance information and [ensure that] difficulties are addressed. Quality representation is perceived as one of the most important functions for the [E]xecutive [D]irector to oversee and YCD's current budget proposal includes [a] request for funding sufficient to provide adequate tools to set up, monitor, quantify, control and improve quality to the extent possible.<sup>17</sup>

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<sup>15</sup> Appendix A, Questionnaire, p. 5. In its responses to OPDS's questionnaire, YCD indicated that the consortium has also requested "supplemental funding" in its next contract with PDSC for CLE material, current publications from OCDLA and Westlaw. Assuming that any additional funds are available in PDSC's "maintenance-level" budget for 2005-07, OPDS would require YCD to show why (a) CLE and OCDLA materials currently acquired by its members cannot be shared among other consortium members and (b) cost-free online research services cannot be used by its members instead of Westlaw.

<sup>16</sup> Id. As in most counties, the Circuit Court in Yamhill County employs a Verification Specialist to determine whether defendants qualify for a court-appointed attorney. In addition, OPDS understands that the Verification Specialist in Yamhill County, with approximately 20 years of experience in this position, runs conflict of interest checks for YCD and assigns cases to YCD's members on a rotating basis in accordance with the attorneys' declared preferences and their qualifications to handle particular cases. As YCD observed in its responses to OPDS's questionnaire, this contribution of resources by the Circuit Court appears to reduce delays in assigning lawyers to clients and attorney withdrawals and substitutions arising from conflicts of interest:

Normally, conflicts are initially screened by Karla Fry, Court Verification Specialist. We are quite fortunate that her effort all but eliminates conflicts of the sort that would preclude an attorney from accepting the cases from the outset.

Id. at 5.

<sup>17</sup> Id. at 7. YCD did not specify in this response to OPDS's questionnaire what the "adequate tools to . . . improve quality" would be or how much they would cost. Presumably, its current budget proposal does. In another response to OPDS's questionnaire, YCD does propose the addition of a "Staff Attorney to handle routine tasks . . . and stand-in [court] appearances . . . [ , who] would also have an excellent vantage point to monitor quality control issues by handling all PV cases." Id. at 11. YCD also proposes that its Executive Director would fill this new position. Id. at 9.

YCD also described some of the things it does well and areas where improvement is needed, in part, as follows:

YCD member attorneys provide amazingly good defense services for indigent defendants given the constraints of our system and we interface very well with the court. Our structure seems to present the best features of “independent” defense and some economies of a public defender, and the result is better quality. We are enthusiastic and motivated to continue improving our effectiveness as well as accommodate and endure the complex and dynamic nature of providing criminal justice in times of fiscal hardship. . . . We are becoming more and more comfortable with centralized control over some defense functions. We collaborate among ourselves very well . . . .

\* \* \* \* \*

We are relatively new and are constantly evaluating ourselves and working to improve. Our interface with the juvenile system is poor and unfortunately little progress has been made in this area. Citizen Review [Board] Hearings are a crucial stage of dependency proceeding and attorneys are not attending them. We have added an experienced attorney who will handle only [j]uvenile cases as a step in rectifying this situation.

Improvement is needed in our ability to efficiently utilize investigators and to increase our effectiveness through mentoring, education, research, evaluation, and litigation support. . . .

YCD could further improve overall responsiveness to immediate or emergency needs of the court and, in some cases, clients by having a Staff Attorney available on call. . . .

YCD would like to see an Early Disposition Program implemented, improvement in the amount of time it takes to bring cases to trial and improvement in the case flow of those that are dismissed or end in a guilty plea. . . .<sup>18</sup>

On October 13 and 14, 2005, John Potter, a member of the Public Defense Services Commission, and Peter Ozanne, the Commission’s Executive Director, visited Yamhill County on behalf of OPDS. They met with YCD’s members and with public officials and justice professionals in the county, including all four Circuit Court judges, the District Attorney and a senior member of his staff, managers of the Community Corrections Department, Juvenile Department and Sheriff’s Office and members and staff of the Citizens Review Board.

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<sup>18</sup> Id. at 10-11.

OPDS was left with a general impression from its visit to Yamhill County that the county is an exceptionally agreeable place to practice criminal and juvenile law, with a spirit of cooperation and collaboration among participants in the justice system that is comparable to what the Commission found in Klamath County.<sup>19</sup> All of the county's Circuit Court judges are clearly committed to ensuring high quality public defense services by offering feedback and advice to the attorneys who appear before them and by actively seeking out and counseling those attorneys whose skills or work habits need improvement. The Court's Presiding Judge has long been recognized as a leader in adopting innovative court management practices and in promoting the delivery of high-quality legal services in Yamhill County's criminal and juvenile cases. Another member of the Court was a highly regarded criminal defense attorney who served as the first Executive Director of YCD. The Circuit Court also provides an unusual level of high-quality administrative support services to YCD by screening cases for conflicts-of-interest, assigning cases to the consortium's attorneys and monitoring the performance of those attorneys.

YCD and the District Attorney's Office experience the usual disagreements over charging practices, approaches to discovery and motion practice, and the use of experts and investigators.<sup>20</sup> Nevertheless, Yamhill County's District Attorney has a unique understanding and appreciation for the role of the defense based upon his experience as a criminal defense lawyer before assuming his current position and as a member of the Study Commission that led to the establishment of PDSC. As a result, most observers in the county consider the relationship between YCD and the District Attorney's Office to generally be positive, cooperative and constructive.<sup>21</sup>

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<sup>19</sup> Indeed, one justice professional who met with OPDS reported that Klamath County and Yamhill County are considered by his professional peers across the state as comparable models for collaborative approaches to the administration of justice.

<sup>20</sup> During a meeting with OPDS on October 14, Yamhill County's District Attorney complained about the practice of some criminal defense attorneys to wait until the last minute to disclose discoverable material to his office. He expressed his frustration about the apparent lack of any meaningful consequences for this violation of the spirit, if not the letter, of Oregon's discovery statutes.

The District Attorney also expressed his opinion that YCD's attorneys use investigators in too many less serious criminal cases in which the costs of professional investigators are not justified. In Yamhill County, like Marion County, the consortium's Executive Director reviews and approves all non-routine expenses requested by consortium attorneys, including expenses for investigators. In order to address any problems regarding the use of non-routine expenses effectively and without delay, OPDS urges local prosecutors, or anyone else concerned with specific expenditures for investigative services or other non-routine expenses, to report their concerns promptly to the Executive Directors of YCD or MCAD or the Director of the Lane County Public Defender's Office in the three counties where non-routine expenses are administered locally, and directly to OPDS in all other counties in the state.

<sup>21</sup> Several observers pointed to one particular area of tension between Yamhill County's criminal defense bar and the District Attorney's Office. Apparently, the District Attorney has been especially committed to a policy of aggressively prosecuting "quality-of-life" crimes in the county

The other justice professionals and managers in Yamhill County with whom OPDS spoke expressed a commitment to advancing their interests and viewpoints within an admittedly adversarial process and arriving at what they viewed as just results, but without sacrificing their personal and working relationships with other justice professionals, including YCD's attorneys. Although they consistently reported that a few of YCD's attorneys are difficult to work with and that the skill levels of the consortium's lawyers vary considerably, these observers generally gave YCD high marks for the legal skills of its lawyers and the lawyers' commitment to the interests of their clients.

The Circuit Court's judges, as well as the members of YCD, concurred in this positive assessment of the consortium's lawyers and legal services, crediting good fortune, the high quality of law practice in the county and the judiciary's deep commitment and active engagement in day-to-day efforts to ensure quality lawyering in the county. The Circuit Court also complemented YCD and its Executive Director for their commitment and support for innovative programs in the county, like Drug Court and a new mental health court, which is referred to as Case Coordinated Services currently under development. The judges, however, recognized the need for more formal training and mentoring programs for YCD's new or underperforming lawyers, expressing confidence the members of the consortium and the private bar would step forward to serve as the volunteer trainers and mentors in such programs.

1. YCD has a management structure that should be reconsidered. In addition to being the only PDSS contractor, other than MCAD, which is compensated on an hourly basis,<sup>22</sup> YCD is unique among consortia in terms of its organizational structure and operations. Rather than a consortium that manages all of its operations and work of its members internally, YCD has many features of a court appointment list, albeit a well-managed one. While it appears from YCD's responses to OPDS's questionnaire that some of these features have changed or are in the process of changing, the Circuit Court in Yamhill County has, over the years, apparently directly managed or substantially controlled the admission and promotion of attorneys in YCD, the selection of its Executive Director,<sup>23</sup> the assignment of cases to YCD's attorneys, the monitoring and evaluation of the conduct and performance of those attorneys and their removal from the

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in order to promote the growth of healthy and safe neighborhoods. See e.g., George L. Kelling and Catherine M. Coles, Fixing Broken Windows : Restoring Order And Reducing Crime In Our Communities (The Free Press, New York 1996). This policy may lead to charging practices that focus more aggressively on relatively low-level offenses and, as a result, limit the scope and effectiveness of Early Disposition Programs. While some people with whom OPDS spoke supported this policy, others predicted its demise as justice resources continue to shrink and rates of serious person crimes continue to increase in Yamhill County.

<sup>22</sup> See the discussion below regarding YCD's hourly rate system.

<sup>23</sup> YCD's responses to OPDS's questionnaire indicated that its first Executive Director "was selected by vote of the members of YCD with the advice and consent of [the Presiding Judge]." Appendix A. Questionnaire, p. 2.

consortium. YCD's former Executive Director confirmed that all of the lawyers who practiced criminal and juvenile law in Yamhill County were originally admitted as members of YCD when the consortium was first formed. She also noted YCD's members were free to leave and return to the consortium without satisfying internal admission or qualification standards, as long as they satisfied the qualification standards of the State Court Administrator's Office and the Circuit Court. While the former Executive Director was available to mentor consortium attorneys informally, YCD has historically had no formal quality assurance programs of its own. In effect, it appears to OPDS that YCD has been managed externally by the court during most of its existence, rather than internally by the consortium's administrators or Board of Directors. As evidence that perceptions, if not the reality, of this management structure still exist, several justice professionals in Yamhill County with whom OPDS spoke had no idea who at YCD was in a position to receive complaints and resolve problems on behalf of the consortium. They were also unaware of the identity of YCD's Directors or its Executive Director.<sup>24</sup>

In light of the foregoing responses of YCD to OPDS's questionnaire, it seems clear to OPDS that YCD's Executive Director is personally committed to assuming more responsibility for managing the conduct and performance of the consortium's members and the quality of its legal services by developing internal quality assurance programs and procedures. Many, if not most, of those programs and procedures, however, have not yet been implemented. Although OPDS concluded from its meeting with the county's Circuit Court judges that there is judicial support for these measures, OPDS was not able to determine whether or not all of YCD's members support them.

Because OPDS has concluded from its visit to Yamhill County that the quality of the legal services delivered by YCD is generally quite good (with the exception of the specific issues outlined below), and because OPDS has not received serious complaints about the general quality of YCD's legal services from key participants in Yamhill County's justice system, the prospect of changing the consortium's current organizational structure and operations raises a question for PDSC of determining the right balance among important policies or principles. On the one hand, the Circuit Court's active support and engagement in efforts to ensure quality public defense services in Yamhill County, the county's unique culture of collaboration and the generally good quality of YCD's legal services suggest that the Commission should honor its commitment to respecting the unique cultures and effective ways of doing business in each of Oregon's 36 counties and, in this case, follow the admonition, "If it ain't broke, don't fix it!"

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<sup>24</sup> In fairness, the current Executive Director, Bob Suchy, has only held the position since September 1, 2004. Furthermore, other observers, including judges, complimented Mr. Suchy on his responsiveness and his ability to work with other justice agencies and professionals to resolve problems.

On the other hand, the first principle of the American Bar Association’s “Ten Principles of a Public Defense System,” which is reflected in Oregon’s establishment of a Public Defense Services Commission, suggests that the Commission should ask YCD to assume more direct responsibility for managing the conduct and performance of its members and the quality of its legal services. That principle states: “[t]he public defense function, including the selection, funding, and payment of defense counsel [should be] independent.”<sup>25</sup> The ABA explains its rationale for this principle as follows:

The public defense function should be independent from political influence and subject to judicial supervision only in the same manner and to the same extent as retained counsel. To safeguard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contractor systems. Removing oversight from the judiciary ensures judicial independence from undue political pressures and is an important means of furthering the independence of public defense.

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<sup>25</sup> See also, the ABA’s tenth principle:

**10. Defense counsel [should be] supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards.** The defender office (both professional and support staff), assigned counsel, or contract defenders should be supervised and periodically evaluated for competence and efficiency.

<sup>26</sup> Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice, A Report on the American Bar Association’s Hearings on the Right to Counsel in Criminal Proceedings (ABA Standing Committee on Legal Aid and Indigent Defendants, December 2004), Appendix B, p. 48. Fortunately, thanks to a judicial tradition of respect for an independent defense function in Yamhill County and across the state, as well as support for the establishment of PDSC and OPDS, Oregon has not encountered the kinds of problems that the ABA’s Standing Committee found and reported in Gideon’s Broken Promise:

**Judges and elected officials often exercise undue influence over indigent defense attorneys, threatening the professional independence of the defense function.** In many localities, the selection and payment of counsel is still under the control of judges or other elected officials instead of an independent authority as recommended by national standards. Accordingly, lawyers must depend on judges to approve their compensation claims, as well as requests for expert and investigative services. Attorneys may be removed from court-appointed lists if they apply for fees considered by judges to be too high, creating a disincentive to spend adequate time on a case. In some places, elected judges award court appointments as favors to attorneys who support their campaigns for re-election. Sometimes, county officials respond to requests for modifications in contracts for indigent defense by threatening to terminate the current contract and award a new one to the lowest bidder.

Id. at 39 (emphasis in the original).

By citing the ABA's principle of independence for the public defense function, OPDS is not suggesting that the Yamhill County Circuit Court's administrative support of YCD's operations, the Court's critical views and input regarding the performance of YCD's lawyers, the judges' commendable efforts to improve the skills and performance of lawyers appearing in their courtrooms, or the close working relationship between the Court and YCD should in any way be discouraged. OPDS is suggesting, however, that PDSC, while encouraging these positive features of the collaboration between the Circuit Court and YCD, should consider the following advantages to the public defense system in Yamhill County and across the state of asking YCD to assume greater responsibility for managing the conduct and performance of its members and the quality of its legal services:

1. As the state agency responsible by statute for providing quality, cost-efficient public defense services in Oregon, the Commission has the authority and ability to hold consortia like YCD, rather than the courts, accountable for the delivery of those services;
2. By holding contractors like YCD ultimately responsible for the admission, evaluation and discipline of its members, contractors are more likely to develop and implement effective and long-lasting programs and practices that promote the quality and cost-efficiency of public defense services in counties across the state;
3. If consortia like YCD develop and implement effective quality assurance programs and practices, problems in the conduct and performance of its attorneys can be addressed before the courts must take remedial or

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The National Legal Aid and Defender Association (NLADA), in collaboration with the U.S. Department of Justice's National Institute of Justice, has also developed a set of principles for the delivery of public defense services, including a goal "[t]o insure that the representation of clients is of high quality." To advance that goal, NLADA adopted as one of its objective that "[r]epresentaion on behalf of clients should remain free from improper judicial control," including, in relevant part, the following "criteria for compliance:"

- Staff recruitment and selection is (sic) made independent of judicial influence/interests.
- Staff retention and promotion are independent of judicial influence/interests
- Case assignment is not subject to judicial control.
- Defender office operational decisions are made independent of judicial control.
- Continuity and stability of defender services are reasonably insulated from judicial change in the community.

Evaluation Design for Public Defender Offices (Law Enforcement Assistance Administration, October 1977). pp. I-10, I- 5-16.

disciplinary action against individual lawyers and the general quality of Oregon's public defense services is more likely to improve as a result;

4. Because the membership on Circuit Courts changes over time and the views of judges about their role in evaluating and managing the performance of lawyers vary, a consortium like YCD should develop its own quality assurance "infrastructure" in order to promote the consistent, long-term quality of public defense services in the state.

2. YCD's operations provide PDSC with an opportunity to consider the merits of hourly contract rates. As the Commission is well aware, YCD is one of two consortia in the state that is compensated for its legal services on an hourly basis. The origins of this feature of YCD's operations are somewhat unclear. Whether YCD's adoption of an hourly rate and MCAD's accounting system were encouraged by outside sources or eagerly sought by the founders of YCD, it is now clear that the members of YCD embrace this feature with enthusiasm and conviction.

PDSC is also well aware of the principal arguments in favor of hourly rate: (1) payment by the hour compensates attorneys for the work actually required to competently represent clients in actual cases, as opposed to case rates that treat classes of cases the same and encourage attorneys to "triage" cases by settling cases that should be fully litigated; and (2) an hourly rate system results in clients viewing their court-appointed counsel as "real lawyers" who will put in as much work as necessary to competently represent them, as opposed to lawyers working under case rate contracts whom clients may view as part of "the system" and willing to settle their cases simply to keep that system running. In addition, YCD and MCAD frequently point out that their legal services are cheaper on a per case basis than the average flat rate per case, either for the purpose of urging PDSC to retain their systems because they are cheaper or for the purpose of urging PDSC to pay them more because they are too cheap.

The Commission has also heard the arguments against hourly rates. They are often made by paying clients who complain about private attorneys racking up "billable hours" or letting "the meter run" to generate more revenue, or by prosecutors who believe that hourly rates in criminal cases result in too many frivolous motions, unnecessary trials and harsher sentences for defendants who are advised to reject reasonable settlement offers.<sup>27</sup> In addition, CBS has pointed out to the Commission that its prevailing contract case rate system encourages the development of skills and efficiencies in handling cases in high-volume public defense practices, and that the uniform adoption of case rates across the state will promote PDSC's policy of increasing the consistency of contract rates among similarly situated contractors.

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<sup>27</sup> During a meeting with OPDS on October 14th, Yamhill County's District Attorney voiced these concerns.

OPDS offers three observations in response to the principal arguments in favor of hourly rates. First, it is unrealistic, if not unfair, to expect lawyers in YCD and MCAD to perform the same or comparable legal services as other contractors in the state at persistently lower rates of compensation over time -- without a loss in quality. In addition to basic fairness, OPDS believes that a presumption underlying the Commission's policy directing CBS to seek consistency in rates across the state is "you get what you pay for." In other words, lower rates for the same legal services will, over time, reduce the quality of those services.

Second, proponents of hourly rates argue that they promote clients' trust and confidence in their lawyers. OPDS appreciates the importance of promoting good client relationships. Nevertheless, OPDS is troubled by the implications that an express or implied recognition of this argument by PDSC would have for the rest of Oregon's public defense system. Implicit in the argument that hourly rates allow its lawyers to work harder for their clients is the assertion that other lawyers in the state who are paid on a case rate basis are less diligent or competent. OPDS and PDSC knows this assertion is not true, based on their own assessments of the operations of contractors paid by case rates, whose services and operations are among the highest quality and most cost-efficient in the state.<sup>28</sup>

Finally, arguments about contract rates create a false dichotomy between hourly rates and case rates. Whether public defense clients appreciate it or not, under any system of attorney compensation, the person or entity paying the bill will ask two questions: "What will this case cost me?" and "What is the 'going rate' for this type of case?" Whether the bill is being paid by a private person or by PDSC, no one will allow "the meter to run" without limits. That is why budgets and "change orders" have entered the world of private law practice, and why OPDS and CBS will always have a method to manage costs by establishing a prevailing or going rate in ordinary cases.<sup>29</sup>

3. YCD's delivery of public defense services in juvenile cases calls for further inquiry. Based on reports by OPDS and at least two task forces of the Oregon State Bar, PDSC has concluded that the quality of juvenile law practice across the state varies to an unacceptable extent and, therefore, is in need of special attention. As a result, the Commission plans to devote at least two meetings and a separate service delivery planning process in 2006 to identifying programs and strategies to improve the quality of public defense services in juvenile delinquency and dependency cases in Oregon. In the mean time, OPDS and

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<sup>28</sup> See also, Chapter 5, Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Commitment Cases, Report of the Oregon State Bar's Indigent Defense Task Force II (September 25, 1996); The Spangenberg Group, "Assessment of the Oregon Adult Criminal Indigent Defense System (March 1996), pp. 84-96.

<sup>29</sup> On the other hand, CBS regularly grants attorney requests for additional credit in extraordinary cases under PDSC's case rate contracts and will continue to do so in the future.

PDSC have increased their focus on these services in the course of developing other service delivery plans.

Based upon its visit to Yamhill County in October and YCD's responses to its questionnaire, OPDS is uncertain about where it might rank Yamhill County in terms of the quality of its public defense services in juvenile cases. OPDS is heartened by the fact that the Circuit Court judges in the county have a deep commitment to their juvenile court and to ensuring the quality of representation by the lawyers who appear in the court's delinquency and dependency cases. The judges encourage, support and rely upon the work of CASAs and the Citizens Review Board. The county's Presiding Judge has also been an active participant in the joint efforts of the Commission and the Oregon Judicial Department's Juvenile Court Improvement Project (JCIP) to establish a "Juvenile Training Academy" curriculum that may become mandatory for all juvenile practitioners and to offering a recent, highly successful continuing legal education program in Eugene, "Essentials of Juvenile Court Practice." Most importantly, the Circuit Court's judges expressed their opinion to OPDS that the quality of YCD's representation in juvenile cases is good to excellent. And to improve those services even more, the Presiding Judge has collaborated with YCD to identify a lawyer in the consortium who specializes in juvenile law to serve as a liaison with other parts of the juvenile justice system, particularly in dependency cases.

In contrast to these favorable reports from the Court, OPDS received a few critical reports from others regarding the quality of YCD's juvenile representation, including from YCD itself.<sup>30</sup> During OPDS's meeting with representatives of the county's Juvenile Department and the Deputy District Attorney assigned to handle delinquency cases for the state, they reported that overall quality of YCD's representation in delinquency cases was good. But they also observed enough instances of lawyers from YCD appearing in delinquency case who were unfamiliar with the relevant law and procedure to suggest that the consortium may need stronger programs to train and mentor some of its juvenile lawyers. On a related matter, these observers also reported instances in which the juvenile court appointed lawyers for minor delinquency cases in which they believed an attorney was unnecessary.<sup>31</sup>

Like many counties across the state, Yamhill County has a Citizens Review Board (CRB) that feels ignored by public defense lawyers, compared to the support and attention it receives from the Circuit Court. The staff and two Board members with whom OPDS spoke recognized the demands on YCD's lawyers and the conflicts between CRB hearings and the Court's calendar, which frequently prevent these lawyers from attending their hearings. They also praised the skill of a few YCD lawyers who have attended CRB hearings in the

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<sup>30</sup> See page 16, above.

<sup>31</sup> OPDS has heard the opposite criticism from some members of the defense bar, however -- that the juvenile court fails to appoint counsel in cases where an attorney is necessary.

past. In addition to believing that more of YCD’s lawyers should attend the meetings in the interests of their parent or child clients, these CRB representatives have observed instances when YCD’s lawyers attended the Board’s hearings, but knew so little about the CRB and its processes that they were incapable of protecting or promoting their clients’ interests.

A recent report by JCIP entitled “Child Abuse and Neglect Case Processing in Oregon’s Courts: 2003-2004” contains findings that also suggest the need for further inquiry into the quality of YCD’s legal services in juvenile dependency cases.<sup>32</sup> As part of that report, a survey by JCIP of the average length of dependency proceedings in counties across the state reveals that the length of those proceedings in Yamhill County are substantially below average. That survey reports the length in minutes of the statewide average and Yamhill County hearings for each dependency proceeding as follows:<sup>33</sup>

<u>Proceeding</u>	<u>Statewide Average</u>	<u>Yamhill County</u>
Shelter	19	12
Jurisdiction	18	6
Trial	112	32
Disposition	23	6
Permanency	24	7
Review	20	8

There may be a number of explanations for the relatively short length of the proceedings in Yamhill County’s dependency cases. This data on its face, however, raises questions about the nature and extent of YCD’s advocacy on behalf of children and parents in these cases.

Finally, in its responses to OPDS’s questionnaire, YCD stated that “[o]ur interface with the juvenile system is poor and unfortunately little progress has been made in that area.”<sup>34</sup> Citing its lawyers’ failure to attend CRB hearings, YCD reported that it has added an experienced juvenile attorney to the consortium “as a step in rectifying this situation.”<sup>35</sup> The Commission’s November 10th meeting will provide an opportunity for YCD to explain how this situation has improved and whether the consortium believes other steps must be taken to improve the quality of its juvenile defense services. The meeting will also provide an opportunity for others to offer their assessments of the quality of public defense services in Yamhill County’s juvenile justice system.

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<sup>32</sup> This report is available online at [www.ojd.state.or.us/jcip/index.htm](http://www.ojd.state.or.us/jcip/index.htm).

<sup>33</sup> Child Abuse and Neglect Case Processing in Oregon’s Courts: 2003-2004 Assessment, A Report of the Oregon Judicial Department’s Juvenile Court Improvement Project (October 2004), Appendix A, p. 168.

<sup>34</sup> Appendix A, Questionnaire, p. 10

<sup>35</sup> Id.

## OPDS's Preliminary Recommendations

Based upon YCD's responses to OPDS's questionnaire and the information OPDS received during its visit to Yamhill County on October 13 and 14, OPDS recommends for the purpose of developing a Service Delivery Plan for Yamhill County that PDSC focus on the following questions during its November 10, 2005 meeting in McMinnville:

1. Should YCD assume more responsibility for managing the conduct and performance of its members and the quality of its legal services? If PDSC agrees with OPDS's approach to framing the relevant issues in this report and believes that YCD should build its own "quality assurance infrastructure," then OPDS recommends that the Commission determine (a) the level of support for the necessary changes within Yamhill County's justice system and among YCD's members and (b) if such support exists, how YCD proposes to implement these changes.
  
2. What are the advantages and disadvantages of hourly contract rates? PDSC originally scheduled its service delivery planning processes in Marion and Yamhill Counties, in part, to examine the advantages and disadvantages of hourly contract rates. More pressing issues in Marion County prevented the Commission from examining MCAD's hourly rate system. Given the limited number of issues facing the Commission in Yamhill County, and the enthusiasm for hourly rates among YCD's members, the Commission's November 10th meeting in McMinnville presents an opportune time to consider this important issue. Further recommendations by OPDS on this subject will depend upon the Commission's discussions and deliberations on November 10th and its directions to OPDS.
  
3. Are aspects of public defense practice in Yamhill County, such as juvenile law practice, in particular need of improvement? Although the Circuit Court in Yamhill County has informed OPDS that the quality of public defense services in its juvenile court is good and has taken steps to improve those services even more, other reports to OPDS, including YCD's own assessment, suggest the possibility that the consortium needs to take more aggressive steps to improve the quality of its representation in juvenile cases. OPDS recommends that the Commission devote a portion of its November 10th meeting in McMinnville to determine the need for such improvements, as well as for the other potential improvements identified by YCD:<sup>36</sup>
  - Increasing the efficient use of defense investigators;

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<sup>36</sup> See YCD's responses to OPDS's questionnaire at page 16, above.

- Improving the consortium's overall responsiveness to immediate or emergency needs of the court and clients by adding a Staff Attorney who would be available on call;
- Assisting in the implementation of an Early Disposition Program to reduce the amount of time it takes to bring appropriate cases to trial and to improve the case flow of those cases that should be dismissed or should end in a guilty plea.

# Appendix A

## Questionnaire for Administrator of Consortium

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

**Yes, see Attachments: A) Corporate By-Laws; B) Articles of Incorporation; C) Billing; D) Contract**

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

**The Board consists of seven members whose terms are staggered. The duties of each elected position are outlined in Attachment A, Corporate By-Laws, Article III. Generally the Board retains broad general powers to conduct the business and affairs of YCD, including supervision of the Executive Director. The Board also discusses and may publicize recommendations to the membership concerning local issues of importance to the members. The Board, when needed, will also consider and follow-up on membership performance concerns, up to and including mentoring, monitoring, training, reprimanding or expelling a member.**

**The Board Members are: Paula Lawrence, Chairperson; Bernt A. Hansen; Mary Biel; Elana Flynn; Scott Hodgess; Mark Lawrence; and Carol Fredrick.**

**The Board holds its mandatory yearly meeting each October and also holds meetings monthly or semi-monthly throughout the year or more often to address consortium needs and concerns.**

**At present the Board is taking into consideration the addition of a "lay" member. A preliminary discussion concerning ethical and conflict concerns resulted in the matter being tabled until the matter can be researched more thoroughly. Research will include discussions with the Stat Bar and other attorney boards that have citizen members, and how privacy interests are addressed.**

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

**Qualifications for administrator include being an active member of the Oregon Bar Association in good standing. Other qualifications, which are not set forth in the Articles or By-Laws but are accepted necessities for the position by the Board of Directors and members in general include the ability to effectively communicate with the member attorneys, courts and OPDS; manage the affairs of the corporation**

**in accordance with Corporate Law and under the direction of the Board of Directors; have necessary tools for mentoring and training of new member attorneys; ability to perceive in advance of escalation, any attorney issues with the court and effectively counsel attorneys when problems relating to attorney/court communications or relations arise. Invaluable to the functioning of the consortium is the Executive Director's monitoring of Legislative issues related to Indigent Defense as well as new case law and passing this information on the members.**

**The first Executive Director, now Judge Carol Jones, was selected by vote of the members of YCD with advice and consent of Judge Collins, PJ. The vacancy created by her ascension to the bench resulted in our Board of Directors having no disinterested majority, so a motion was made to ratify a majority vote of the members, producing the current Executive Director. The Executive Director is salaried. This salary is currently set at .5 FTE and compensated \$1720 per month. A liaison between the board and presiding judge is provided by a board member, Mary Biel in the event issues arise that the presiding judge is uncomfortable addressing with the Executive Director or unsatisfactorily addressed by the Executive Director.**

**The By-Laws at present do not include a set "term" for the Executive Director, whose term is limited at the will of the board.**

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

**There is no formal limit to the overall workload related to consortium matters, and the Executive Director routinely provides assistance to attorneys on request and the daily workload may range from part-time to overtime given the "needs" of the day.**

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

**When the executive director is not available or has a conflict, the Board Chairperson or another Board member will step in to fill the void. This is generally limited to signing paychecks; and reviewing the reasonableness and necessity of the executive director's fees.**

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

**Initially the consortium included all defense attorneys who were involved in indigent defense in Yamhill County at the time the consortium was formed. The goal was to maintain this status quo and form an entity to provide indigent defense services, primarily in response to the separation of indigent defense from OJD and the need to relieve some burden the court historically carried relating to matters of billing, fee review, expense authorization, and accounting. By contracting with OPDS on a per-hour basis it was believed that the accuracy and quality of defense service delivery would increase. Accountability for hours worked and the savings for cases resolved quickly would be passed on to OPDS in dollars saved while the quality of**

defense service delivery would increase. Having one main office to process and engage in quality control of services and billing has result in economic savings for the court as well as for the attorneys.

Since the inception, members have been added to the consortium, including new attorneys who had been hired by existing consortium member firms or attorneys who were involved in providing indigent defense services in Yamhill County in the past and have returned to the county. Our current process of adding members is 1) determination of the need for and ability of the prospective member by the board; 2) approval of Judge Collins, PJ; 3) approval by OPDS; 4) majority vote by the Board of Directors. The Executive Director is responsible for checking into the history of prospective new members. Incorporation of the Qualification Standards for Court Appointed Counsel is, of course, mandatory.

7. What is the process for applying for membership?

In the past the prospective member has contacted YCD and set-up a personal meeting with the Executive Director and the presiding judge or his/her designee for consideration. This process now includes a majority of vote by the Board of Directors as outlined in the Corporate By-Laws Article IV, Section 4. Executive Director began recruiting on one occasion, but the needs were fulfilled by attorneys returning to the area who had previously engaged in indigent defense work in Yamhill County and the recovery of a sick attorney that eventually returned to work

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

Consortium Attorney	Date Contracted Into YCD	OSB #	%YCD
Mary Biel*	6/2/02	82191	50%
Pamela Bond	6/18/02	03081	65%
Theodore Coran	8/7/02	82226	20%
JanMarie Dielschneider	3/28/05	90053	95%
Majle Dodge	1/13/03	96225	71%
Michael Finch*	5/6/02	92303	62%
Elana Flynn*	5/6/02	98227	80%
Carol Fredrick*	5/6/02	88370	49%
Bernt A. Hansen*	5/6/02	72111	65%
Eric Hanson*	5/6/02	84146	30%
Keith Hayes	2/11/03	90295	40%
Griff Steinkc Healy	6/30/05	80379	80%
Scott Hodgess	8/8/03	01288	85%
Kevin Kinney*	5/6/02	95323	20%
J. Mark Lawrence*	5/6/02	89005	60%
Paula J Lawrence*	5/6/02	89285	90%
Charles Lisle*	5/6/02	86064	60%
John Mercer*	5/6/02	77278	46%
Rachel Negra	10/4/02	02403	20%
Nancy M. Nickel	10/1/05	81135	95%
Cynthia Kaufman Noble	3/5/03	92399	60%
Gregorio Perez-Selsky*	5/6/02	78335	95%
Robert Suchy*	5/6/02	85088	77%
James White*	5/6/02	91121	75%

\*CHARTER MEMBER

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

**Most YCD member attorneys emphasize criminal defense, public defense, and several also have juvenile dependency and delinquency defense history. Prior to the formation of YCD, the attorneys who became members were already working in public defense.**

**With respect to mentally ill defendants, Yamhill County recently received a grant to establish a mental health court (named Court Coordinated Services or CCS) program and there are at present 3 attorneys who have been very effectively representing these special-needs clients. Indigent defendants in civil commitment proceedings are currently appointed attorneys outside the consortium who possess the necessary skills and are willing to accept these cases.**

**There is no limit on the percentage an attorney can devote to consortium related cases; some are able to devote a large percentage of their time, while others may only be able to take a limited number of court appointed cases due to the demands of their private practice or to the demands of the firm in which they are partners/associates.**

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

**YCD's Bylaws allow for member firms to add associates to carry YCD caseloads. This has resulted in several new members over the years to cover attrition. A few attorneys who had previously carried indigent caseloads in Yamhill County have returned to the area and joined YCD. There has been some limited recruiting by Executive Director when necessary.**

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

**The YCD office makes consortium material and court rules available, and the Executive Director personally conducts an orientation for new members. The presiding judge determines the level of proficiency and assigns cases appropriately. The executive director monitors and observes the performance of the attorney and discusses performance with the court and at times the DA. The executive director may recommend mentoring for individual attorneys when appropriate. Mentoring needs are determined from direct observation by the Executive Director; frequent discussions with judges about attorney performance and appropriateness. When an attorney is determined to be in "over his/her head", that attorney is counseled by the executive director to accept cases at a lower level until sufficiently experienced. Formal Board action can result if an attorney does not respond to this informal prompt, but the judges maintain ultimate authority to assign cases commensurate with the attorney's ability.**

**The current Budget Proposal has asked for funding for library materials including CLE material and current publications from OCDLA. YCD maintains a brief bank and encourages member attorneys to submit material including Motions and Appeal documents. Also included in the proposal is a monthly subscription to WestLaw.**

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

**Currently there is a very strong and active collaborative environment among consortium attorneys. Newer attorneys are encouraged to seek help from the more experienced attorneys, and judges may appoint a more experienced attorney as a "second chair" when requested and appropriate. In addition an attorney can always request assistance from the Executive Director. This practice results in greater efficiency where a member who has gained expertise in a particular area supports another member and information is transferred. Collaboration has been carefully nurtured by YCD and is growing rapidly.**

**Monthly membership meetings create a forum to discuss these issues and frequently there are presentations are made by member attorneys.**

**Adoption of a more formal mentoring system is in the development stage. The Board has authorized the Executive Director to study and propose a mentoring system and quality control measures for adoption by the board of directors. Currently information is being gathered and other mentoring programs are being investigated by the Executive Director. A training manual is in the process of adoption and supplemental funding is necessary and has been requested for use in a mentoring program in the current contract proposal.**

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

**Cases are assigned by the court based on the court's determination of the skill level of the particular attorney. Attorneys are assigned cases at a higher level when the court feels they are competent to handle them. This is further monitored by the Executive Director through personally observing the attorney directly whenever possible; by the Presiding Judge; and by Verification Specialist.**

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

**Through cooperation with court staff, numerous meetings revealed areas where efficiency could be gained. Cases are usually assigned within a matter of hours by the consortium office: specifically, court staff and Verification Specialists notify YCD directly by phone or e-mail; YCD then contacts the attorneys with all necessary information; YCD also notifies the DA's office of the daily appointments**

to expedite Discovery information being delivered to the assigned attorneys quickly and without the need for costly paperwork. The Executive Director is provided two daily lists of all attorney appointments: one from the court and one from YCD for monitoring purposes. PDSC timeframe compliance is not monitored currently by YCD, but a proposal to devise a program to monitor this and other performance indicators has been authorized by the YCD board. Availability of Discovery within PDSC timelines would make compliance substantive and not mere rote.

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

Every effort is made to assure continuity of representation. Attorneys having a pending case with a client are appointed to subsequent cases to the extent possible, including PVs. Some attorneys do not qualify for a more serious subsequent appointment, so these must be assigned to more qualified attorneys. Once an attorney is in OJIN as representing a particular client, subsequent cases are assigned to the extent possible.

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

Normally, conflicts are initially screened by Karla Fry, Court Verification Specialist. We are quite fortunate that her effort all but eliminates conflicts of the sort that would preclude an attorney from accepting the case from the onset. In cases where this initial screening does not reveal the conflict, the attorney and their staff again verify; if there is a conflict YCD is notified and a case is reassigned the same day, many times at no cost to the state.

In cases of conflicts arising between the attorney and client, the Executive Director is available as a resource to intervene, and every effort made to avoid duplicate expenses to the state. Second opinions are also available and these two approaches have been highly successful. At present consideration is being given to making intervention mandatory prior to withdrawal.

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

Member meetings are held monthly, and special meetings are called when the circumstances require it.

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

A collaborative environment is maintained by the Executive Director using E-mail. New cases and law updates are sent out to all members and other significant news is distributed as well. All YCD members maintain a folder in the DA's office for discovery that is also used for information dissemination. Efforts are also being

**made to arrange for electronic delivery of Discovery. Most attorneys have e-mail but there are a few who do not, citing lack of training or funds as reasons.**

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

**Research and work product is freely shared among the members and made available through the Executive Director. YCD also maintains a Brief Bank and encourages member attorneys to submit documents. Some cases presenting novel or far reaching issues receive research support from the executive director.**

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

**Daily lists of appointments are sent directly to YCD and the executive director which, combined with financial data, provide a constant overview of caseload. Verification Specialist Karla Fry also keeps a running tally of all cases appointed to each attorney. Overburdened attorneys are encouraged to contact the executive director for assistance and support. Attorneys can be relieved from appointment rotation if they are burdened by complex cases or numerous trials. The executive director can stand in for attorneys in routine matters.**

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

**The executive director directly monitors attorney performance by reviewing dispositions and observing court performance. Routine informal meetings with the judges are conducted on a regular basis to obtain performance information and difficulties are addressed. Quality representation is perceived as one of the most important functions for the executive director to oversee and YCD's current budget proposal includes request for funding sufficient to provide adequate tools to set up, monitor, quantify, control and improve quality to the extent possible.**

**A formal evaluation program is currently being developed by the executive director under authority from the board of directors. This program is in the planning stages and executive director is discussing the program with member attorneys and gathering information. One facet of this program will very likely be a self reporting checklist for the attorney to complete as the case progresses. This would outline the expectations and provide opportunity for attorneys to express impediments to meeting these expectations. Review of these forms would enable executive director an opportunity to facilitate removal of obstacles and identify attorneys who exceed expectations as well as those who fail to meet them. Correction of underperformance trending is crucial, but recognition of those who exceed expectations constantly and identifying them as role models is important as well.**

**Another facet of this program would involve more formal feedback from the defendants, Judges, DA's, and other staff involved or affected as well as input from clients.**

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

**Currently executive director works directly with the attorney to address the problem, which often times can be rectified by reiterating the availability of help where necessary and some research assistance or perhaps some advice. Underperformance usually is related to failure to keep abreast of changes in the law to adequately prepare. New case law is frequently sent to member attorneys and member attorneys known to be working on particular cases are sometimes provided support. The executive director observes attorney performance and suggestions are made in areas needing improvement. The judges are willing to discuss attorney performance directly with the attorney and can remove any YCD attorney at will circumstances warrant. Our proposed budget makes provision for acquisition of adequate training materials, research tools and assistance to be made available to the attorneys needing improvement. In cases of chronic underperformance the executive director, after discussion with the Presiding Judge, would bring the matter before the board of directors for removal from YCD.**

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

**Currently executive director sends out all significant cases from the U.S. Supreme Court, the 9<sup>th</sup> Circuit, and the Oregon appellate courts as well as significant motions filed. This augments monthly member meetings where there is a forum to discuss current cases and topics of interest to the defense bar. Defense attorneys outside the consortium are invited and encouraged to attend, often adding to the knowledge base of the consortium. Some CLE materials have been donated for member use, but our library and training materials are inadequate. There is no formal requirement for a certain number of CLE's in criminal law, but there is a program attendance requirement for Juvenile cases. Our current proposed budget also makes provision for training materials, as indicated above. With a sufficient library, training and quality control can be facilitated reasonably through required programming. A training manual for new attorneys is currently being considered for adoption.**

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

**Disciplinary actions are expected to be reported to YCD without delay. The executive director expects disciplinary action to be reported when commenced in confidence. We are currently in the process of updating the member attorney's personnel records and the OSB disciplinary reporter will be searched and all instances of discipline will be maintained in these files in the strictest confidence.**

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

**It is the executive director's policy to frequently solicit comments from the bench regarding attorneys and take action to rectify all concerns immediately. The judges have been notified to contact board member Mary Biel with any complaints regarding the executive director, either in the capacity of executive director or as counsel. Client complaints are communicated immediately with the attorney and remedies discussed. Complaints are usually directed to the court and the court can direct the complaint to YCD or the attorney for further action. YCD is investigating a complaint policy so client complaints can be remedied internally to the extent possible and appropriate. It is common knowledge that serious complaints go to Judge Collins, Presiding Judge. The executive director has frequent meetings with the judges regarding any issues with member attorneys and acts to remedy all concerns quickly, including any unresolved client complaints or complaints from others.**

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

**The executive director has no knowledge of deficiency regarding cultural awareness or sensitivity, but should the occasion ever arise every effort would be made to remedy the deficiency. YCD and the courts make certain all defendants who are in need of an interpreter, regardless of language type, are provided this service. Cultural questions can be answered by discussion with the interpreters or appropriate consulate. Extraordinary expenses are authorized in cases attorneys need to consult immigration counsel.**

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

**One aspect of our performance evaluation process authorized by the board involves obtaining client feedback regarding performance of attorneys. The executive director has been in practice for quite some time in Yamhill County and has known and previously represented many indigent defendants who speak freely regarding the quality of representation and any complaints. Various ways to gain valid insight into client perception of service quality and improve it are being considered, including an outreach process of meeting with clients who are in-custody for input with a goal of enhancing customer satisfaction to the extent possible. Executive director has contacted Jim Arneson of OPDS's Quality Assurance Task Force to help in developing a program for YCD.**

**Part of our proposed budget includes a staff attorney position which would likely be filled initially by executive director. Part of the staff attorney duties would be probation violations. In this capacity executive director would have an excellent**

**vantage point to monitor quality of representation objectively discuss issues of representation on the underlying case.**

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

**Executive director has a personal policy of discussing policy shifts among the members for feedback and input prior to recommending implementation to the board of directors. Executive director is active in the case management meetings held by the presiding judge, drug court policy meetings and local public safety meetings. Other members attend mental health court and juvenile meetings. Consortium participation is expected whenever asked. The information gathered in these various meeting are brought for discussion at the member's monthly meetings.**

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

**YCD member attorneys provide amazingly good defense services for indigent defendants given the constraints of our system and we interface very well with the court. Our structure seems to present the best features of "independent" defense and some economies of a public defender, and the result is better quality. We are enthusiastic and motivated to continue improving our effectiveness as well as accommodate and endure the complex and dynamic nature of providing criminal justice in times of fiscal hardship. We have an established track record of doing just that. We all have dedication and are willing to sacrifice to help our indigent clients. We are becoming more and more comfortable with centralized control over some defense functions. We collaborate among ourselves very well, and this involves discussion and sharing of work product, much like a public defender's office. The consortium attorneys are willing to accept the degree of guidance and control necessary to achieve efficiency and yet know their independence and personal style is respected. Given the adversarial nature of our work, I believe we do a good job working with the courts to deliver efficient indigent defense justice.**

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

**We are relatively new and are constantly evaluating ourselves and working to improve. Our interface with the juvenile system is poor and unfortunately little progress has been made in that area. Citizen Review Hearings are a crucial stage of dependency proceedings and attorneys are not attending them. We have added an experienced attorney who will handle only Juvenile cases as a step in rectifying this situation.**

**Improvement is needed in our ability to efficiently utilize investigators and to increase our effectiveness through mentoring, education, research, evaluation, and litigation support. We have been winning more trials in the last year than ever, and this trend is increasing, but there is stillroom for improvement. Adequate tools will be necessary to continue quantify and maintain performance. Our current budget contains provision for educational and support tools which are needed to increase our effectiveness, as well as monitor performance. Improvement in investigation**

quality and investigator use is being explored along with litigation support issues. YCD has been working with the court to help rectify their process of setting hearings, especially first appearances and PV hearings, with only a couple days or less notice.

The proposed addition of a Staff Attorney to handle routine tasks such as first appearances, routine PV hearings, and stand-in appearances when the court appointed attorney has an unforeseen emergency is necessary and would benefit the client as well as the court. This position is also crucial for running an efficient indigent defense service delivery system and a huge benefit for the court. Defense counsel would no longer be forced to scramble with little time to prepare due to delay outside their control. Defense counsel would be relieved from these hectic and stressful tasks allowing them to focus on litigation and other important aspects of their practice. This would eliminate some of the case resets that add to our extremely clogged court docket and the attorney coverage will facilitate early disposition programs. The staff attorney would also have an excellent vantage point to monitor quality control issues by handling all PV cases.

YCD could further improve overall responsiveness to immediate or emergency needs of the court and, in some cases, clients by having a Staff Attorney available on call. Many members have limited or no support staff and cannot afford appropriate staff overhead at our current rate so rapid response cannot be achieved otherwise.

YCD would like to see an Early Disposition Program implemented, improvement in the amount of time it takes to bring cases to trial and improvement in the case flow of those that are dismissed or end in a guilty plea. Much of this is dependent on the charging discretion of the state. Given the sustained increase in acquittal rate, it would seem some adjustment is in order and may be forthcoming. This coupled with an appropriate Early Disposition Program should alleviate most of the problem we are experiencing with our docket if charging is targeted at a reasonable conviction rate. Presently, an incredible amount of unproductive time is spent in court waiting for cases to be called that require but a brief appearance and preparing for trials, which are only reset time and again. YCD would like to take further efforts in documenting and quantifying the magnitude of this loss and take active steps to reduce it, hopefully converting this saving into further rate increases or benefits for its woefully under-compensated members. Some progress in this area can be facilitated through more extensive and effective communications with the DA's office and the courts' docketing department and deployment of a Staff Attorney. There is a lot of work being done toward moving the docket more quickly through differential case management and adoption of an EDP program. Although well intentioned, our prospect for moving cases to trial on the first setting using differential case management techniques are overly optimistic given the current charging practices of the state and acquittal rates. Recent case law makes bringing cases to timely trial essential and will precipitate emphasis on docket reduction. Many YCD members are in private practice and are held hostage in court hours waiting for brief routine hearings. The District attorney routinely sends up a general duty DA to handle these matters, so the efforts of the court to intervene and make substantive progress to actually resolve the cases is diluted at best and in

**many cases thwarted altogether. Reports of private clients waiting for appointments that walk out of offices when the attorney is hung up in court abound, making this situation even worse. Trials are reset numerous times and attorneys spend time repeatedly preparing for trial. Sometimes these cases are dismissed the night before or day of trial. By keeping accurate records to substantiate and quantify these effects and by working even more diligently with the courts and staff, YCD could make further progress in reducing or eliminating these costly delays.**

**YCD members could greatly benefit from a reduction in the stress level of their jobs through a modest hourly pay increase and appropriate tools. Financial difficulties due to extensive case load at a lower than average hourly rate add to the mounting stress of the criminal defense profession as a whole. The last rate increase was in the mid 80's and many consumer items, including health and retirement benefits not provided by OPDS contracts, have tripled in price. The effects of the low hourly rate adversely impacts effective management. It is difficult to manage effectively and maintain fee limits at the same time.**

**Before YCD was established, new attorneys were traditionally incorporated into indigent defense by the court and given misdemeanor cases to gain experience and prove themselves. Recently there has been a shift in emphasis to expanded felony prosecution and the state is allocating minimal resources to misdemeanor prosecutions and filing felonies wherever possible. This and Measure 11 have created a situation where there is a greater need now than ever for experienced attorneys that can handle these cases and retention of a local experience base is essential. Sufficient funding for tools to maintain and improve performance is necessary now and student debt forgiveness as incentive would help to attract and keep those capable and willing to participate for compensation at a small fraction of prevailing rates.**

**Thank you for your learned consideration.**

**Respectfully Submitted:**

**Bob Suchy  
Executive Director  
Yamhill County Defenders**

# CONTRACT

## BETWEEN YAMHILL COUNTY DEFENDERS, INC. & INDEPENDENT CONTRACTOR-ATTORNEY

This agreement is between Yamhill County Defenders, Inc., (hereinafter "YCD") and \_\_\_\_\_, an independent contractor (hereinafter "Contractor").

The term "Court" as used herein means the Yamhill County Circuit Court.

From January 1, 2004 until December 31, 2005, YCD will be under contract with the State of Oregon to handle indigent criminal defense work in the Yamhill County Circuit Court. For the duration of the contract period, the parties hereto agree to the following terms and conditions:

### 1. ASSIGNMENT OF CASES

The Yamhill County Circuit Court shall continue to assign cases to Contractor in a manner to be determined by the Presiding Judge. YCD does not control the assignment of cases. Contractor may be placed on a major felony, minor felony, misdemeanor, or other lists, with other contractors as the Court deems appropriate based upon Contractor's annual Certificate of Qualifications then on file with the Court. It is the Contractor's responsibility to communicate to the Court the list or lists for which the Contractor will provide services.

It is the responsibility of the Court to distribute cases in a fair and equitable manner among contractors. The assignment of cases is at the discretion of the Court, and Contractor should address concerns about case assignment with the Court.

### 2. COMPENSATION

Contractor will be paid attorney fees on an hourly basis and will be reimbursed for ordinary and extra-ordinary expenses incurred in court-appointed work by YCD, upon receipt of corresponding funds from the State of Oregon, according to the Public Defense Payment Policies and Procedures, published by the Office of Public Defense Services (OPDS). Ultimately, it is the responsibility of the State of Oregon to provide funds with which to pay Contractor. Contractor will be paid at the rate of \$40.00 per hour for all cases other than Measure 11, and \$50.00 per hour for Measure 11 cases, or such other rate as the State of Oregon approves for payment of Contractor. Fee and expense requests will be reviewed by YCD for reasonableness and may be reduced or denied if

deemed excessive or unreasonable. Should Contractor wish to appeal any such reduction in fees or expense requests, Contractor shall follow the “Yamhill County Defenders, Inc. Procedure For Appealing Fee/Expense Reduction” attached hereto as Appendix A. It is the responsibility of the Contractor to submit fee statements for processing and payment either upon completion or when interim payment is authorized. Cases assigned prior to March 15, 2002 shall be compensated according to the then existing agreement with the Court.

### 3. EXTRAORDINARY COSTS

All requests for non-attorney vendors, e.g. experts, and investigators, or other extraordinary costs to be incurred by contractors must have prior YCD approval. Pre-approval for interpreters is no longer needed. It shall be the responsibility of Contractor to submit an extra-ordinary expense request authorization form (EEA) for each such expense. At the conclusion of the case, or when interim billing is authorized, Contractor shall include with the request for payment a statement of all non-attorney provider time used in connection with the case. YCD will make payment to non-attorney providers once corresponding funds are received from the State of Oregon.

### 4. PROVISION OF SERVICES

A. Contractor shall remain a member in good standing of the Oregon State Bar, shall maintain an office in Yamhill County and shall maintain professional liability insurance coverage. Contractor agrees to follow all of the rules and regulations that apply to indigent defense service providers promulgated by the Court, the State of Oregon or YCD.

B. Contractor shall provide legal services for each appointed indigent person by providing legal advice and assistance on all matters related to each pending case through judgment on each case. Contractor shall provide said services in person and not through an associate or agent unless otherwise provided in this agreement. Other qualified Contractors who are members of Contractor’s firm satisfy the “in person” requirement, but secretaries and legal assistants do not. Contractor may arrange for another qualified Contractor to handle routine court appearances such as arraignments. Contractor shall provide representation with due diligence and professionalism and shall not allow other work to cause a deterioration in the quality of service rendered to each defendant.

C. Contractor may voluntarily remove him/herself temporarily from the appointment rotation without forfeiting YCD membership so long as YCD determines the voluntary removal is not defeating the purpose of this contract or the goals of YCD. It is

Contractor's responsibility to notify both the Court and YCD immediately of any such removal.

#### 5. MEETINGS

YCD will schedule at least one annual membership meeting for Contractors. YCD will provide advance written notice of said meeting.

#### 6. BRIEF BANK

A brief bank and memorandum bank consisting of legal memoranda and other useful materials contributed by YCD Contractors will be kept at the YCD office. All contractors shall have access to said bank during regular business hours.

#### 7. JURY LIST

Contractor shall be provided with Juror Information Forms by YCD. Within two days after each trial on court-appointed cases, contractor shall file a completed form with YCD. YCD shall maintain a monthly jury list bank. Information in said bank shall be kept confidential by Contractor and not disseminated to non-Contractors. Use of said bank shall constitute implied agreement with this confidentiality provision. All contractors shall have access to said bank during regular business hours.

#### 8. ASSIGNMENT

DUE TO THE UNIQUE SKILLS AND ABILITY OF CONTRACTOR, THIS AGREEMENT IS NOT ASSIGNABLE BY CONTRACTOR.

#### 9. TERMINATION

If Contractor is suspended or disbarred from the practice of law in the State of Oregon, Contractor shall immediately notify YCD of such suspension or disbarment. Upon such suspension or disbarment, this contract shall be deemed to be terminated. If Contractor is subsequently re-admitted to the practice of law in the State of Oregon, or upon such suspension period ending; and upon the Court approving Contractor as an indigent defense provider, YCD will reinstate Contractor as a member of YCD.

Contractor may voluntarily terminate this contract for any reason at any time, by providing written notice to YCD of such termination. Upon said termination by

Contractor, Contractor shall continue to represent previously appointed clients unless the contractor obtains leave of court to withdraw. It is the responsibility of Contractor to ensure that any pending cases are properly handled.

#### 10. CONTRACT WITH STATE OF OREGON

Contractor shall be bound by the terms of the agreement between the State of Oregon and YCD (“State Contract”), a copy of which will be made available to Contractor at the YCD office during regular business hours. Contractor shall cooperate with and assist YCD in complying with the terms, conditions and obligations of the State Contract. Further, contractor shall not in any manner hinder, frustrate or interfere with the effective performance of the terms, conditions and obligations of the State Contract.

#### 11. INSURANCE

Contractor shall procure and maintain in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon, said coverage to apply to Contractor’s firm or office. The limits of said policy shall not be less than \$500,000 per occurrence for personal injury and property damage. Said coverage shall include the State of Oregon, the Oregon Judicial Department, the Office of Public Defense Services, and their divisions, officers and employees as additional insureds, but only with respect to Contractor’s activities to be performed under this Contract. Contractor shall provide YCD with proof of said coverage.

Contractor shall save, hold harmless and indemnify YCD, its officers, Agents, Board of Directors and employees from all claims, suits or actions of whatever nature resulting from or arising out of the activities of Contractor, its employees, or assigns under this contract.

#### 12. REQUESTS FOR PAYMENT

Requests for payment and reimbursement of expenses required by OPDS policies must be submitted by YCD within thirty days. Therefore, contractor must have delivered completed requests to the YCD office no later than fifteen days from completion of services. Failure to do so may result in the contractor receiving delayed compensation.

Contractor shall use the “ElectroBoojum” billing system (“Boojum”) in the preparation of all payment requests. YCD shall provide a copy of the Boojum software, and necessary technical support to Contractor to enable Contractor to effectively use this

system. For good cause, Contractor shall have up to a six month grace period (from the first date of YCD membership) within which to fully implement the Boojum system into Contractor's indigent defense practice.

### 13. IMPLEMENTATION AND PROMULGATION OF GUIDELINES

YCD may from time to time adopt guidelines to implement the policies set forth herein.

### 14. MERGER

This agreement contains the entire agreement between the parties and supersedes all prior agreements written or oral.

### 15. ARBITRATION

Any disagreements under this agreement or between YCD and Contractor, except compensation disputes under paragraph 2 of this agreement, shall be decided 1) informally, 2) by mutual voluntary submission to the Presiding Judge of the Yamhill County Circuit Court, or 3) by binding arbitration. The costs of said arbitration shall be born by Contractor. YCD will make its best effort to limit the costs of arbitration.

The parties shall agree on either a single arbitrator from a list proposed by both parties or each party shall choose one arbitrator and these two arbitrators will chose a third arbitrator from a mutually acceptable list of arbitrators. If the parties cannot agree on such a list then the two chosen arbitrators shall choose a third arbitrator of their choice. If more than one arbitrator is chosen then a decision can be made by a majority vote of the arbitrators. The decision of the arbitration panel shall be final.

### 16. CERTIFICATION OF ACCURACY OF FEE STATEMENTS

Because fee and expense statements from Contractor to YCD are expected to be submitted electronically, Contractor's original signature will not be on said statements. Therefore, it is necessary for each Contractor to affirm herein that his/her statements for attorney fees and expenses in connection with each appointed case are true and accurate, and that Contractor has not received and will not be accepting other direct or indirect compensation for services provided in connection with said statement(s).

THEREFORE, IT IS AGREED BY CONTRACTOR, that for each and every statement submitted to YCD requesting payment for services or reimbursement for expenses in connection with any court-appointed case, the following certification applies:



## **BILLING**

YCD is responsible for processing billing statements on indigent defense cases. ORS 135.055(4) requires counsel, upon completion of all case related services to submit their billing statement of all reasonable fees and expenses, supported with the necessary pre-approvals, invoices and receipts. Contained within the "YCD Attorney Contract" is an agreement between the Attorney and YCD that all billings submitted either in writing or by electronic means are automatically certified to be true and accurate. The YCD office reviews, verifies, and processes the billing statements for payment to the member attorneys and their Sub-Providers.

### **BILLING STATEMENTS SUBMITTED TO YCD MUST INCLUDE THE FOLLOWING:**

- A. **YCD BILL HARDCOPY:** To meet statutory requirements, YCD utilizes the Bill Hardcopy, which replaces the State Court Administrator's Fee Statement/Certification Form. All Attorney billing statements requesting payment of attorney fees, out-of-pocket expenses, and extraordinary expenses must be submitted to the YCD office using this form. It is necessary to have all applicable boxes and lines filled in with the complete and correct case information. Make sure to use the YCD published codes for the Appointment Types, ORS #'s with extensions, Charge Names, Withdrawal Reasons and Dispositions. These are all contained in the Boojum billing software in the form of drop-downs. Incomplete billing forms or missing case information may cause the billing statement to be held-up or returned to the attorney for correction and/or completion before processing by YCD.
- B. **ATTORNEY TIME AND EXPENSE DETAIL:** Attorneys must submit supporting information for the total hours submitted on the billing statements. The attorney time and expense detail is a chronological listing of the dates of services, a description of services, and time expended on each service listed in tenths of an hour. In addition, this detail must clearly differentiate between the time spent "In-Court" and the time spent "Out-of-Court".
- C. **OUT-OF-POCKET (O-O-P) CASE EXPENSES:** Case expenses such as photocopies, postage, telephone, facsimile, travel, subpoena service, records, some transcripts, and other miscellaneous expenses are reimbursable to member attorneys. If the total cost of any one expense is \$25.00 or more, the expense requires submission of a receipt. If the total cost of any one expense is over \$25.00, the expense requires a pre-authorization utilizing the Extraordinary Expense Authorization (EEA) process.
- D. **YCD EXTRAORDINARY EXPENSE AUTHORIZATION (EEA):** Attorneys requiring the services of any sub-provider (i.e. Interpreter, Investigator, Evaluator, Expert or Out-of-Pocket Expenses over \$25.00) must obtain **PRE-APPROVAL** from the YCD office **BEFORE** engaging the services of the sub-provider or the expenditure of any funds. Attorneys need not submit motions and affidavits to the court or the Indigent Defense Services requesting indigent defense expenses. All requests, including Measure 11 requests, are processed by YCD. EEA requests forms may be found in the Boojum billing software, and may be faxed, mailed or delivered to the YCD office. The "Extraordinary Expense Authorization" must be properly completed with the appropriate client and case details and any explanations or descriptions of work to be performed. All case details and information provided to YCD for expense approval shall be kept confidential.

The completed EEA, with the approval information filled in at the bottom, needs to be on file at both the attorney's office and at YCD's office. A copy of the approved EEA must be given to the sub-provider as their work order or authority to perform the services requested. Please note that Sub-providers will only be paid for the total amount of hours pre-approved by the EEA on file at the

YCD office, except in extraordinary circumstances and under the procedure set forth in the paragraph below.

The routine EEA requests like Interpreter and Investigator for ten hours or less will be quickly approved. Unusual requests may require more time to approve, or may require a written or verbal explanation. Every effort is made to approve your requests as quickly as possible. In most situations, EEA's will be reviewed and approved/disapproved the same day they are submitted.

Increases to EEA's need to be indicated and tracked on the original EEA. To request additional hours or funds on a particular case, simply date and write an explanation to justify the additional request. All additional increase requests are reviewed and approved by the Executive Director, so a detailed explanation should be submitted. It may also be necessary to discuss these additional requests with the Executive Director.

In extraordinary cases, an EEA may be approved and paid after the expense is incurred. When the submitted EEA did not cover the actual amount of the expense or when the EEA process was not used before the expense was made it may still be paid. If the request complies with the indigent defense policies and procedures and the total amount is still reasonable and necessary. However, this post-authorization will only be accepted with written explanation by the attorney, detailing the exigent or extraordinary circumstances that existed requiring the expense to be incurred before receiving authorization. This written explanation is necessary to justify the after-the-fact approval or increases and provide a reasonable audit trail.

Billing statements that are submitted for payment that are "not pre-approved" or are for "amounts above" the pre-approvals will require this written explanation from the member before they can be processed. This will likely delay payment at least one billing cycle.

The completed EEA and the sub-provider billing must be included with the attorney's billing statement when the case is completed and submitted for payment. If an EEA was completed and approved but not needed, it must still be included with the attorney billing statement in order to be removed from YCD's accounts payable files.

**E. SUB-PROVIDER BILLING STATEMENTS:** Pre-authorized sub-providers must submit their billing statements to the hiring attorney when their work is completed, when their billing is requested, or when the case is completed. Sub-providers may not submit their billing statements directly to the YCD office. The sub-provider billing statement must provide the name of the client, the name of the hiring attorney, detail indicating the date(s) of service(s), time expended performing service(s) in tenths of an hour, the hourly rate, and the total amount requested for the billing statement.

Sub-providers billing for hours over what has been pre-authorized on the EEA will only be paid for the hours that are pre-authorized except in extraordinary circumstances as outlined above. Sub-providers must always be aware of their approval amount/time. It is the responsibility of the hiring attorney to provide the sub-providers with a copy of the approved EEA.

With pre-approval, the sub-provider may have their billing statement processed prior to the case being completed. Attorneys are encouraged not to request sub-provider interim billings on a routine basis.

**F. RECEIPTS FOR CASE EXPENSES:** Any individual out-of-pocket expense that totals \$25.00 or more must be accompanied with a receipt to be reimbursed. This applies to both Attorney and Sub-Provider expenditures. Expenses expected to be more than \$25.00 requires a pre-authorization utilizing the Extraordinary Expense Authorization (EEA) process.

In the absence of a receipt, the attorney or sub-provider must state on a separate piece of paper:

- 1.) What the expense was for.
- 2.) What the rate and total amount of the expense was.
- 3.) Why there is not a receipt.

The attorney or sub-provider must sign and date this separate piece of paper and submit it with the billing statement to YCD. The attorney or sub-provider must keep reasonable underlying records in case YCD, the court, or SCA requires further documentation.

## **ELECTRONIC BILLING SYSTEM (ELECTROBOOJUM)**

A computerized billing system has been designed for members to prepare the YCD billing statements at no cost to the members. This system will be installed on your computer by appointment, and ongoing technical support will be available, also at no cost. Members are required to utilize the billing system for YCD purposes; it has been designed to make billing much less time consuming than preparing the YCD Bill Hardcopy manually. There are built-in tables and integrity checks that help with choosing the correct YCD codes and charge details. There is a calendar feature that provides members with knowledge of all hours billed or unbilled on any single calendar date, along with many other helpful features.

ElectroBooJum also enables members to electronically prepare the billing statements. Members are required to submit their bills on a computer diskette.

## **TIMELINES FOR BILLING STATEMENTS**

### **A. BILLING CYCLES, CUT-OFF, AND PAYMENT TIMELINES**

YCD processes two billing cycles a month. Every other week the attorneys have a cut-off date for submitting billing statements, and are provided with a calendar showing these dates. Billing statements received after 5 PM on cut-off dates are held over for processing in the next batch. The YCD office produces one electronic billing from the individual billing statements received prior to the 5 PM cut-off. This electronic billing is submitted to Indigent Defense Services in Salem, who in turn submits a payment request to the Accounts Payable of the State of Oregon, Judicial Department. Every other Wednesday (opposite Wednesday cut-off deadlines) will be the day that checks get distributed for the prior cut-off submission day. This means that Attorney and Sub-Provider payments for a particular cut-off date will be disbursed three weeks after that cut-off date. Thus, every Wednesday will either be a cut-off day or a payday. In extraordinary circumstances, this schedule may not be able to be followed. YCD will do everything possible to inform members if there will be a problem meeting this schedule.

The YCD office produces the individual checks to the members and the sub-providers after it receives a telephone call from the Accounts Payable of the Department of Justice that the payment has been electronically deposited to our bank account. If for some reason the State is unable to process the YCD electronic billing, the payment timelines under the above schedule may be delayed and the YCD office will inform the members as soon as possible.

The YCD office provides a reference calendar for each year indicating the cut-off dates to the

membership. Members are notified in advance of any changes to these cut-off dates.

## **B. DELAYS IN PROCESSING BILLING STATEMENTS**

Occasionally billings may not be processed within the billing cycle for which they were submitted. There are several reasons this may happen. These include:

- 1.) Billings held up for Fee Review
- 2.) Billings without pre-approved EEA's or above the pre-approved amounts.
- 3.) Billings that the YCD payment process cannot verify details.
- 4.) Billings that are illegible, incorrect, or incomplete.
- 5.) Billings received later than 5 PM on cut-off dates.

## **COMMON ERRORS ON BILLINGS STATEMENTS**

The YCD office makes every effort to accurately process all the attorney-billing statements received from members. The attorneys' offices can help correct some of the "common errors, omissions and problems" by:

- a.) Ensuring that the Unique ID Number has not been used previously.
- b.) Matching the year of the ID Number to the year of the appointment.
- c.) Obtaining and using client's full legal names (first, middle, last).
- d.) Verifying and using client's correct date of birth.
- e.) Accurately indicating the true appointment date in the first time-slip.
- f.) Using **only** the published codes from the "YCD Codes Lists".
- g.) Listing all charges and counts appointed to on separate lines with the exception of infractions and violations.
- h.) Ensuring that all ORS numbers have the proper YCD sub-section extension and level codes.
- i.) Reporting the appropriate and correct dispositions for all charges.
- j.) Accurately separating and totaling in and out of court functions.
- k.) Attaching/creating receipts for individual out-of-pocket expenses totaling \$25.00 or more.
- l.) Including all Sub-Provider invoices.

## TYPES OF EXPENSES

General expense categories include overhead expenses, out-of-pocket expenses, and extraordinary expenses.

### A. OVERHEAD EXPENSES

Overhead, including services performed by an employee or an independent contractor, is not reimbursable, except in very limited circumstances with YCD's pre-approval.

**NON-REIMBURSABLE OVERHEAD** includes, but is not limited to:

- 1.) Travel, including parking, to and from court for appearances within the county where counsel's office is located or within 60 miles of counsel's office, whichever is less.
- 2.) Secretarial services.
- 3.) Word-processing.
- 4.) Rent and utilities.
- 5.) Office equipment and supplies.
- 6.) Library materials.
- 7.) Law Clerk, Associate and paraprofessional services, unless pre-authorized.

### B. OUT-OF-POCKET (O-O-P) EXPENSES

YCD attorneys may be reimbursed for actual out-of-pocket costs for the following items within the limits described below. Receipts and pre-approval are required for any single expense category totaling more than \$25.00.

1.) **(POST) Postage:**

Reimbursed at actual (not estimated) costs of first class mail. Express mail or messenger service can be reimbursed only if the attorney could not have avoided the extra expense through better planning or if the attorney could show that it was reasonable, necessary, or less expensive than regular first class mail.

2.) **(TELE) Telephone Charges:**

Reimbursed at actual (not estimated) costs of long distance telephone charges and local collect call charges from indigent clients in jail, prison, hospital, or other similar institutions.

3.) **(COPY) Photocopy:**

In-office, actual costs not to exceed \$ .05 per page; by outside vendor other than state court, actual costs not to exceed \$ .10 per page; by state court, actual costs not to exceed \$ .25 per page, plus necessary certification cost. (Photocopying of large projects expected to be more than \$25.00 must

be pre-authorized utilizing an EEA.)

4.) (TRAV) Travel/Mileage:

Reimbursed at \$ .21 per mile for necessary travel other than travel within the county to court appearances (See "Overhead", Section #11.0 A.) and for sub-providers such as Investigators outside the normal course of business travel for the office location or provider's type of work.

Travel that must be accomplished by air needs to be pre-approved through YCD and arranged through the SCA, as the SCA can obtain discounted rates on air travel. If you need to travel by air or need to have a witness travel by air, you must utilize the EEA process and contact the YCD office to help arrange/detail this expense.

5.) (CLERK) Law Clerk:

Reimbursed at up to \$15.00 per hour for hours pre-authorized utilizing the EEA process to perform specific duties and tasks related to an individual case. The Attorney must provide the Clerks time by date, time reported in tenths of an hour and description of the work completed for reimbursement. Members must retain supporting documentation for hours worked by clerks in the applicable files at the attorney's office that must be made available for audit verification purposes, if requested by YCD or SCA.

6.) (FAX) Facsimile:

Reimbursed at actual costs of facsimile charges not to exceed \$0.50 per page. Individual receipts are necessary for each facsimile reimbursement. Multiple page documents should be handled by the least expensive means possible. If another delivery method, such as mail or express mail would be less expensive it should be considered first.

7.) (TRANS) Transcripts:

In some cases, it is necessary to have a full or partial transcript prepared. The Executive Director can approve this expense if reasonable and necessary. The absolute maximum amount that can be approved and reimbursed for transcript preparation is \$2.50 per page. No appearance or other fee may be paid for the transcript preparation. The maximum amount that can be reimbursed for a photocopy of a transcribed proceeding is \$0.25 per page.

8.) (RECORDS) Records & Reports:

In some cases, it is necessary to obtain copies of records and reports such as medical, hospitalization, police, probation, counseling or court files. Pre-authorization is necessary utilizing the EEA process for any cost of records or reports expected to be more than \$25.00. When you are not sure what the total expense will be, you should obtain a pre-approval before requesting the documents.

9.) (DISC) Discovery:

Reimbursed at actual cost of copying discovery by the least expensive means possible not to exceed \$ .05 per page in-house and not to exceed \$ .10 by outside vendor. Photocopying of large amounts of discovery and any copying expected to be over \$25.00 must be pre-authorized utilizing the EEA process. Premiums charged by vendors for expedited copies will not be paid if counsel could have reasonably avoided these costs.

10.) (CLR) Computerized Legal Research:

Reimbursed for actual on-line usage and only to the extent counsel shows in supporting documents that the cost, including attorney fees, is less than the cost of the same research done manually. Pre-authorization is necessary utilizing the EEA process for any cost of computerized Legal Research expected to be more than \$25.00.

11.) (SERV) Service of Process:

In criminal proceedings, counsel must use the least expensive means possible. Flat fee process servers should be utilized as much as possible. If it is necessary to use your investigator for this service, it should be handled by utilizing the least expensive means possible. ORS 21.410 (1) (a) provides that no fee shall be charged to the state by any process server for civil cases in which the party requesting service has counsel appointed at state expense. Pre-authorization is necessary utilizing the EEA process for any cost of Service of Process expected to be more than \$25.00.

12.) (ASSOC) Associate Work:

Reimbursed at up to \$40.00 per hour for hours pre-authorized utilizing the EEA process to perform specific allowable functions or tasks related to an individual case. The Attorney must provide the Associates time by date, time reported in tenths of an hour and a description of the work completed for reimbursement. Members must retain supporting documentation for hours worked by Associates in the applicable files at the attorney's office that must be made available for audit verification purposes, if requested by YCD or SCA.

13.) (MISC) Other Out-of-Pocket Expenses:

YCD will pay other out-of-pocket expenses similar to the above or in excess of the limits stated above utilizing the EEA process, if the expenses are reasonable and necessary. If counsel is uncertain as to whether the expense will be reimbursed, contact the YCD office to check on it before incurring the expense and to determine if pre-authorization is required. Generally, an inquiry and Extraordinary Expense Authorization (EEA) should be made for any individual expense rising above \$25.00.

C. EXTRAORDINARY EXPENSES

YCD will only reimburse member attorneys and their sub-providers for extraordinary indigent defense expenses if:

- 1.) YCD has pre-authorized the expense utilizing the EEA process, and either:
- 2.) The expense is within the guidelines and the approved amount, or
- 3.) YCD has properly approved a deviation from the guidelines.
- 4.) In extraordinary cases, an EEA may be approved after the expense is incurred. In cases when the submitted EEA did not cover the actual amount of the expense or when the EEA process was not used before the expense was made, if the request complies with the indigent defense policies and procedures and the total amount is still reasonable and necessary. However, this post-authorization will only be accepted with written explanation by the attorney detailing the exigent or extraordinary circumstances that existed requiring the expense to be incurred before requesting authorization. This written explanation is necessary to justify the after-the-fact

approval or increases and provide a reasonable audit trail.

Billing statements that are submitted for payment that are "not pre-approved" or are for "amounts above" the pre-approvals will require this written explanation from the member before they can be processed. The lack of planning and following the pre-approval process will delay payment at least one billing cycle due to the extra paperwork that must be done by the YCD office.

- 5.) Extraordinary Expense authorization decisions made by the Executive Director may be appealed using the same policies and procedures as a Fee Review Appeal (see below)

Extraordinary Expenses include, but are not limited to:

- 1.) **(INTERP)** Interpreter Services.
- 2.) **(INVEST)** Investigator Services.
- 3.) **(EVAL)** Psychiatric/Medical Evaluations.
- 4.) **(EXPERT)** Expert Fees and **(WIT FEE)** Witness Expenses.
- 5.) **(TRANS)** Transcripts/**(COPY)** Photocopies/**(MISC)** Audio or Video Tapes.
- 6.) **(RECORDS)** Records/Reports from Outside Sources.
- 7.) **(TRAV)** Extended Travel/Lodging Expenses.
- 8.) Extraordinary Expenses may also include any **(O-O-P)** Out-of-Pocket Expenses such as **(CLERK)** law clerk or **(ASSOC)** associate time that have been pre-authorized as an expense outside of overhead costs.

## **SPECIFIC GUIDELINES FOR EXTRAORDINARY EXPENSES**

All the services listed below require pre-approval by utilizing the YCD Extraordinary Expense Authorization (EEA) process. The service providers must receive a copy of the pre-approved EEA indicating the total amount of authorization and the case details for their billing purposes. All payments for these services must be processed through the YCD Office. At no time, are Sub-providers to be paid by YCD attorneys. These payments must be properly accounted for and tracked for 1099 Contractor tax purposes and reporting to SCA. **You must try to find a Sub-provider at or below the rates listed in these guidelines. If the attorney is unable to do so, the attorney may request a deviation from these rates, but must indicate that they have tried to find a Sub-provider at these rates and/or why a Sub-provider who charges above these rates is necessary.**

### **A. (INTERP) INTERPRETER SERVICES**

Language Interpretation Services are not to exceed \$25.00 per hour (\$32.50 per hour for Court Certified Interpreters). YCD attorneys are responsible for arranging for interpretation services within the guideline rate for their out-of-court meetings such as office appointments and jail visits. The courts arrange for interpreters and specialty interpretation services for in-court needs. For specialty interpretation services, such as American Sign Language or other uncommon language interpretation, YCD has the authority to approve a guideline rate variance.

## B. (INVEST) INVESTIGATOR SERVICES

Investigation Services are not to exceed \$25.00 per hour. This includes all overhead expenses, including secretarial services and routine travel. Investigators must be licensed with the Oregon Board of Investigators (OBI). YCD Attorneys are responsible for deciding which of their cases require the services of an investigator and which OBI Investigator to hire. The investigator must receive a copy of the EEA authorizing the investigative hours along with clear and concise investigative goals and direction. If the investigation is going to take more hours than what has been pre-authorized, the attorney must request additional authorization of time by providing more information on the tasks to be completed. These pre-authorizations are very important and YCD will only pay the total hours pre-approved on the EEA that is filed in the YCD office.

Investigators will be reimbursed for the following out-of-pocket expenses without specific pre-authorization:

- a) Actual cost of long-distance telephone expenses, with documentation, and
- b) Actual cost of copying documents, with documentation and within the limits set forth in B)-Out of Pocket Expenses above.

## C. (EVAL) MEDICAL EVALUATORS

When the attorney is requesting authorization for funds to hire medical experts a reason should be stated or a desired result explained on the extraordinary expense authorization form.

### 1.) PSYCHIATRISTS, PSYCHOLOGISTS, PHYSICIANS EVALUATIONS are limited to:

- a.) Examination: not to exceed \$250.00.
- b.) Report: not to exceed \$75.00.
- c.) Consultation with Attorney: not to exceed \$60.00 per hour.
- d.) Testimony: not to exceed \$60.00 per hour and \$240.00 total.

### 2.) MEDICAL EXPERTS STANDBY FEES:

YCD will pay standby fees for medical experts only when the court or opposing counsel is responsible for incurring the standby expense. For example, the trial court refuses to take testimony out of order or grants opposing counsel's belated request for a continuance over appointed counsel's objection after the expert is on standby.

### 3.) MISSED MEDICAL OR PSYCHOLOGICAL APPOINTMENTS:

The party, counsels, or court responsible for the missed appointment is responsible to pay for it. YCD will pay for a missed appointment only:

- a.) When an indigent person with appointed counsel is responsible for missing an appointment because of illness, injury, lack of capacity, or other good reason which prevented the timely cancellation of the appointment, and is not attributable to another party, to counsel, or to the court.
- b.) When the indigent person requesting the appointment was personally responsible for the missed appointment and cannot show good cause; however, YCD will not pay for a second or a later appointment for the same purpose.

The person seeking payment from indigent defense funds has the burden to establish that the indigent person was responsible for the missed appointment.

**D. (EXPERT) FORENSIC SERVICES**

Counsel should consult first with the state crime lab and the state medical examiner to determine whether counsel requires extensive independent forensic services.

YCD will pay up to \$75.00 per hour for forensic services, including but not limited to:

- 1.) Out-of-court testing and examination (of blood, bullets, hair, etc.);
- 2.) Testimony in-court.

The hourly fee includes all overhead expenses, including secretarial services and routine travel within 60 miles of the provider's office.

**E. (EXPERT) HANDWRITING ANALYSIS**

YCD will pay up to \$150.00 per hour for handwriting analysis.

**F. (POLY) POLYGRAPH TESTING**

Polygraph examination and report not to exceed \$200.00. YCD will authorize polygraph services sparingly and only when the service is necessary to an adequate trial defense or negotiated disposition. YCD will not pay polygraph expenses for testing the truthfulness of communications between an indigent client and his or her appointed counsel.

**G. (CLERK) LAW CLERK, LEGAL ASSISTANT, PARALEGAL**

YCD will reimburse counsel for law clerk, legal assistants, or paralegal services when pre-authorization is obtained as an out-of-pocket expense, not to exceed \$15.00 per hour. Paraprofessionals include law clerks, legal assistants, and trial assistants. Counsel may request reimbursement only as an out-of-pocket case expense. The attorney must provide the paraprofessionals time records by date, time reported in tenths of an hour, and a description of the work performed in order to be reimbursed.

**H. (ASSOC) ASSOCIATE**

YCD will reimburse counsel for associate time when pre-authorization is obtained as an out-of-pocket expense, not to exceed \$40.00 per hour. Associates can be authorized to perform specific functions or tasks related to an individual case, except for any substantive court appearances. Counsel may request reimbursement only as an out-of-pocket case expense. The attorney must provide the associates time records by date, time reported in tenths of an hour, and a description of the work performed in order to be reimbursed.

**INTERIM BILLING**

**A. IN GENERAL**

Interim billing involves many extra steps throughout the billing process. The attorneys, sub-providers, and the YCD office all must handle these billings differently and it is generally discouraged except in certain circumstances where it is appropriate.

YCD may approve an Interim Billing for:

- 1.) Sub-providers who have completed their work on a case and the case is ongoing (+2 months);
- 2.) The attorney and all sub-providers, if the case is complicated, and ongoing (+ 6 months);
- 3.) The attorney and all sub-providers, for ongoing SED contempt cases (+6 months);
- 4.) The attorney and all sub-providers, for murder cases (quarterly); or
- 5.) Partial payments when the billing statement is being held/reviewed by the Executive Director.

#### B. PRE-APPROVAL TO INTERIM BILL REQUIRED

Pre-approval from the YCD office is required in order to submit an Interim Billing. Approvals to Interim Bill must be pre-planned, requested, and approved in advance. Approval will not be given on cut-off days and billing statements received without pre-approval will not be processed within the current batch. The YCD office completes an "Interim Billing Authorization Form" which requires information about the case much like an Extraordinary Expense Authorization. Then there are some specific questions about the case(s), such as, when were you appointed to the case(s), what is the next major event in the case(s), and how many hours have been worked on the case(s)? Depending upon the answers to these types of questions, approval to interim bill is received or denied.

However, even with pre-approvals of Interim Billings, there is no guarantee that they will be processed within the bill batch for which they were received. Every effort will be made to attempt to process these bills but it will depend upon the YCD office workload, timelines and volume of regular billing statements received. All regular billing statements have priority over interim bills.

#### C. INCLUDED ON THE INTERIM BILLING

The attorney must bill for all the case time and expenses incurred within a specific time frame on the interim billing. This means that any sub-providers or out-of-pocket case expenses from the date of appointment up to a specific date must be included. The attorney and any sub-providers decide on a cut-off date, such as the end of a 6-month period or the end of a quarter and bill all the time and expenses up to and including that specific date.

#### D. RECEIPTS ON ALL OUT-OF-POCKET CASE EXPENSES

When interim billing on a case the likelihood of going over the \$25.00 expense amounts that require receipts is common. It is therefore necessary to provide receipts for all out-of-pocket case expenses that are incurred by the attorneys and their sub-providers on each interim billing of the case.

#### E. INTERIM BILL HARDCOPY FORMAT

For interim bills, there are a couple of differences when completing the Bill Hardcopy:

- a.) Each Interim Bill must have the same Unique ID number.
- b.) Each Interim Bill must reflect the original appointment date.

- c.) There should not be a date in the Final Date field until the final billing.
- d.) The disposition on all charges should be "INTR" until the final billing.

## **SUPPLEMENTAL BILLING**

### **A. IN GENERAL**

There are certain instances when it is necessary and appropriate to request a supplemental billing. This usually occurs when there is a major oversight or error in the billing process or at the request of the courts when further work on a case is necessary. Attorneys are encouraged to avoid unnecessary supplemental billings due to the extra steps that are involved to process this type of billing.

YCD may approve a supplemental billing when:

- a.) A major omission or error such as neglecting to pay a sub-provider occurs.
- b.) With pre-approval, substantial time and expense has been logged after billing the case.
- c.) The courts request additional work on the case(s).

### **B. PRE-APPROVAL TO SUPPLEMENTAL BILL REQUIRED**

Pre-approval from the YCD office is required in order to submit a Supplemental Billing. Approval to Supplemental Bill must be pre-planned, requested, and approved in advance. Approval to Supplemental bill will not be given on cut-off days and billing statements received without pre-approval will not be processed within the current batch. The YCD office completes a "Supplemental Billing Authorization Form" which requires information about the case much like an Extraordinary Expense Authorization. Then there are some specific questions about the case(s), such as, what is the reason for the supplemental billing request, when did you previously bill the case(s), and how many hours have been worked on the case(s)? Depending upon the answers to these types of questions, approval to Supplemental bill is received or denied.

However, even with pre-approvals of Supplemental Billings, there is no guarantee that they will be processed within the bill batch for which they were received. Every effort will be made to attempt to process these bills but it will depend upon the YCD office workloads, timelines and volume of regular billing statements received. All regular billing statements have priority over supplemental bills.

### **C. INCLUDED ON THE SUPPLEMENTAL BILLING**

Attorneys complete the billing statement using the same Unique ID number and case details as previously submitted/corrected. The attorney needs to ensure that there are no overlapping times or expenses on any supplemental billings. The billing statement must contain only the time and expenses not previously submitted or paid.

### **D. RECEIPTS ON ALL OUT-OF-POCKET CASE EXPENSES**

When supplemental billing on a case, the likelihood of having gone over the \$25.00 amounts that

require receipts are common. It is therefore necessary to provide receipts for all out-of-pocket case expenses that are incurred by the attorneys and their sub-providers on each supplemental billing of the case.

#### E. SUPPLEMENTAL BILL HARDCOPY FORMAT

For supplemental bills, there are a couple of differences when completing the Bill Hardcopy:

- a.) Each Supplemental bill must have the same Unique ID number as the original bill
- b.) Each Supplemental bill must reflect the original appointment date.
- c.) The disposition on all charges is "SUPP".

### **REVIEW OF ATTORNEY BILLING STATEMENTS**

#### A. IN GENERAL

One of the functions of the YCD office is to provide an initial review of the attorney billing statements for reasonableness. The process begins on cut-off dates, with a verification of the time and expense calculations to compare the total fees requested with the standard weighted average deviation for the different case types.

#### B. EXECUTIVE DIRECTOR FEE REVIEW

The Executive Director reviews any billing statements that exceed the standard averages for that particular case type. Upon this initial review, the Executive Director may approve the fees as reasonable and necessary and the billing statement is processed within the same batch.

If an attorney believes that a particular billing statement is unusually high, he or she is encouraged to submit a letter or memo along with the billing statement. This is likely to prevent the statement from being held over until the next billing cycle. The attorney should provide an explanation as to why the time expended or the expenses incurred were reasonable and necessary. If the information submitted is sufficient explanation, the Executive Director will approve the fees as reasonable and necessary and the billing statement is processed within the same batch.

If the Executive Director has any questions or concerns about the billing statement revealed by this review or not explained in an attached letter or memo, then the billing statement is withheld from the current batch. The attorney is contacted by a Fee Review letter requesting that the Executive Director and the attorney discuss the particular case and the billing statement details.

Upon receipt of a Fee Review letter, the attorney has two options:

- 1.) Contact the Executive Director in person or by phone to discuss the case.
- 2.) Submit to YCD a letter or memo outlining any pertinent details. This letter must include information so that the Executive Director can decide whether the time and expenses spent on the case are reasonable and necessary. This must include facts concerning the case, the attorney's time and expenses and how they relate to each other. It may include case strategy and theory.

Please note that all case details and information provided to YCD for expense approval or fee review shall be kept confidential.

In the event the attorney's bill is denied after the Fee Review process above, the attorney may appeal the decision of the Executive Director to the Fee Review Committee of YCD, and will be given the opportunity to be heard, in writing or in person, by the Committee on the issue of the reasonableness of the fee statement.

Should the attorney's bill or any part of it be denied by the Fee Review Committee, the attorney may appeal the decision to either the trial judge or, in the event no trial occurred, to the Presiding Judge of the Yamhill County Circuit Court. The judge's decision is final.

# CORPORATE BYLAWS

of

## YAMHILL COUNTY CRIMINAL DEFENDERS, INC.

### ARTICLE I. OFFICES

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

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

### ARTICLE II. BOARD OF DIRECTORS

**Section 1. General Powers.** The business and affairs of the corporation shall be managed by its board of directors.

**Section 2. Number, Tenure, and Qualifications.** The number of directors of the corporation shall be seven. The number of directors of the corporation may be changed by two-thirds vote of the active membership. Each director shall hold office for the term stated in the Articles of Incorporation or until the director's death, resignation, or removal from office in the manner hereinafter provided.

**Section 3. Regular Meetings.** A regular annual meeting of the board of directors shall be held without other notice than this bylaw in October at a date, time and place to be determined by the board, unless said meeting is reset by the board.

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

**Section 5. Notice: Waiver.** Notice of any special meeting shall be given at least 72 hours prior thereto by written notice delivered personally or mailed to each director at the director's business address. If mailed, such notice shall be



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

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

### ARTICLE III. OFFICERS

**Section 1. Number. Titles.** There shall be three officers, the Chairperson of the Board of Directors, who shall be designated the President for statutory reasons contained in ORS 65.371, the Secretary and the Treasurer.

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

(a) **Chair; Election. Term.** The Chairperson of the corporation shall be elected from among and by the board of directors to a term of one year.

(b) **Treasurer; Election. Term.** The Treasurer of the corporation shall be elected from among and by the board of directors for a term of one year.

(c) **Secretary; Election. Term.** The Secretary of the corporation shall be elected from among and by the board of directors for a term of one year.

**Section 3. Chairperson of the Board. duties.** The chairperson of the board shall preside over meetings of the board of directors.

**Section 4. Secretary. duties.** The Secretary shall:

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

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

(c) be custodian of the corporate records;

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

**Section 5. Treasurer, duties.** The Treasurer shall:

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

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

**Section 6. Executive Director, duties.**

(a) The Executive Director is a member of the corporation and shall operate as a principal member of the corporation. Following the election of the initial Executive Director by a majority vote of the membership, subsequent Executive Directors of the corporation shall be appointed at will by the Board of Directors. The Executive Director shall be an ex-officio member of the Board of Directors.

(b) The Executive Director shall be the principal executive officer of the corporation and, subject to the control of the board of directors, shall in general supervise and control all the business and affairs of the corporation. The Executive Director may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the board of directors, any contracts or other instruments which the board of directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the board of directors or by these bylaws to some other officer or agent of the corporation or shall be required by law to be otherwise signed or

executed; and in general the Executive Director shall perform all duties incident to the office of Executive Director and such other duties as may be prescribed by the board of directors from time to time. Fee statements for Indigent Defense services performed by the Executive Director may not be approved by the Executive Director but shall be reviewed in a manner to be determined by the Board of Directors.

**Section 7. Removal.** Any officer or Executive Director elected or appointed by the board of directors may be removed by a simple majority of the board of directors whenever in its judgment the best interest of the corporation would be served thereby. An officer or Executive Director may also be removed by vote of two-thirds of the membership at a special meeting called for that purpose.

**Section 8. Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or otherwise may be filled by the board of directors for the remaining portion of the term.

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

#### ARTICLE IV. MEMBERS OF YCD

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

**Section 2. Members of YCD.**

(a) **Types.** Membership shall be of two types: Charter and Auxiliary.

(b) **Charter Membership.** With the exception listed in 2(c) below, charter membership shall be limited to and defined as those attorneys who joined Yamhill County Defenders, Inc. during the initial first membership sign up period and who are listed on a membership roster dated TBA. All charter members shall have the right to add one auxiliary member to their practice pursuant to the qualifications set forth in section 3 below.

(c) District Attorney Exception. Any person serving as a Yamhill County District Attorney or Deputy during the initial membership sign up period, shall be eligible for charter membership by giving notice of their intent to join YCD within 30 days of the end of their employment as a District Attorney or Deputy.

(d) Auxiliary membership. Auxiliary members are those members who are employed to fill an auxiliary membership position either by a charter individual member or by a charter member of a firm. Any auxiliary member can become a charter member only by receiving charter membership as outlined in section 4(a) below.

(e) Firm Membership. At the inception of YCD, each law firm employing one or more original charter members shall have as many firm membership positions as there are charter members of that firm. These firm membership positions shall remain with that firm for so long as that firm retains its original identity. Should an original charter member leave a firm existing at the inception of YCD, that firm will retain an auxiliary firm membership position that the firm can fill subject to the qualifications listed in Section 3 below. A charter member leaving a firm shall retain all rights of a charter member as outlined in Section 2(b) above.

**Section 3. Qualifications of Membership.** All members must be eligible to serve as appointed counsel in an Oregon District Court under the provisions of ORS 151.430(3) as implemented by rules promulgated by the Indigent Defense Services Division of the Oregon Judicial Department, and the Circuit and District Courts of Yamhill County. YCD members shall be initially approved by the Yamhill County Circuit and District Court Judges. Case assignment shall continue under the current rotation system used by Yamhill County Circuit and District Courts.

**Section 4. Provisions of Membership.**

(a) New Charter Members. Charter membership will be open periodically upon a majority vote of the board of directors.

(b) General Meetings. General meetings of members shall be held periodically at a time and place announced by the Executive Director.

(c) Special Meetings. Special meetings of the membership may be called by the Chairman, the Executive Director or by petition of not less than one-half of the members.

(d) Quorum. A simple majority of members shall constitute a quorum for the transaction of business at any general or special meeting of the members.

(e) Removal of Members. A member loses his membership by leaving the active practice of law, failing to maintain an office in Yamhill County for any period of time, not maintaining qualifications as set forth in Section 3(a), or being removed by a vote of two-thirds of the membership upon motion of the Board for good cause.

(f) Other Requirements of Membership. As a requirement of membership in the consortium, all members shall maintain a physical office in Yamhill County. Members must also sign a contract with the consortium to provide indigent legal defense services prior to any appointment by the courts. The duration of the contract shall be the same as that of the contract between the YCD and the SCA.

## ARTICLE V. CONTRACTS, LOANS, CHECKS, AND DEPOSITS

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

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

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

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

## ARTICLE VI. AMENDMENTS

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

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ARTICLES OF INCORPORATION

YAMHILL COUNTY DEFENDERS, INC.

FILED

OCT - 3 1996

Secretary of State

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

ARTICLE I

The name of this corporation is Yamhill County Defenders, Inc., and its duration shall be perpetual.

ARTICLE II

This corporation is a public benefit corporation.

ARTICLE III

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

James E. White  
405 East Third Street #3  
McMinnville, Oregon  
97128

ARTICLE IV

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

(S/A)  
per cust.

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## ARTICLE V

The names and addresses of the incorporators are:

James E. White, 405 East Third Street, McMinnville, Oregon 97128

## ARTICLE VI

This corporation shall have members.

## ARTICLE VII

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

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

## ARTICLE VIII

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

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

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## ARTICLE IX

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

## ARTICLE X

The Corporation's Board of Directors shall consist of seven (7) directors. The Board or Directors and the Executive Director shall be active members of the Oregon State Bar in good standing. Each Director shall serve a term of three years and for a period thereafter until such time as that Director's successor has been appointed; provided, however, the initial Directors shall serve terms as set forth in the following schedule:

<u>Director</u>	<u>Term</u>
1	1 year
2	1 year
3	2 year
4	2 years
5	3 years
6	3 years
7	3 years

Directors shall be elected by members at large, with each member having one vote per vacancy. Votes may not be pooled nor is cumulative voting permitted.

Initial directors shall be elected by a majority of votes cast by members for that specific vacancy; vote pooling and cumulative voting shall not be used.

Succeeding directors shall be elected by a majority of votes cast for that specific vacancy. Provided, however, where more than two candidates are offered for a single vacancy, and no candidate receives a simple majority of votes cast, then the two remaining candidates with the highest number of votes shall be presented to the membership for majority vote. Vote pooling and cumulative voting shall not be used.

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## ARTICLE XI

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

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

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

(a) by a corporation exempt from federal income tax under the provisions of Section 501(c)(3) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law, or

(b) by a corporation, contributions to which are deductible under Section 170(c)(2) of the Internal Revenue Code or the corresponding provision of any future United States internal revenue law.

## ARTICLE XII

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

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officers with the same scope and effect as the indemnification provided in this Article XII to such uncompensated officers. The indemnification provided in this Article shall not be exclusive of any other rights to which any such person may be entitled under any statute, bylaw, agreement, resolution, or otherwise.

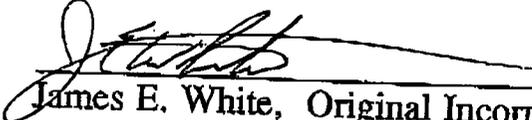
### ARTICLE XIII

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

### ARTICLE XIV

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

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

  
James E. White, Original Incorporator

# Attachment 4

The following paragraphs replace paragraphs V4 and V5 on page 12 of the **Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense approved by the Public Defense Services Commission on October 21, 2005.**

Brackets are used to identify deleted material. New material is underscored.

#### 4. Appointment Lists

A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications will be approved for inclusion on appointment lists. OPDS's goal is to select attorneys who: [are more than minimally qualified, where possible, given the volume of cases, the number of attorneys submitting certifications, and the needs of the court.]

- (1) if possible, are more than minimally qualified,
- (2) have specialized skills needed in a particular community,
- (3) are available to cover cases in the appropriate geographic area,
- (4) are able to meet specific needs of the court such as availability at specific times,
- (5) are both effective and efficient, and/or
- (6) have other qualities which would benefit the court, the clients or OPDS.

At the completion of the review, OPDS [will] shall notify [inform] the attorney [regarding its decision as to] of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes indicate that the attorney meets the criteria for selection set forth in Paragraph 4.A.

C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.

- D. Extension of Time for Good Cause. The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. Provision of Lists to the Courts. OPDS will prepare an applicable list of attorneys for each county. The list will be sorted by case type and, within each case type, alphabetically by attorney name.
- F. Updating Lists. OPDS will update lists monthly with a supplemental list of any changes.

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

- A. Suspension from Future Appointments. If OPDS [learns of facts] obtains information that calls into question an attorney's ability to provide adequate assistance of counsel [even though the attorney meets the minimum qualification criteria,] OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from [the appointment list] future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS [will] shall notify the attorney and the court [when OPDS suspends an attorney from the court's appointment list] of the suspension and the reason(s) for the suspension.
- B. Suspension from Current Appointments. The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. Request for Reconsideration. An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. Review of Request for Reconsideration. Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the

request and issue a final determination. In reviewing the request the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.

- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

# Attachment 5

**Public Defense Services Commission  
2006 Meeting Schedule  
Draft**

**Meeting Dates: Second Thursday of Each Month, Unless Otherwise Noted in Bold**

<b>Date</b>	<b>Day of Week</b>	<b>Time</b>	<b>Location</b>
December, 2005		No meeting	
January 12, 2006	Thursday	9 a.m. – 1 p.m.	Salem
February 9, 2006	Thursday	9 a.m. – 1 p.m.	Salem
March 9, 2006	Thursday	9 a.m. – 1 p.m.	Salem
April 13, 2006	Thursday	9 a.m. – 1 p.m.	Salem
May 11, 2006	Thursday	9 a.m. – 1 p.m.	Salem
<b>June 16, 2006</b>	<b>Friday</b>	<b>Noon – 4 p.m.</b>	<b>Bend</b>
July 13, 2006	Thursday	9 a.m. – 1 p.m.	Salem
August 10, 2006	Thursday	9 a.m. – 1 p.m.	Salem
September 14, 2006	Thursday	9 a.m. – 1 p.m.	Salem
<b>October 20, 2006</b>	<b>Friday</b>	<b>12:30 p.m – 4:30 p.m.</b>	<b>Welches</b>
November 9, 2006	Thursday	9 a.m. – 1 p.m.	Salem
December 14, 2006	Thursday	9 a.m. – 1 p.m.	Salem