

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Ingrid Swenson

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, December 7, 2006 Meeting
9 a.m. to 1 p.m.

Main Floor Conference Room
Garrett Hemann Robertson PC
1011 Commercial St NE
Salem, Oregon

AGENDA

- 1. **Action Item:** Approval of the Minutes of PDSC's October 20, 2006 Meeting (*Attachment 1*) Barnes Ellis
- 2. Report on November 30 E-Board Request and Governor's 2007-2009 Budget (*Handout*) Ingrid Swenson and Kathryn Aylward
- 3. **Action Item:** 2007-2009 OPDS Budget Narrative Review and Approval (*Attachment 2*) Kathryn Aylward
- 4. **Action Item:** Personnel Action to Grant Bonus Step (*Attachment 3*) Kathryn Aylward
- 5. **Action Item:** Review and Approval of a Service Delivery Plan for Clatsop County (*Attachment 4*) Barnes Ellis
- 6. Review of Proposed Amendments to Qualification Standards for Court-Appointed Counsel (*Attachment 5*) Paul Levy
- 7. Update on Service Delivery Plan for Klamath County Dick Garbutt
- 8. PDSC Meeting Schedule for 2007 (*Attachment 6*) Barnes Ellis
- 9. OPDS's Monthly Report OPDS's Management Team

Please note: Lunch will be provided at the end of the meeting for Commission members and others who ordered lunches in advance.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

October 20, 2006
Robert Burns Room
The Resort at the Mountain
Welches, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea (by phone)
Jim Brown
John Potter

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Lorrie Railey
Billy Strehlow
Laura Weeks

[Tape 1, Side A]

Agenda Item No. 1 Approval of the minutes of the August 10, 2006 meeting

046-050 **MOTION:** Shaun McCrea moved to approve the minutes; John Potter seconded the motion; hearing no objection, the motion carried: **VOTE: 4-0**

Agenda Item No. 2 Yamhill County Status Report on Public Defense Delivery System

079-312 Bob Suchy presented a written report and testified about developments in Yamhill County since the Commission visit there in 2005. He discussed steps taken to improve attorney performance generally and representation in juvenile matters in particular. Mr. Suchy reported that he had agreed to chair the Consortium Advisory Group, that YCD was rewriting its bylaws, that it was considering recruiting non-consortium members to the Board of Directors and that it was making progress in becoming less dependent upon the presiding judge to oversee the public defense system in the county. He also reported that a DUII diversion program was the only existing EDP program in Yamhill County.

Agenda Item No. 3 Commission Review and Discussion of Report on Clatsop County Public Defense Delivery System

318-
[Tape 1; Side B] 234 Ingrid Swenson summarized the issues of concern identified in the draft Clatsop County report. Commission members discussed the obstacles to an effective EDP program in the county and proposals for addressing them. Chair Ellis discussed the interrelated issues of

caseloads and compensation rates and pointed out the commission's need for data that would allow members to compare rates and achieve greater consistency. The quality of juvenile representation was also discussed.

Agenda Item No. 4 Diversity Task Force Report

237-609 Angel Lopez presented the report of the Diversity Task Force and recommended a survey of contractors, a law school loan forgiveness program, the creation of a recruitment brochure and website, the creation of a "Loaner Lawyer Program" to mentor participating lawyers and a part time administrator at OPDS or OCDLA to oversee diversity related initiatives. Chair Ellis suggested a training in cultural diversity for attorneys who represent a significant number of Hispanic clients. John Potter noted that OCDLA is sponsoring a week-long Spanish immersion and diversity training in La Pax, Mexico at the end of February.

Agenda Item No. 5 OPDS's Monthly Status Report

612-676 Ingrid Swenson reported that Paul Levy had been selected as the new General Counsel to the Agency.

{Tape 2, Side A} 446-703 The commission received reports about changes in the appellate process for juvenile cases, the commission's presentation to the September E-Board, the MCAD litigation, the initial meeting of the Marion County public defender board and the Oregon State Bar's House of Delegates Resolution work group.

Agenda Item No. 6

[Tape 1, Side B] 676-
[Tape 2, Side A] 027 Kathryn Aylward reported on the agency's initial Annual Performance Progress Report.

Agenda Item No. 7 OPDS Strategy for Elimination of Appellate Backlog

029-436 Kathryn Aylward and Pete Gartlan discussed the circumstances that gave rise to LSD's appellate backlog, prior efforts to address it, the impact of the Blakely decision on the Division's ability to reduce the backlog, OPDS's plan to use temporary positions as well as the appellate panel to eliminate the backlog, how the effort would be funded and the need for additional office space to accommodate the additional attorneys.

MOTION: John Potter moved to adjourn; Jim Brown seconded the motion; Hearing no objection, the motion carried: **VOTE 3-0**

The meeting was adjourned at 2:47 p.m.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL MEETING TRANSCRIPT

October 20, 2006
Robert Burns Room
The Resort at the Mountain
Welches, Oregon

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea (by phone)
Jim Brown
John Potter

STAFF PRESENT: Ingrid Swenson
Kathryn Aylward
Peter Gartlan
Lorrie Railey
Billy Strehlow
Laura Weeks

TAPE 1, SIDE A

[The meeting was called to order at 12:36.]

- 04 Chair Ellis Welcome, all of you, and before we get into the business I want to recognize our new Executive Director, Ingrid Swenson, and I do want to report to interested persons about the search. We did a lot of work to be sure that word got out broadly, not just within the state but nationally. We had something like 40 to 50 applications, which is a significant response. We reviewed those and worked them down to eight that were considered finalists that the Commission, as a whole, interviewed. I thought the participation by each of the Commission members was terrific and particularly Chief Justice De Muniz. He was very interested in this. It was wonderful to see the quality of applicants that we found and of course we were very, very pleased that we were able pick someone that comes with the kind of background and the experience level. And the level of enthusiasm we found within, not just the provider community but the legislative community and elsewhere, for Ingrid has been very, very encouraging. So we are very happy and I wanted to acknowledge that the transition occurred. If you have ever seen something seamless, whatever the day was –
- 027 I. Swenson The 21st of September.
- 027 Chair Ellis The 21st of September. We had an E-Board meeting early in the morning. Peter made his last presentation, then Peter gets in his truck and we watch him drive out of town as John and I are heading over from the Supreme Court building, where we had our meeting to finalize the selection of Executive Director, so we could perform the great ceremonial laying on of hands.

It was literally Peter driving out of town and Ingrid, who chose not to move down the hall, but she did accept the position for which we are grateful.

037 I. Swenson Thank you very much Mr. Chair, I am very much flattered by your selection and humbled by it as well. I am glad that I worked with Peter as directly and for as long as I have. I think it will be make a huge difference in my ability to carry on with Commission business. I think we are headed in the right direction and I want to continue doing that.

042 Chair Ellis I can only report that Peter was back in Portland less than a week ago, and he called and I spoke to him, and his tone was wistful.

Agenda Item No. 1 Approval of the Minutes of PDSC's September 14, 2006 Meeting

046 Chair Ellis First item is the minutes. Are there any additions or corrections to the official minutes?

047 J. Potter Mr. Chair, I have one minor note, on page 20....

048 Chair Ellis That is on the unofficial and we'll come to that.

049 J. Potter I am sorry.

050 Chair Ellis If not, I would entertain a motion to approve the official minutes as submitted.
MOTION: Shaun McCrea moved to approve the minutes. John Potter seconded the motion. Hearing no objection, the motion carries. **VOTE 4-0.**

053 Chair Ellis Then on the unofficial, John.

053 J. Potter On page 20, on the unofficial, line 52, "who John spoke to for an hour or so", makes it look to me as though Peter wasn't there. It was not just I who spoke to.

057 Chair Ellis So insert "John and Peter"?

058 J. Potter Yes.

060 Chair Ellis Oh I see, "John and I". I just had a few typos.

061 I. Swenson I would be disappointed if there weren't some.

062 Chair Ellis Page 4, line about 210, where it says "I don't that think" it should be "I don't think that". Page 5, line 303, "tria" should be "trial".

065 I. Swenson I'm sorry, line number of page 5?

066 Chair Ellis Line 303. Then page 13, line 213, we are missing a verb. There should be an "are" between "you" and "not". On page 16, line 451 "grip" should be "gripe". That is all I have. Again, I really am impressed with the quality of the minutes that we get. It is really helpful. I mean on a day like today -- we are going to be considering the Clatsop County Report -- to be able to go back and refresh oneself on the input we got from a number of presenters in Astoria that day really helps. Thank you all.

Agenda Item No. 2 Yamhill County Status Report on Public Defense Delivery System

079 Chair Ellis The next item is the Yamhill County status report. Bob Suchy is here, so Bob if you would come forward and summarize the report. I will say that I was very impressed by it. I thought it was a terrific report. When was it we met in McMinnville?

- 084 B. Suchy October.
- 084 Chair Ellis A while back I thought, and you guys have been busy in the meanwhile, picking up on some of the suggestions that we had for how to improve service there and this is your report.
- 088 B. Suchy Chair Ellis, Mr. Brown, Mr. Potter, the Commission asked us to do a couple of things. One was to look into our performance management of the attorneys that work for or through YCD, and the second was to look into our juvenile system and try to make some improvement there. We have submitted a report that goes into quite a bit of detail about the different things that have been done. I think significantly, the performance management with respect to attorney performance.... The Executive Director was formally empowered, by the Board of Directors, to look into issues of performance and monitor issues of performance. I have been doing that personally and assisting the attorneys where it is necessary. Sometimes, if there is a diligence issue, I can sort those things out relatively quickly. I have weekly meetings with all of the judges and they report that our efforts have been very effective and they are very satisfied with the performance of the YCD contract and the attorneys who are working under it. In the juvenile area, we have managed to reschedule some of the court hearings that caused conflicts with CRBs and now I think our attorneys are almost always attending the CRB meetings, which is a significant improvement from before. We have put together a juvenile group that consists of all the attorneys that take juvenile cases and they have meetings once a month. There is a team leader and Judge Jones is active in the juvenile excellence project that she has been working on and we participate in that as well. So we are doing what we can in those two areas. The third thing that the Commission tasked us to do is to participate in the Consortium Advisory Group. There was one meeting. Unfortunately, the chairperson of the Consortium Advisory Group had to withdraw, and I was asked by Peter Ozanne and again by Ms. Swenson, to chair that, so I look forward to taking on that task and figuring out how to do it. Other than those things, I think the report includes an outline of what we have done and where we are going and we are happy to report that it looks like we are making some progress in those areas. We are rewriting our bylaws that would delegate more authority to the Executive Director to remove members summarily, for whatever reason the Executive Director deems appropriate, and that would of course be ratified by the Board of Directors and then eventually by the judges who seem to be immune from lawsuit, which is an issue that Marion County is grappling with now. So we are a little bit nervous about that, but we are looking into it and trying to do everything that we can to assure that the delivery of indigent defense is consistent with what the Commission feels is appropriate.
- 135 Chair Ellis Well, we are obviously hoping that the Marion County litigation leads to something positive for the defense structure statewide. I recognize that right now we don't know the outcome. I have made it clear, however, that from our perspective we want to do everything we can as the Commission to support the authority of people like you and Steve and others to take appropriate action, because if we can't do it, that is really bad.
- 144 B. Suchy I agree. There are perils there and apparently ethical perils for all of this as well.
- 145 Chair Ellis One thing I wanted to ask about. Yamhill was kind of an interesting region for us because you have Judge Collins who is very interested and certainly has the background and qualifications and all the right instincts. But we came away from our meeting with the feeling that he was much more involved on appointment and everything else, than most judges around the state have been under the new structure. Our concern was that that is fine when he is there. He won't be there forever, and we really want to build a structure that isn't dependent on who happens to be PJ in Yamhill County at any particular time. My sense, from reading your report, is you are taking real steps to transition somewhat away from a PJ dominated system. My questions are two: Describe for us what you are doing there and is that working out alright with him?

- 163 B. Suchy I think it is. We are not quite to the point yet where we are going to be doing the actual appointments ourselves because we don't have the manpower or resources to do it. But I think as far as the management and the issues that come with the attorney performance, we have taken major steps forward to alleviate that stress from the good judge. I think Judge Collins' heart is in the right place with indigent defense and I think the things that he has done are consistent with the ABA model. However, it was something that was judicially run and now every day it is going farther and farther away from the old model that we had where the judge called all the shots. I am pleased to report that, yes, we are drifting away from that and it is a good thing .
- 175 Chair Ellis Not drifting, but step by step.
- 176 B. Suchy Step by step, moving in that direction and it is something that I believe the judge feels is being done appropriately, and it is being done without any tension.
- 179 Chair Ellis What is the status on the DA trying to shift costs to the defense?
- 180 B. Suchy Well, we have a staff attorney, which is a brand new thing for indigent defense in Oregon, to my understanding. We have a consortium contract and one of our attorneys, actually it is a rotation that goes through several of the attorneys, is paid a salary to be in court at certain times to cover certain things that come up that need immediate attention, one of which was the early disposition program. We have the staff attorney that can cover the EDP cases and there were several instances where discovery was provided to the staff attorney, and the district attorney would bill for the discovery even if the offer that was made to the staff attorney wasn't accepted by the defendant. So that caused some difficulty. Frankly it was kind of a very small amount, insignificant amount, but the Board of Directors felt that that was inappropriate and communicated that to Ms. Aylward as far the appropriateness of paying for that discovery, so that is kind of the story behind that.
- 196 Chair Ellis This is our friend Brad?
- 196 B. Suchy This is our friend Brad Berry.
- 198 Chair Ellis He used to be up here, you know.
- 199 B. Suchy I understand that. We have been trying real hard to get an EDP program up and working in Yamhill County but unfortunately the deputy district attorneys that do the intake don't seem to be as sold as we are on the benefits of such a program insofar as the savings to the state and the benefit to the defendants. We stand ready to provide those services in Yamhill County, but we are not getting the cases yet from the district attorney. We do get driving under the influence diversion cases and in spite of the risks in handling those cases expeditiously, we do take those. So our EDP program at this point is probably limited pretty much to the driving under the influence diversions that come through.
- 210 Chair Ellis Are you going to be around for the rest of our meeting because when we get to Clatsop County, there is a really interesting
- 212 B. Suchy I saw that.
- 213 Chair Ellis contrast and mindset. And it does seem to me, getting ahead a little bit, that I think its not just that we have a model as to what a good EDP program would be, but I would like to see us try to get some consistency statewide and really make a move to make those programs not only viable, but make sure that the level of information that comes to the defense lawyers is sufficient so that the defense lawyers feel they are really doing their job and are able to function. I get the distinct feeling there is a wide range in the state on that. I think we will cover that more when we get to the Clatsop report, but you might keep that in mind and share

with us your thoughts on it, because in some of the regions I think EDP is a big part of what they are doing and they feel comfortable with it, and I would like to see if we can't push for more consistency and fairness statewide.

- 232 B. Suchy I agree. It involves district attorney discretion and perhaps might be something that the legislature needs to take a look at -- how, exactly, we should be doing this. I do know that the local public safety boards are supposed to be enabling the early disposition programs, and in our county that just hasn't been done. I think there are systemically some issues that need to be taken care of.
- 239 Chair Ellis Other questions for Bob? I had a question. On page four, the report states "Last, at present the ED is developing a process for reviewing attorney billing, because the court is concerned that it be given accurate estimates of the indigent defense costs at the time of sentencing" and my margin note was "why"?
- 247 B. Suchy Well that is a good question, Chair Barnes. The ABA's position on recoupment of indigent defense fees seems to be that it is inappropriate for indigent people to have to repay their fees back. However, the statutory scheme in Oregon is such that the court can do that.
- 251 Chair Ellis I see now.
- 251 B. Suchy What we had the unfortunate experience of grappling with is an attorney that had somehow managed to underreport to the court the fees, and it resulted in a court order for us to disclose other billing from that attorney and look into the matter further, which I did. It ended up with us having to consider and implement a policy now where every bill that comes through YCD is checked against OJIN for accuracy, and there is an allowable margin of error that isn't very much. It is \$75 or ten percent of the actual bill. Otherwise, the attorney has to go back to the court and determine whether the court wants to have a hearing to amend the judgment, or is satisfied with just ordering the reduced amount. Those are the steps that I have taken to alleviate the tension there that was caused by the court, with the potential that we weren't getting the right information to the court at the time of sentencing.
- 269 Chair Ellis Other questions for Bob? Describe for me your board as it now is.
- 272 B. Suchy The composition currently is all consortium members comprise the board. We have seven members on our Board of Directors with staggered terms. I have been pushing toward bringing in some lay people onto our board, but so far there are questions about whether that would be appropriate or ethical, so we are looking at the expansion of our board to include people from outside of the consortium. Does that answer your question?
- 280 Chair Ellis That is something we have been encouraging.
- 280 B. Suchy I understand.
- 281 Chair Ellis It doesn't have to be lay, it can be non-consortium lawyers,
- 283 B. Suchy Right.
- 283 Chair Ellis but someone other than a direct provider. Let me just mention one point on that that may be helpful. If you do have non-consortium members on the board, if you're concerned that in some of these disciplinary situations you are going to be accused of being anticompetitive or something of that sort, having outside board members is a great cushion against that kind of argument.
- 294 B. Suchy I understand that, Chair Barnes. I think one of the issues, though, that anyone from the outside might want to look at, is what happens in Marion County as well. That could be a

potential liability for anyone coming onto the board that takes that sort of action. I am aware of that and I have identified non- members that could be tapped for our board and I agree, I think it is a good thing.

300 Chair Ellis

Do you have D and O insurance?

301 B. Suchy

We do. It is not an astronomical amount but it will get us some defense. Traditionally, we have relied on the judge's sovereign immunity when it came down to those kinds of issues of removing someone from doing indigent defense work.

306 Chair Ellis

I am an absolute believer there is no right to be a defense contractor. Just because you have a law license doesn't mean that you are entitled to that, and particularly those that are sub-performing.

310 B. Suchy

I agree and I think the important thing is the vitality and health of public defense and I commend the Commission for its efforts.

312 Chair Ellis

Well we commend you. Are there any other questions for Bob? That was a good report. Appreciate it.

Agenda Item No. 3

Commission Review and Discussion of Report on Clatsop County Public Defense Delivery System

318 Chair Ellis

The next item is the Clatsop County report. We are at sort of the second of three stages in the report preparations. Just to set the table on that, what we have been doing in these regional planning reports is staff, which usually includes John, writes an initial report based on their meetings with people in a particular community, kind of giving us some issues to think about. Then we meet in the community with interested persons. In this case I think we heard from most of the six lawyers that are the providers. We heard from both the judges. The DA himself was out of state at the time, but he submitted a written submission. We heard from one of his colleagues and three or four others in the justice community. I thought it was very productive and helpful session, and then based on that exchange; staff has prepared a revised draft that picks up on some of the thoughts and ideas that were discussed there. Ingrid will present that here in a moment and then we will discuss this today and then hopefully that will lead to a final draft of our report on Clatsop. So, with that background, Ingrid.

347 I. Swenson

Mr. Chair and members, as you know there were basically five areas of concern that you examined and that people testified about when we were in Clatsop County. The first of those had to do with the supply of public defense lawyers and although, at this point, the lawyers feel like they are able to maintain the current workload, they are concerned that they may not be able to do that indefinitely, and there are some factors which seem to indicate that some of these folks will be taking different positions, potentially, in the future. As one of the judges indicated, recruitment is very difficult. It is very difficult to get new attorneys to come to Astoria partly because of the cost-of-living there, partly because of the pay available to public defense attorneys, partly because of the tremendous loans that most new attorneys carry when they come out of law school. Although I think she is willing to continue a recruitment effort, I think we may need to look at some other strategies that we had talked about before for the less populated areas of the state in terms of helping with recruitment to these areas. As we look towards finalizing this report, it is probably time to reexamine all of those strategies and see if there are particular ones that could be utilized in this area. We probably also need to talk a little bit further with those folks at this stage and find out if there have been any further developments in terms of the lawyers' plans and who will be needed, and whether they have additional thoughts about how to get additional attorneys to assist them. There is one typographical error here on page 20, at the very top it refers you back to page 14, but it should have been page 16 of the report, and it is on page 16 that Peter had outlined some of the strategies for recruitment that we could consider. That issue is very much interrelated with

the caseload issue and they have to be looked at simultaneously. The caseload is perceived to be too high, especially in the juvenile area. The court is concerned that lawyers are overwhelmed and they are making a good effort to do what they can, but that they are overwhelmed. They don't necessarily indicate that themselves, but they certainly identify a need for some additional assistance at least within the near future. So, as you may be aware, I think all of you are, there is a legislative initiative which would reduce caseloads, increase compensation, and increase quality for juvenile dependency lawyers. It may be that if we are able in fact to obtain funds for those purposes from the legislature, it would be of particular assistance in places like Clatsop County where the principle burden seems to be in the juvenile dependency caseload. That may be because of the added responsibilities of lawyers in that area. Handling those cases has become more complex over time and people are obligated to attend meetings and visit clients who may be located in distant places and so forth, things that are not necessarily required in criminal cases. Also related to the foregoing two issues is the contract rate for the consortium. You heard from a number of folks that they were concerned that there were certainly places in the state, and other contractors, whose rates were better than the rates that they were receiving. I think the Commission basically already decided that we need to study that issue, certainly before the next contract cycle. And by the time the Commission is able to direct whatever resources we get from the next legislature, this will be an issue that will be ripe for consideration at that point. With respect to the participation of the defense attorneys in the EDP, it was fortunate, really, that Steve Gorham was there and Olcott Thompson, to talk about the experience in Marion County because I think it may have been very useful for the Clatsop folks to hear that the program can work effectively, but that there are some components that need to be in place before that is true and probably, most importantly, you need experienced attorneys on both sides and a district attorney who is basically providing the best offer that you are ever going to get in the case at that point. If those elements aren't there, then the program itself isn't particularly appealing. I know that the lawyers in Clatsop have some ongoing concerns about the appropriate role of a defense attorney in these situations, but I think working with colleagues, like those in Marion County, they might be persuaded that that is appropriate and acceptable.

442 Chair Ellis

It struck me that the big variable, and the one that was really causing the Clatsop lawyers to pull back, is discovery access. They just felt it put them in an ethically untenable position to try and represent someone on an early disposition offer without really good access, at least, to all of the police files and the witness' statements in the police files. It does seem to me that this is the kind of thing where a joint task force between the DA's association and OPDS could be productive. I would think from the DA point of view EDP has got to look like a pretty significant way for them to perform their function and reduce costs. But they can't expect the defense side of that to just say "Oh, well we take your word for it" or "I get ten minutes with the client and rush out and start making meaningful recommendations on acceptance of the sentence or not or acceptance of a plea or not." I don't know what your reaction is but it I know from the several places that we have been, that these programs vary tremendously, largely based on DA attitudes and discretion. I would think that the DA community would be receptive to trying to work out a model program that we would feel had sufficient disclosure and access where we don't think we are violating our standards, but are able to move it rather rapidly to get to a point where EDP can happen.

483 I. Swenson

Mr. Chair, I certainly agree with what you are saying. I think John may have participated in the Chief Justice's group that has generally looked at this issue, and I think there are some things that can be done statewide, in addition to the legislation that enables this process, and in addition to the guidelines that this Commission has promulgated for its members. But often, I think, and maybe people here have some thoughts about that, I think it comes down to a local issue because, among other things, DAs have lots of options. They don't have to go with the program that we prefer; they can do like they do in Clatsop County and operate a program without defense lawyers there. I can't imagine why they prefer that but they have other options. There are different types of DA diversion that they can use, so I think it has

primarily been a local conversation. What is it in our community that we need to do in order to make this work in our local situation?

- 506 Chair Ellis I got the distinct feeling that the defense lawyers in Clatsop County felt isolated. They were just uncomfortable with it so they weren't doing it, but if we had more of a statewide approach to it and gave them some materials to work with -- I know they have a DA who has a special kind of sense as to how he wants his side of things done -- but I would really like us try to do more than just sort of leave them out there and find a way to really help that process. At the end of the day, one of the things we are charged with is quality and cost control, and this is a place where both of those intersect. I want the cost control piece but I want the quality too. I think there is so much in favor of an EDP program that has enough of that quality so that people aren't just victims.
- 529 I. Swenson John, am I correct that the Chief's forum discussed this at some point? When was that and what were the conclusions about statewide efforts?
- 534 J. Potter I don't remember when it was and I don't remember the conclusions. But they have discussed it and it is always -- the discussions I have been a part of always end up with the conclusion that an effective EDP program has to have all three components and they all have to want it to succeed. Clatsop County, at least in my recollection, is the first place we have run into in which they have an early disposition program that doesn't have the defense involved, but that has the endorsement of the judges and of the DA. I think I raised at the meeting the last time that I was concerned about it, and I think all of us were concerned about it, that we are not participating and that no one is even challenging the fact that it is going on and the way that it is going on. I find it quite disturbing.
- 552 Chair Ellis I did too.
- 553 I. Swenson I would be glad to explore some further discussion in that group. The legislature is potentially another area for discussion as well because they like EDP programs. They created the enabling legislation for them and their assumption would be that they are working in most communities. And if they are not, I think that would be important for them to know. Our contractor advisory group could certainly take a look at that and look at where the problems are. And maybe some kind of assistance from one contractor to another might be provided in a particular community.
- 545 J. Potter When they found out, that is the contractors found out, that money was available, or could be made available to participate in the program because that was one of their concerns as well -- that they had been told or recollected that they had been told that there weren't funds available. Now that they know that there are and that they can get credit for them, has there been any more interest on the defense bar's side of things?
- 574 K. Aylward No. It was always our understanding that we were open to negotiating regarding the appropriate amount of money. And what we had in our notes from the time was that it is an ethical position for them, so we didn't discuss money any further because of the ethical position.
- 581 J. Potter It is the discovery issue that is the driving force for them on the ethical issue. They weren't getting discovery, or they didn't think they were going to get discovery earlier enough for them to do anything with?
- 585 K. Aylward I think it was significantly that, but it was also the notion that there are all the other things we want to do -- meet with the client, investigate the case. It just didn't seem like lawyering to them.

- 591 J. Potter I would tend to agree that is what is happening now. It doesn't meet any of the standards that we have discussed. They don't have a room for them to go to to discuss things; they are not getting the discovery. And I am not sure, Mr. Chair, what role we should play in this but it seems like we should inject ourselves into this process, at least to try and bring the parties together and have another discussion about it.
- 602 Chair Ellis I know each of the DAs likes to think they are a separate jurisdiction, but isn't this something that we could try to work through the District Attorney's Association -- try to set up a joint group to address them? I don't mind if some of the judges get involved, but find some way to develop what I would characterize as a model EDP program. Then, in communities that in my mind are deviating from the model, you have something to really offer them.
- 617 J. Brown Mr. Chair, I just have one observation. I don't disagree with what I am hearing but I had a sense that the defenders in Clatsop County really didn't want to do it because of the ethical standards. We have had dialogue with the Deschutes County District Attorney, as I recall, and so forth and I must confess that I have no current experience of any kind. I would be surprised if, given the array of EDP opportunities, there isn't a substantial percentage of those that are just slam dunk obvious. The business of investigating -- you talk to the guy and he says "Yeah, I had this stuff. I thought I could get out of the store with it" whatever; "I just want to go back to Eastern Oregon or Klamath Falls and forget about it this blow out weekend in Seaside." Certainly there is going to be a body of those that would be amenable to uniformity of standards, but I think the immediate practical problem is you have some folks that don't want to do it, I think that might be a starting place.
- 646 Chair Ellis I think they don't want to do it because the program they have got down there, they are expected to walk in and make a recommendation and they feel like, I don't know the facts and I haven't had time to work with this individual and I am being put in this position and that is wrong. And they are right, it is wrong.
- 653 J. Brown But as to that percentage that is not obvious, what is to stop an attorney from saying "Look, I can't possibly advise you. I don't have enough information and if I were you I would just hold off." Just let nature kind of work its way for awhile and maybe there is a sense that that would not be performing ethical duties even to be holding the conversation, but district attorneys are, I think we have to assume, reasonably intelligent people.
- 669 Chair Ellis That is a hypothetical.
- 671 J. Brown Hypothetically speaking of course, and they are really cutting off their own noses prosecuting a bunch of unnecessary cases when they don't need to.
- 675 I. Swenson Our standards certainly require that people have whatever discovery is available and so the attorneys couldn't be expected to participate in a program with no discovery. But usually the police reports are available at that point, not everything. There are going to be additional reports that would come along during the course of a case if you were heading to trial. You would investigate things and find out other things, but I think as Steve Gorham said last time, you can act on the information you have in front of you and assume that there would be those cases that on the day of trial something else might have happened. People understand that you are not going to have all of that but you can at least have a basis for making an educated decision.
- 697 Chair Ellis Part of my thinking, I am looking for ways [End of tape]

TAPE A; SIDE 2

- 042 Chair Ellis Contact your counterpart there and see if there isn't an interest in working together to develop a recommended program. I recognize that each community is going to do it differently, but at least get a bench mark as to what a good EDP program would be.
- 046 I. Swenson Mr. Chair, I had talked to Kevin Neely who is the new representative for the District Attorney's Association in the legislature and suggested that you and I could meet with the President of ODAA. That changes is in December and John Foote will be the new president of that organization, so Kevin suggested that we wait until John assumed his position or just prior to time. So that would be a good opportunity.
- 052 J. Brown Might we consider even writing the district attorney for Clatsop County and informing him that we favor involvement, that we want defense counsel to be involved? We understand, though maybe not correctly, that there are impediments; and asking him to describe to us this program and copy the judges and then call the consortia specifically to find out what they require, and see if we could nudge that dialogue forward.
- 061 I. Swenson In other communities, Commissioner Brown, in Washington County recently, there was a meeting between the judges, the district attorneys, the defense lawyers and our office. Maybe we could arrange such a meeting to talk about these things.
- 064 Chair Ellis Okay, I think that is – if it is done in a way that just doesn't provoke them.
- 066 J. Brown Let me just throw in, I had occasion to try a case in Clatsop County a while back, in fact it was about a month before we met there, and so I took the occasion to call upon the district attorney and he wished to assure me that he very strongly supported the work of the Commission and believed it was in the interest of the criminal justice system that all components be adequately prepared, compensated, that defense counsel be involved.
- 075 Chair Ellis You may have caught Josh on a good day. He has assured us in writing that that flap at the last legislature was forced upon him; it was not something that he really wanted to do.
- 078 J. Potter I would certainly support a meeting that is initiated through the OPDS office and you Ingrid, and I think you can discuss it in ways that are accurate but say, there is information that we now have that may have been misinterpreted before. We would like to get all the parties together and talk about it from the defense perspective and the DAs and the judges. They are a critical part of this.
- 084 S. McCrea I agree with that too.
- 084 Chair Ellis I think it also reflects that in that particular community there are six providers and they are not as tightly structured as some other communities, and it is a little ad hoc who speaks for the defense community there. I think we can help with that.
- 089 J. Hennings Is it still on the table that you are going to try and set up a meeting with the District Attorney's Association?
- 090 Chair Ellis Yes.
- 092 J. Hennings Then it seems to me that if you are doing that you ought to invite the president of OCDLA. (inaudible). We have an association that covers the entire defense bar.
- 094 Chair Ellis That may well be a good idea. Did you have more on the report that you wanted to make?
- 096 I. Swenson The fifth area was just the organization of the consortium and the same issues that we had looked at in Yamhill County in a much smaller area. Is there a need for the consortia, since there are two of them, to take on more of these functions of quality control and so forth?

101 Chair Ellis

I did have an epiphany at our meeting on the subject of why, in small a community, do we have two and that is because there it is gender based and I thought I understood that. I do want to comment on this. It is same issue that appears in three different ways, in Items 1, 2 and 3, and this is the combination of caseloads that are too heavy based on all the standards that we know, and a compensation rate that appears to be significantly lower than some other areas. It does strike me that there are two things. One is they are very related issues because I think what we are beginning to learn is that a lot of defense lawyers think they have a minimum economic need to sustain their families and they take on more cases to get to that minimum economic need. So there is a definite correlation between caseload and rates. Secondly, Kathryn in her usual, very articulate way, expressed that it is sometimes hard to compare one community with another, in part because some things are included or not included in rates in one community or another, or in part the weighting factor that applies in one community in terms of actual cases versus the rate for cases that may not happen. My reaction to it was that I am sure a lot of what you are saying is right, but I can't make these comparisons in a system where we have that kind of skewing. "Skewing" isn't right. That sounds like somebody is doing something on purpose. But I really would like to get to a point that the comparability of rates is something we can all look at so we are looking at apples versus apples and oranges versus oranges. I know that is a process that doesn't get taken care of in one cycle, but I am really uncomfortable because I don't feel like I can answer people, like the people in Clatsop, on that. Secondly, the report does reflect that the Commission has said what we want to do is bring these rates into alignment; it is a process that takes a couple or three cycles. We are trying not to cannibalize somebody else, but we are trying to make more sense and consistency out of the rates and obviously I think we should. There may be differences in the cost of living. There may be differences in what else an organization does, but the more consistent we can become the more I think a lot of the unhappiness that we see in some areas could be resolved. I know one of the issues is whether either or both of those consortia should be pushed to do structural changes of the kind that Yamhill, for example, is considering and doing, and several other places. And MCAD would be a good example. I guess my reaction was that these are unusual consortia. At least in the one that I am thinking of you have a lead contractor and she hands off some of the work to her colleague and they get along fine. It is working. It is too small to talk about a board and all that sort of thing. I guess my instinct is not to push structural change there so long as it continues to be working. There may come a day that we will do that, but it is so small right now. I don't know how you reacted?

163 I. Swenson

We are certainly not seeing significant quality issues, anything that would cause us to say that there is a problem here that needs to be addressed. It would simply be for their own benefit, if it were to their benefit, to have some of that organizational structure.

167 Chair Ellis

I came away from the meeting a little like I came away from our meeting in Klamath Falls. It is a part of the state that doesn't often get visits from commissions of this kind and I thought it was really a good day. I think we have good people trying hard to do a decent job and by and large I came away encouraged by it. Are there any other comments? There is a passage in the report on page 13 that is a little pregnant. I am sure people who read this and know who is involved will probably have some idea what is happening. It refers to impressions that some of the attorneys' apparent commitment to their parent clients in dependency cases did not equal their commitment to defendants in criminal cases and observations that several CCDA attorneys frequently fail to contact their clients or obtain pretrial discovery prior to their first appearance in delinquency cases." I guess maybe it is enough to have said that. It is a small enough community that everybody there is going to know who they describe, and maybe it will have that kind of salutary kick-in-the-rear effect.

188 I. Swenson

Mr. Chair, those are issues that are common basically throughout the state and we are trying to address them. We had a seminar earlier this week in Eugene dealing with termination cases. But at all of those gatherings of juvenile lawyers we talk about these kinds of issues.

There are also the performance standards, which were updated by the bar. They talk about these issues. So we will continue to work on that.

196 Chair Ellis I think that is all the comments I have. Is that enough?

200 I. Swenson I think so. I think we can prepare another report.

202 Chair Ellis Where are we on our regional planning? Do we have other regions we are looking at?

203 I. Swenson Mr. Chair, I think it is time to consider what is next. There are certainly some suggestions which have been made about where that would be, but no decisions have yet been made. We can talk about subject areas that the Commission might cover instead of just geographic areas. I think I mentioned a couple to you. The death penalty cases would be one. We certainly want to spend some time on post conviction relief and had tentatively, Peter had tentatively, scheduled those discussions for the end of this year, but it looks like we may not necessarily get there until the first part of next year. There are other regions of the state and we talked about potentially Pendleton as being at least one area. We might want to wait until the spring to go there, but if we go to a location like Pendleton we could potentially draw people from outside that area -- the La Grande area and surrounding places -- just to reach out to the eastern part of the state.

219 Chair Ellis Umatilla has some special issues.

220 I. Swenson Yes, so it would be useful. Then we have populous areas like Washington County we could look at.

222 Chair Ellis We had set a goal for ourselves of not less than three per year and I would like to stay on that. I really believe that the communities have responded in a positive way. Some, I think, started with their defenses up a little bit, but I think that that is part of why going there is important. I really think we are getting a pretty good response from all the communities.

230 I. Swenson Maybe we have some volunteers here today?

231 Chair Ellis Umatilla would certainly be a logical one.

233 I. Swenson We could do Morrow at the same time.

234 Chair Ellis Right. Okay. Angel I saw you back there. Would you like to come forward and present the Diversity Task Force report?

Agenda Item No. 4 Diversity Task Force Report

237 A. Lopez I was neglectful in not getting materials to the new director, but she was heads up enough to do it.

242 Chair Ellis I don't know if the materials we got are the ones you are talking about.

243 A. Lopez Hopefully we will be on the same page. Again, Mr. Chair and members, may it please this body. My name is Angel Lopez and I am a consortium member in Multnomah County, the Portland Defense Consortium. I have been a member of OCDLA since about 1982. Last year at this same conference that we just finished up, the Manager's Conference, I was tapped by Peter Ozanne to be part of a work group to look at issues that had to do with diversity in this organization, or I guess more appropriately, lack of diversity in this organization and we did. From that came a recommendation that what we needed to do is to have a study group and take a closer look. A few months later Peter called me up and asked if I would Chair this study group, which was the Public Defense Diversity Task Force. I said I would be happy to

do that and I did. Page one of your materials is a list of everybody who was part of that particular group. I would add as a footnote that Ann came up to me today and indicated that she wanted to be a member of any further work that was done along these lines and I would be happy to include her in that. She is a very good person and very able. We met three times, first as a large group and then as subgroups. The subgroups were the recruitment group and the education group. The big group was basically for us to get together to outline what we meant when we were talking diversity and page 2 of my materials does indicate what we came up with in terms of diversity. We defined diversity as having to do with age, race, gender, other cultural competencies, foreign language skills so that we are reflective of the foreign language speakers that we serve. We found that what we could do to best figure out how to get to where we want to go is to figure out where we are today. Out of that came a recommendation for a statistical guidelines survey of our group, of the people who practice indigent defense for the state. The idea that came up was that through this organization we would recommend that you develop a survey on our behalf and that we send it out to all the contractors. They in turn would take a survey of their offices and come back to us with these numbers, these numbers of individuals falling into these categories: the total number of lawyers involved in indigent defense services delivery and a further breakdown by race, number of lawyers who speak a foreign language or who can sign, age, demographics, reported anticipated retirement year and gender. Over lunch Jim Hennings was also kind enough to suggest that other indicia would be equally helpful and that would include the home town of the lawyer, where they went to college and where they went to law school. That would help us with our quest for geographic diversity just to see where we are as a baseline. Now once we have that baseline we could figure out where in diversity we need to grow and where that growth is most needed. One thing that is painfully obvious to me, and also to the members of this board, is that there is a graying of the indigent defense bar. I believe that that is true because of my own personal experience looking around trying to hire younger lawyers and the continuing response I get is "You know I would really like to do this work but your pay is not sufficient for me to do this and pay my law school loans." There are two areas ultimately that we are really going to have to face. Do we want to lower the quality of this bar by giving the work to people who will take it at the rates that we are currently offering, or do we want to enhance the pay to encourage good people to be able to deliver the services that we need them to deliver in order to provide the quality product that we expect as a matter of course. Another idea we have along those lines is a loan forgiveness program and I discuss that loan forgiveness program in the next page of my materials. We, at some point, expect that we are going to be coming to this group, and we are coming to this group right now, to recommend that you guys come up with a fund of \$350,000 annually. We believe that \$350,000 annually could service 70 qualified attorneys to the tune of \$416 a month or \$5,000 a year in loan forgiveness, making it more affordable to them to enter into this area of practice. What we would envision is a program that would be somewhere between three and five years in length. At the end of any calendar year – well at the end of any month -- where an individual is working for a certified public defense service provider, that they would receive in addition to their compensation a loan repayment check in the amount of, in extra pay, in the amount of \$416 a month to assist them with their law school and college loans.

- 330 Chair Ellis Do you envision the beneficiary committing to stay in the field for some period of time?
- 333 A. Lopez Well for every month that they would be part of that organization they would be entitled to that compensation.
- 334 Chair Ellis So lets take MPD and their first year there they have got a \$90,000 loan, so for three years through this program, their loans get paid down but we don't have any assurance they are going to stay in public defense.
- 340 A. Lopez We don't, but we are rewarding them on a monthly basis for every month that they are in public defense. Once they would leave obviously that payment ceases.

- 342 Chair Ellis You would think they would like it as a fairly good retention incentive.
- 343 A. Lopez What we are envisioning is somebody who is probably there for three years, they are probably going to be there for the long term. We would be thinking of a three to five year period depending on what this group thought would be prudent. One thing that we would need to do is to check with the Oregon State Bar about a change in the Oregon tax law and what I would recommend on that basis is that this loan repayment money, at least on a statewide basis, be exempted from their income taxes so that it could all go, at least a bigger portion of it could go, toward their law school payments.
- 352 Chair Ellis Treat it more like a gift than income.
- 353 A. Lopez I think that is what we would be doing. We need to structure it so that it would not be a taxable event at least on a statewide basis. If we could make that federal as well all the better because I don't want to penalize these people and give them less than they think they are actually getting. I would like to be able to tell them that of this \$416 a month you are actually going to be able to service your law school debt or your education debt to the tune of X dollars so they know how to budget. That was one of our ideas. Another idea is to have a website that would
- 363 Chair Ellis Your topic is diversity, so in your vision would this program be targeting minorities?
- 366 A. Lopez No, it is targeting young lawyers new to the field.
- 367 Chair Ellis So the diversity is age.
- 367 A. Lopez Exactly. It cuts across everything. Age, gender, race at this point.
- 369 Chair Ellis Okay.
- 370 A. Lopez As a practical matter I doubt that we would be able to recruit 70 minority attorneys a year to do indigent defense work. OCDLA's job website -- what we envision there is a website in Mr. Potter's organization that would include job openings at all the indigent defense providers statewide. So, at any given time, anybody in the nation who is thinking about working in Oregon can plug into that website, figure out what is available, where it is available, what the pay scale would be and then we would also have a blurb about what this organization is doing, about the other types of programs including hopefully the loan forgiveness program that we have going for us. They would have enough information to make an intelligent application to one of the law offices and we would monitor that. Once the job is filled obviously, it would be our responsibility as employers to contact Mr. Potter and say "the job is filled take it off the site." I think that would be very helpful as a recruitment tool and so did the rest of my committee. We would recommend active recruitment along those lines with a minimum of a brochure that we could make available to law schools throughout the country and any employment agencies that might be of interest to young lawyers looking to relocate, and lawyers of color thinking of relocating to this area. We would also advocate for active recruitment in terms of members of say the National Bar Association, the Oregon State Bar's OLIO program, the Oregon Minority Lawyers Association and the National Lawyer's Guild, to put out the word as to why people, young people in particular, should want to come to Oregon, want to become criminal defense lawyers, and want to do indigent service. Furthermore, we would ask for an internship program that we could develop within the various law firms. As I mentioned this morning, Jim Hennings has a Loaner Lawyer Program where the bigger firms place young associates with him for a period of time. I think it is a win/win situation. The young lawyers get valuable trial experience and the Public Defender's Office gets a smart lawyer for a while, at least for a while. Mentoring -- obviously once we get somebody in the fold, we want to make sure we do everything to keep them there in terms of professional competence and in terms of just having somebody to talk to because what we

do frankly is very, very stressful. And you can share that stress burden with others, and it diminishes it if you have somebody else to talk to who says "Yeah, I have been there and this is how I dealt with it" and so forth. In terms of implementation, I think we are going to need at least a half-time employee. Ideally, it would be seated with either you or OCDLA. They would help us develop a brochure; they would help us develop a website; they would help us develop a recruitment program and help us work up the fine tuning on the loan forgiveness program if we can get there, and I am hoping we can get there. So that is where we are at in terms of diversity and recruitment. In terms of education, that subgroup met and Ken Walker was the chair of that subcommittee. When we were talking about the significance of CLEs that had to do with diversity, there were two things going on. One, as you recall until maybe two weeks ago, the idea of a mandatory CLE in diversity, statewide, throughout the bar was up in the air. Part of Mr. Ozanne's concern, and part of my concern, is that as much as the diversity issue should be a part of the consciousness of the bar as a whole, I think by necessity it needs to be part of the consciousness of this particular group because we service a significant part -- a significant part of our clientele comes from minority communities, and the more we understand our differences, the more we understand the way that they relate to police, the way they relate to society and the way they feel included or excluded, the less likely it is to hamper us from being the best lawyers that we can be in that regard. There are also issues of communication and issues of trust that I think can be fostered the more we understand cultural differences. So that being said, I think proverbially right now the ball is in your court in terms of what you wish the next step to be. We have our recommendations. We have a blueprint of a very strong group willing to continue acting to implement those recommendations. I don't know if it would be appropriate to suggest this as part of a work session on your part to see which of these you would incorporate and accept and which of these you wish to be reality, but whatever of these issues you would like us to follow up on, we would be glad to continue to work to implement them.

465 Chair Ellis

One of the things that kind of struck me in the last 15 or 20 years is how much of our clientele are Hispanic and how little is available to help lawyers who themselves are not Hispanic, to be comfortable both culturally and linguistically and it does seem it wouldn't be that hard to get either lawyers or people from the Hispanic community to do some workshops working with the defense community in places like Washington County and Marion County where there is a large Hispanic community, to really help move that along. Right now, my impression is that you get random appointments so you are not really getting the few that we have that are really from that community and comfortable with it, and I just know there has to be a huge, not just linguistics barrier but cultural barrier to make that representation something that the defendant has trust in and we are able to answer and translate to that defendant what this system is all about. I can see one program that isn't on here and one that wouldn't be that hard to put together and would get, I think, a pretty good response, which is some kind of a cultural training session.

497 A. Lopez

Communications.

497 Chair Ellis

Yeah.

497 A. Lopez

I agree with that. On kind of the flip side of that equation, as part of my contract, I do probably about 80 to 90 percent of all Spanish speaking representation in Multnomah County. I can tell you that even though I feel very comfortable working with Spanish speaking people, when I get somebody that is like Vietnamese and Vietnamese speaking, or Indian and Indian speaking, I feel very uncomfortable and these are the cases that I really struggle to keep up with because it is human nature to want to do those things that you can do best, and not want to do those things that are harder. I feel sympathy for the lawyers in Marion County and the lawyers in Washington County who don't have that cultural connection and who have to struggle with that on a daily basis. A program like this would go a long way to help.

- 513 Chair Ellis I think so too and I think it is something that we could easily play a significant role in helping put together.
- 515 A. Lopez So, I guess the short version is that I am pleased with Ingrid being the new director of this program and I know that she has a very clear and exceptional understanding of the issues. Whatever you direct her to do with regard to following up on these issues, I would be more than happy to be of whatever assistance I and my group can be.
- 523 Chair Ellis Do you think on the loan program, and this is a subject that we have addressed by trying to push Congressional exemption on the federal funded student loans, at least for the FTE providers and we get a lot of “Yes, I agree with that” but six years later it still hasn’t happened. Do you think there would be a potential of private foundation support for the kind of program you are talking about?
- 534 A. Lopez You know, I don’t know, because there is the fairness issue but there is also, I think, a bias against criminal defense lawyers. “Who wants to help a criminal defense lawyer get a crook off?” I think is what we hear a lot.
- 538 Chair Ellis Well, one way to package it is a program that would be helpful whether you are on the prosecution side or the defense side, but young lawyers getting into criminal justice activity. But even if you limit it to defense lawyers I would think there might be some foundations that might support it at least for a period of time.
- 548 A. Lopez Chair Ellis, I agree with you, I see where you are coming from and I think that is all the more reason why we need at least a .5 FTE to look at those problems on a daily basis and to actually address and do the grants. That is where the grant writing ability would come in handy.
- 554 Chair Ellis I agree with that. Are there other comments?
- 556 J. Potter On the loan forgiveness, as you know the Oregon State Bar is embarking on a fairly modest....
- 559 A. Lopez I was going to say the glass is not even half way full.
- 560 J. Potter Modest or not it is a \$5 contribution, as I understand it, per lawyer. Is there any way to fold this idea of loan forgiveness as a budget line item for OPDS into the bar’s modest program so that we are pooling whatever resources the bar may be able to get and what we may be able to get. Has there been a thought or discussion of that amongst your committee?
- 568 A. Lopez To do the Oregon Law Foundation or the State Oregon Bar itself, we hadn’t discussed that but I see that it would work, and I see that it would work if we made it clear to them that our money was restricted to going toward individuals practicing indigent defense service delivery. I don’t see that that would be a problem at all having been a member of the Bar’s Board of Governor’s.
- 577 J. Potter One further comment, and taking off on what you said, Barnes, about having some sort of local awareness training You were talking specifically about Hispanic issues. As you may know OCDLA is having a week-long Spanish immersion and diversity training the La Paz, Baha at the end of February and we had 25 slots in an arrangement with a law school but also a Spanish immersion school to put this on. Those 25 slots sold out within about 45 days, so it emphasized to me that the demand is certainly there, the interest is certainly there, but in listening to your comments, people who are coming back from this training will have an increased awareness and we might want to pull of those people into the process of helping folks who can’t afford to go down to Mexico to get some of this diversity training and maybe get the bar to approve some CLE credit for that too.

600 A. Lopez I think that would be imminently doable. I am proud to say that one of my junior associates, Becky Carter, is one of the 25 that will be going.

602 J. Potter Good.

602 Chair Ellis So it wasn't just a Potter fishing trip?

603 A. Lopez No.

605 Chair Ellis Are there any other comments or questions for Angel? Thank you very much.

607 A. Lopez Thank you very much. You guys have a great weekend and thanks for entertaining my comments.

607 S. McCrea Barnes, this is Shaun, I am going to have to click off now.

608 Chair Ellis Thanks Shaun.

609 S. McCrea Take care, guys.

Agenda Item No. 5 OPDS's Monthly Status Report

612 Chair Ellis Shaun clicked off without kicking me. Are we doing alright without a break?

617 I. Swenson Well, I think the first thing that I wanted to talk about was Paul Levy. He was here earlier but he had to leave. I think all of you have chatted with him since he has accepted the position of General Counsel for the agency. We are really pleased about that and he is going to start the first or so of November. We have a small office for him, but I think it will do, and we have lots of plans for Paul who has so many skills that we want to take advantage of. I don't want to just assume that he will do the same things that his predecessor did, but that we will find the best uses for his considerable abilities.

635 Chair Ellis I think that is a first class appointment and I am very happy about it. I think it just adds strength to an already very strong management line up. If Hennings wants compensation he is not going to get it.

645 G. Hazarabedian Mr. Chair, this might be an appropriate place to jump in and say that I have talked to a lot of people in the defender community both since Ingrid was given the director job and more recently since Paul was given the general counsel job, and I have got to say that it is unanimous that we are very, very pleased with the direction the Commission is going on these appointments.

652 Chair Ellis I appreciate that. On a Commission like this probably the single most important function we do is to make sure we get the right Executive Director. If you get a good person there lots of good things happen. We felt we had good support from throughout the provider community. We got a lot of help, and I thought the Commission stepped up. People put a lot of time into this to make it happen. We are happy. Thanks.

664 I. Swenson Thank you very much. Mr. Chair, we don't have a lot of office things to report to you and I think if it is okay we will let this become a discussion of Item No. 7, which is the elimination of the appellate backlog, because that has been our main focus.

676 K. Aylward Can we do six first?

676 Chair Ellis We can do all three.

Agenda Item No. 6

PDSC Annual Performance Progress Report

676 K. Aylward Item No. 6 is the Annual Performance Progress Report. This is a form that is part of our budget document. It is behind the tan divider. This is our first ever Annual Performance Progress Report. I think they were so surprised to see it that the Progress Board might actually have wondered why we hadn't done one before. The Judicial Department doesn't use these forms, but it seemed worth doing. It is a very standard format that all state agencies have to use. We list our seven key performance measures. There is an executive summary that talks about how we are doing. We are either at, or making our target, in six of our key performance measures. The one performance measure that we are not approaching target is the appellate case backlog. In part, on these forms, if you turn to page 5 before we start looking at each of the performance measures individually and discussing what needs to be done, the reasons why we are not meeting targets and when I got to some of the CBS forms, because we are meeting our targets, and the question about what needs to be done, and my first reaction was nothing. We are exceeding our targets and we don't have to do anything but it did get me to start thinking that one of the things about performance measures is that they are supposed to be a management tool. It is supposed to be useful. It is supposed to tell you something and not just create busy work to make the legislature happy, and it actually did. We looked at these and thought if we are exceeding performance measures in some areas and not meeting them in others, is there a way that we can reallocate the resources we have so that as an agency as a whole, we can meet all of our performance measures. We started to think about some of the things might be, that CBS could do for LSD in order to help work on the backlog and we had some ideas. So, if you have any questions about the performance report....

733 Chair Ellis As I understand the concept it is to try and find something objective and measurable. The age-old problem is how do you tell if you have improved quality? But if you can fasten on to these measurable objectives, then you have some way to track it, and I am sort of learning as we go myself to see how it works. [End of tape]

TAPE 2; SIDE A

002 K. Aylward We have an opportunity to go back to the legislature and ask for changes to our key performance measures. The time to submit that form was in the spring and we didn't do it and Judicial didn't do it either, so I am not worried about that but I also think that we ought to give our existing performance measures a little more time to run so that we gather a little more data before we finally decide this is a useless one, or we need to change this one.

007 Chair Ellis What is the trend line in each of these here? I am looking at percentage of fee statements processed within 10 business days. You have a huge spike in '05 and '06 .

010 K. Aylward Excuse me, what page are you on?

011 Chair Ellis That looks pretty good.

011 J. Potter Page 8.

011 Chair Ellis Then I see a trend line.

013 K. Aylward Oh, good. I am glad you mentioned that. That jump up there is attributable to Alan Gibson in our office and I must give him tremendous credit. In '04 that was how quickly we were paying the bills and I imagined then the trend line....

015 Chair Ellis The trend line is the target.

- 016 K. Aylward is the target -- where we wanted to be able to go. And I thought we could get a little better year by year and eventually we might be able to do 95 percent of them within that 10 business days. Alan Gibson made a technical improvement to our process that eliminated double data entry, which not only saves time but eliminates error, and he single-handedly is accountable for that giant leap in performance.
- 022 Chair Ellis So maybe we just under-targeted?
- 024 K. Aylward It was difficult to establish targets at the beginning. I mean who knew how many bills we would get, let alone how many people we would have to pay them.
- 027 Chair Ellis Well, I see where you are going and, Gartlan, you are next and your trend line, your targets -- you are a miserable failure.

Agenda Item No. 7 OPDS Strategy for Elimination of Appellate Backlog

- 029 P. Gartlan Absolutely, I agree. It may have had something to do with the, I think it was close to 100 percent increase in case assignments, may have had something to do with that but I doubt it. I am following the data from a few years ago and I think we assigned 1100 cases in 2003 and the estimate is that by the end of this year, for this year, we will have assigned 2100 cases. That is a good indication....
- 036 Chair Ellis That is not quite double.
- 037 P. Gartlan No it is not. So even though our trend went up and we wanted it to go down, one might say we avoided a real catastrophe.
- 038 Chair Ellis How much of that is the bubble around *Blakely*?
- 040 P. Gartlan Just about all of it is the bubble around *Blakely*, but the trial type cases. I know this is going to be confusing to go through this all the time but, trial type cases, guilty plea cases. Trial type cases tend to stay and they trend up but not dramatically. *Blakely*, the guilty plea cases, went up dramatically, like somewhere from about 250 cases in 2003 to over 1100 cases this year.
- 046 Chair Ellis But that is going to go away because new guilty pleas are being made with awareness of the *Blakely* standards.
- 048 P. Gartlan Right. We hope so. We think it will but we have Senate Bill 528, which is the legislative response to *Blakely*, so we will be litigating issues under that statutory scheme. We will still be assigning....
- 053 Chair Ellis For another year plus.
- 053 P. Gartlan Yes, but given our history, given what we did with the *Blakely* crises where we designated lead cases for different categories, I think we had about 13 or 15 different categories of issues, and we modified the briefing format. We had an agreement with the Court of Appeals and the attorney general as to how to approach the briefing. Not only did we identify lead cases but we also said we are going to file a motion, and what the motion did is it did away with the traditional briefing format and we were able to file briefs that looked like motions that were two and three pages. And the Court of Appeals was significantly pleased with that so that they wanted us to distribute that to everybody. So that became the way to address *Blakely* cases on the appellate level throughout the state. What I am saying is we had that experience and we can employ that experience with respect to the issues that are going to come up under Senate Bill 528.

- 067 Chair Ellis Let me see if I understand what happens. With all the *Blakely* activity we have had to delay on some of the other caseloads while you process all that. By the time the *Blakely* bubble ends, you will have this big backlog of cases, so it isn't likely to get right back to the trend line where we want to be, it takes awhile to work our way back down. What is our plan to do that?
- 076 P. Gartlan We have a three-prong plan. Every time I think about this I feel like a general kind of putting up a chart on the board, but the three-prongs are: improvement in the automation system and Kathryn has been a whiz. She has already developed and implemented some changes to our database which have automated motions and our reversion process and it dramatically reduces the secretarial time and attorney time that it has cost us in the past with respect to designating cases that would go to the appellate panel and preparing motions and letters. It may not sound like much but it is amazing. She really did an amazing job automating this whole system. She went into the database and wrote programs and implemented them and they are so significant that the secretary who is responsible for gathering cases and sending them out to the appellate panel invited the secretaries to her work station the other day, and people came by and were amazed. It is truly amazing and it saves us so much time. The other prong increased the number of cases to the panel temporarily. The third prong, and probably the most important one, is to hire attorneys temporarily, three or four spots that we could fill temporarily.
- 099 Chair Ellis How long is temporary?
- 099 P. Gartlan Eight months to a year.
- 100 K. Aylward No, one year. Offer them one year employment.
- 101 P. Gartlan One year and explain to them that it temporary, but I think given our history and our practice we tend to lose one to two attorneys per year who leave, so I would hope that we can offer a permanent position to one or two attorneys from this group who turn out to be really good appellate attorneys.
- 106 Chair Ellis When you bring somebody in for a year there has to be a supervision and training piece of that, how efficient is that as a way of reducing backlog?
- 109 P. Gartlan I have thought about this and I think it is really efficient and what I have noticed is that with our training program, we can get new attorneys up to speed really quickly. It depends, of course, on the individual, but depending on the individual, within a month or two we can get somebody up to addressing and resolving three to four cases a month, which is significant, a good rate. It is going to be difficult to train that many people in a short amount of time, but it is very much worth it and it is probably more worth it for somebody like me, than for the Commission, because the Commission has been in existence for only a few years and the backlog has been in existence since 1995.
- 121 Chair Ellis I thought you completed your '95 cases.
- 122 P. Gartlan The backlog is something we have lived with and it has been worse at times. It is not good but it certainly has been much worse in the past. But the idea of the prospect of eliminating the backlog and actually working the way an appellate office is supposed to work, being more agile, and being able to address issues as they come up and not worry about who has a backlog that can take the issue, but the prospect of actually putting the best people for that particular issue on the case and being responsive and mobile is really, really exciting. It is worth the investment of time that it will take.
- 132 Chair Ellis We want the AG's office to cry out.

- 133 P. Gartlan Well what is interesting is they are starting to cry out. It is unfortunate for our clients because as our time has dropped with respect to filing briefs, theirs has increased. They have had to pull people off their criminal cases and devote them to civil cases because they bill on those cases, whereas, their criminal cases are drawn from general funds so they have lost attorneys in that area. Even though we are filing briefs sooner than three, four, five years ago, the attorney general's response has increased in terms of time, so there is more delay. Unfortunately, delay is almost balancing itself out and we are still in a position of under two years for Court of Appeals resolution. But with respect to to whom that delay is attributed, it has only shifted and will shift from us to the attorney general.
- 146 J. Potter Will that get progressively worse with your plan if you hire extra lawyers and reduce your backlog and so ostensibly add more work at the AG's office?
- 149 P. Gartlan It should not because as we reduce and we go down under 210 and 180. The Court of Appeals has imposed a 350 "no further extension" limit on both parties, so they will be at 350 let's say, and hopefully they will be at 300, but they will be at 350 with no further extensions and ours will decrease, so putting it together eventually it will be beneficial for our clients.
- 155 Chair Ellis On those one-year slots what is the pay?
- 157 K. Aylward Not much. It is a training opportunity for someone.
- 159 J. Brown I was just imaging that Hennings would want to send a couple of his people up.
- 161 Chair Ellis I am thinking that for some of the people that have been clerking for appellate judges, this would be a great way for them to transition into practice and they would be a pretty good target group.
- 165 P. Gartlan It is except they tend to leave in August, so we have missed them.
- 167 J. Potter You mentioned the panel as well. How do you go about doing that? More lawyers on the panel or more cases to the panel?
- 170 K. Aylward I am not sure everybody understands what we are talking about when we talk about the panel and the backlog and where cases go. This is what we have got. Let's say LSD, and these are just artificial numbers for purposes of illustration. Let's say they can push out 100 cases a month, but what they have got coming in, let's say, is 110 and let's say right now the current backlog is 200. So they have 110 coming in. This is a closed system, so those extra 10 are now going to the panel. Well, historically the panel has also been a closed system. The Legal Services Division only reverted to the panel the dollar value of cases that we had originally contracted with the Oregon Appellate Consortium to do back in 2000. So then we didn't have a contract we had a panel, but as far as Legal Services Division -- the value of the cases they were reverting -- they kept that the same. We have one closed system because there aren't enough people; another closed system because it just is closed, which means that everything that comes in becomes backlog. What we are proposing to do is open up both of these, what had been limited systems before. So in Legal Services Division we are opening it up by adding four new attorneys, just for a year, double-filled Defender I positions. We have increased the capacity here and we are also proposing that more cases go the panel. The panel can take more cases so then we have got four people added over here -- so these four people here, what their job is to make this backlog go down, and down, and down. That is the first prong for reducing this backlog. The next thing is that lets say you get 120 that come in next month, if what you are trying to do is get rid of the backlog, where are those 20 cases going to go? They are going to go here; they are going to go to the panel. We are going to keep the backlog from getting worse by having more cases go to the panel. These guys are working on the backlog and then the third prong is what we are doing for LSD to be able to make them more efficient. What we are thinking is we have a lot of ex-para-legals in CBS that have a lot

of experience and they have time on their hands because we are in between contracting and we can make use of it, so if we automate the document production so that all of that low end stuff is gone, then the legal secretaries are freed up to do more paralegal type stuff and we have people to train them and help them to be paralegals. It is career advancement for the secretaries. As they do more paralegal work that will take more workload off the attorneys' desks, so the attorneys can be more productive. As we start doing that, production is a little better. But the other thing when I found this out, I have been hearing about this backlog for so long and it is boring. It is always there and it is always the same story and it is attorneys working too hard or clients taking a long time for their cases. When I look at it in terms of resources, last year our office filed 2,087 motions for extensions of time. When you think of the volume of work involved in that -- the court has to get this document and file it in their database; the AG has to get this. We are spinning our wheels and we are going to grind to a halt if we don't put a stop to it. That backlog has to go away because we are unable to get our work done. Let's say these four people work really hard and the backlog is gone and suddenly without a backlog.... Oh, clients call all the time, call collect; we are paying for those collect phone calls, and the attorney has to talk to the client and has to say "Sorry, I haven't even looked at your file and I am not going to look at it for six months or nine months" but still they have to call; they have to write; they have to do all that work. So, the backlog is gone, no interference with your ability to work, wonderful system is in place, and now guess what, your production.... 120 is coming in the door and you don't have to revert anything, and that reverting stuff costs money. You are going to end up saving money by doing this and we are imagining something that really is quite short term for these four double-filled positions. In large measure we have it because there were vacancies in May or June. There were a pool of applicants, the pool was a bit shallow let's say, and Pete and Becky decided that they wouldn't be able to fill their positions; they had to wait for the next round of bar results or whatever it is. They waited for another round and then found some people. The fact that you had those vacancies for two or three months in that time period meant not only this stuff could get worse, but the money that we are not paying those people now we have to double up and double pay some people at this point. As far as this, if we are having maybe 20 cases go instead of 10, we went to the Emergency Board and we said LSD is a closed system. We have more cases coming in. Please give us money to pay to these panel people and they said yes. So we have this money covered to pay for the panel people extra stuff. We have got this money covered by some savings, and ultimately we end up fixing the problem that has been a problem for a long time. The only thing is there are some risks and I can share them with you.

250 Chair Ellis We are going to do both. What I was going to say is this is really wonderful to hear because it is an integrated....

252 K. Aylward We are doing this synergy thing that you always wanted and we never, ever had.

254 Chair Ellis Right. I am not hearing about internal walls. I am not hearing about division and separation, I am hearing about working together, and I think it is terrific.

257 K. Aylward We began to think what we can do to free up the attorneys and staff time so they only have to concentrate on getting those cases done. What can we take off their plate? Any of the administration stuff, any of the junk, their copy machine is jammed, call us and we will send a runner, don't stand there trying to fix it yourself. Everything that we can do as a business office, we are the agency's business services division. It is services for the entire agency, not just for our contractors and providers.

265 Chair Ellis So what are the risks?

267 K. Aylward These four bodies need a home so I have to find space for them. Our building has space right now and one of the things we were concerned about -- we have FTEs in our budget package for next time. So, if a miracle should happen and we get some FTEs and there is space in our

building now, but that could change tomorrow. If I got those FTEs and had no space in the building.... Then I started to think that if I could get the space now that would be wasteful but if we had the bodies to put in it that makes sense. The worst case is I sign a lease that goes.... Ingrid can sign a lease. Our current lease expires in 30 months time and I am negotiating with the landlord now to reduce the rent and it would be really nice to say "I'll take a little more space if you reduce the rent on all of it" and I think he would say yes. That helps fund the costs of renting another additional space. That is one risk is that we could end up not getting the FTEs and these four people leave at the end of the year and I still have 18 months of office space that I am paying for. So we spread out a little. We get a little more comfortable. It is not the end the world. The other risk is that I have made a horrible mathematical error and am wrong. We don't actually have enough money to double-fill those four positions. It is a risk. I think it is small, but it is a risk that keeps me up at night. The other thing is we could end up next biennium not having any kind of decent budget at all. We could not get the FTEs and these four people are going to straddle. So let's say we start them January 1, 2007. They would have six months in this biennium, which I am fairly confident we can fund, and then they would have six months in the next biennium. We don't know yet what our budget is going to be for next biennium. If we get any of the FTEs, if we get the juvenile dependency appellate FTEs that we have asked for, what will happen is they will be funded from July 1 but you don't even have your budget July 1. You finally get it the first week in September and they say "Oh yeah, we approved those positions for the full biennium." You have kind of already been funded for the positions during a time when you couldn't possibly fill them anyway. You find out in September, yes the policy package was approved; you advertise the jobs; you fill the positions; it sort of takes you until November to actually get bodies in the position and that way you have reached the end of the year that you promised these four people. It does get funded if we have FTEs funded. If we don't have FTEs funded, then we have funded ourselves for the first six months and live like church mice after they leave. No copy machines, nothing new, we are kind of that way anyway which is how we got to be able to do this in the first place. We just do it in reverse. Those are the risks.

- 313 Chair Ellis Doesn't sound too bad to me.
- 313 K. Aylward And the risk is that we could fail which I would find devastating, but I think we can do it. I am thinking backlog zero by August 1. That is where my money is. Mr. Gartlan is less optimistic so we will see.
- 321 J. Potter One of the flies in the ointment here possibly is Ballot Measure 48 and we will know about that in a few weeks, but if that happens, your budget will be affected and you wouldn't be able to do this.
- 328 K. Aylward The other thing is the window of opportunity for being able to do this is rapidly diminishing, because the funding that we have available for this biennium for these four people will not still be available at the end of the biennium, and if we wait very long to hire these four people....
- 338 Chair Ellis Use it or lose it?
- 338 K. Aylward Basically.
- 340 Chair Ellis We are quite interested in this and happy to see it happen.
- 343 I. Swenson Kathryn has had the discussion with Robin La Monte and Robin fully supports this effort.
- 343 K. Aylward I sent her an email and she sent me an email back saying "What is your funding requirement?" and I said "Zero" and she said "Sounds terrific. Keep me posted." I said we could do it with existing resources.

- 348 Chair Ellis I think it is a terrific plan and I also think it is a great piece to demonstrate to the legislature the wisdom of what happens and that we are a good place for them to invest money.
- 352 K. Aylward Everybody in the office -- we met with the entire office on Wednesday -- and there is a role for everyone to play and we are determined to make this happen. And Ingrid might kill me for saying this, but I think the commission might have a part too, by temporarily reducing the demands on staff time in terms of the frequency of commission meetings, and the number of reports that are due and the things to study, and I am just thinking could we have a little bit of a breather, and then life would be so good you could have commission meetings all the time and I will proofread reports and I will do all kinds of stuff, but let us fix this first. Sorry Ingrid, I said it anyway.
- 365 I. Swenson I think we can manage to do our usual number of meetings, and we do skip a couple of months during the year. We can minimize the reports that Kathryn personally has to do and others involved in this effort.
- 369 Chair Ellis Either that or put Brown in one of those four spots.
- 370 J. Brown Preferably off to the right.
- 372 I. Swenson Besides Kathryn's great work on this, I do want to acknowledge Commissioner Brown. I think he woke us up in some ways in June by just saying "Do you think there is something that we can be doing about this backlog?" And we were so used to living with it and dealing with it and trying to make it go away in the gradual sense, that we didn't know any better.
- 378 Chair Ellis I love that piece where if you didn't have all those motions for extensions of time, you would have the time so you wouldn't need the extension.
- 382 J. Brown It is obvious but so insightful at the same time.
- 383 Chair Ellis Someone with the comic skills could play with concept and have a real good time with it.
- 386 K. Aylward Well not me. I just want to do it.
- 387 Chair Ellis The other thing that comes out of this is I will bet you that the morale impact of keeping this backlog thing, and getting the thing where we have got momentum and acceleration and you are not spending your time explaining why you haven't done things, that just ripples through a group like this.
- 394 P. Gartlan Absolutely. It is a business model, this plan. It will work.
- 397 L. Railey I was just going to say that as the spokesperson for some of the staff in the business section that even we are excited about it. We are excited to be able to help and take on some of the little things that we can upstairs to make it easier for them to do their jobs. I think that is part of what we have needed all along too.
- 408 J. Brown To me that is a profoundly important attribute for an organization to be able to basically have two or three of your very smart people drop what they are doing and focus on something for a short period of time when those occasions come up. And that is the sort of thing I think that can have clearly a profound impact on the system. I very excited about what you are doing.
- 419 P. Gartlan We should be an elite group able to respond to whatever comes our way.
- 420 J. Brown Or make them respond to you first.

- 422 Chair Ellis Then you can spend your time drafting oppositions to the AG's motions to respond.
- 424 P. Gartlan We can spend our time doing other things with more direct benefit to the trial level bar.
- 427 K. Aylward It is going to have so much visibility because the Court of Appeals will see it, the AG will see it. We will go to the legislature and we tell them, and we are going to be like an agency on fire and it is going to reflect on all of us. We are all part of the same agency. People will talk and say "What is happening at OPDS?"
- 432 Chair Ellis That is it.
- 433 K. Aylward That is it. We want them to talk about it.
- 436 Chair Ellis I like the presentation. We don't have a quorum so we couldn't actually vote on it, but I don't think you need anything.
- 439 I. Swenson I don't think so because it is a reallocation of current resources. We wanted you to know all about it and certainly express any reservations or concerns you might have.
- 442 Chair Ellis So what else have you got for us?
- 443 I. Swenson Well it is hard to follow that but there were a couple of little things. I think they might want to know about the juvenile appeals and the juvenile mitigation.
- 446 K. Aylward Yes, that would be the management status report. I think I have mentioned to you a few times that we had been working on getting an online appellate referral up on our website, so that in the same way that a trial attorney who wants to refer a criminal appeal to LSD an attorney could do so with a juvenile dependency as well. And that did go up and live about two weeks ago. Nobody has clicked on it yet and we are not really necessarily prepared for somebody to click on it yet, but ideally, even though I announced it to 200 of them yesterday. "It is there. Start clicking."
- 456 Chair Ellis So it is 100 percent successful at this stage?
- 458 K. Aylward What the arrangement will be is that when we get information that someone wants to appeal a dependency matter our office will file the notice of appeal and send a fee statement to start the production of the transcript and locate the appellate attorney and basically disseminate all of the information that gets the transcript going, stops the clock on the limitation for notice of appeal to be filed, gets an attorney on board right away. We will do those three steps and then sort of bow out gracefully and say "Carry on with this."
- 467 I. Swenson You should know that this arose out of the appellate workgroup and it arose because of a problem with the filing of those appeals. The attorneys who are doing it now do it very rarely. They don't always do it properly; they are often late filing a notice of appeal. So for all of those reasons standardization will be a benefit to everyone.
- 467 K. Aylward Shortly thereafter, juvenile dependency, civil commitment. I think post conviction isn't a problem because they just contact Jim Varner, but we want to be the sort of hub of appeals or referrals or basically appointments, appellate central, and then if we actually get our juvenile dependency attorneys as employees then all our systems are in place and we just don't refer them out anymore. The other thing is a pilot project to do mediation at the appellate level. They are going take three or four termination of parental rights cases a month that they think are suitable for mediation and it is kind of tricky because the timelines are not going to change for the appeal, so your brief is still due in 21 days, but meanwhile you are mediating and if your mediation is successful you don't have to do brief or you still have to do the brief in case your mediation is not successful. It is going to be resource intensive for the appellate

attorney. It is going to involve the trial attorney actually at mediation as part of this trying to get cases resolved and so we will have to pay trial attorneys for that extra bit of participation. We may have to pay appellate attorneys more because they are actually working two tracks of the case at the same time. We will see how that goes, but it is such a small number of cases to start with that it really is just a pilot project and we haven't made any commitments other than to admit that it probably will take more compensation.

- 504 Chair Ellis I don't think our records reflect the action of the E-Board and we haven't met since and you want to mention what happened?
- 509 K. Aylward The Commission submitted an Emergency Board request for the September 21 and 22 meeting. Peter Ozanne and I appeared on September 21 in front of the Emergency Board. We requested \$7.8 million dollars. The Emergency Board acknowledged the reasons that we needed the money, agreed that we needed it, but had a little cash flow problem and so they said "We can pay half of it now, but there is only \$15 million left in the emergency fund so we have to wait until December 1 when the special purpose appropriations are released and then it is available for the Emergency Board". So we did get funded \$3.9 million of our request and we will be going back to the Emergency Board -- November 30 is the subcommittee hearing -- requesting that on December 1 the remaining \$3.9 be appropriated. I didn't get any sense that there was a question about the need it was simply "We have to pay you in two small pieces because we don't have the money right now." I am optimistic that when we do go back in November and December 1 that they will fund the remainder of that amount.
- 532 Chair Ellis I wasn't thrilled about some of the (inaudible).
- 532 I. Swenson (Inaudible) ...other states and immigration status of our clients.
- 538 Chair Ellis What are we doing about those questions?
- 538 I. Swenson Responding. The one study that was done just three years ago....
- 541 K. Aylward Actually, it was just last session Robin La Monte compared a comprehensive report talking about indigent public defense in Oregon and how we compare to other states, and a lot of it was using data prepared by the Spangenberg group that the ABA used to commission a study from the Spangenberg group to compare state by state. And the ABA used to commission it a lot and then they sort of didn't, so that report that Robin La Monte prepared last session is still the most current data from Spangenberg.
- 551 Chair Ellis There are a world of issues in there I know.
- 553 K. Aylward The report is actually excellent so I called Robin and said "Can we just attach a copy of your report as an attachment to our E-Board?" and she said that was fine. That will give the Emergency Board members the most current information that we believe exists.
- 558 Chair Ellis How does that make us look? In theory, we look like we are spending more than anybody else.
- 560 K. Aylward No, we are not, but in the areas where we are a little near the top, Robin has done a good job of explaining the factors involved in that and I can provide you with a copy of that report.
- 564 Chair Ellis I would like to see it.
- 566 J. Hennings In the area of juvenile mediation, just so you look at something outside the appellate area, I let my staff know that in juvenile sessions that they may be called upon to track those. The response I got back from both counties was that if we had mediation prior to the trial we could

probably stop this situation much faster. It may be something the commission would want to look at in terms of potentially asking that a law be drafted that would make it so that if the defense wanted mediation, there would be mediation. Right now if anybody objects, DHS, the DA, even the judge, there will not be mediation. And usually mediations are not about whether or not there should be a termination, but where the children are going to be placed. So if the state really wants bang for their buck, they will start pushing for there to be more mediation on terminations prior to the trial, rather than after. I understand why this came up because the head of the appellate court is saying how do we cut down on these cases, but it may be a problem of looking at the long focus. The focus ought to be the entire case.

- 595 Chair Ellis Ingrid, one topic that I am very interested is the MCAD litigation and the threat that service on the board might expose you to challenge and the threat that MCAD and others of our providers don't have the ability to control quality. Can you help me know where that is and what we can do as a commission to really support the MCAD defense?
- 608 I. Swenson Shortly before he left, in fact one of the final letters that Peter wrote was to the attorney, I think it is Mr. Reese, offering to do whatever it is that he needs done including an amicus brief or something of that nature. I need to follow up with him. I haven't called him to remind of that or talked with him about it, but I think it was clear from Peter's letter that we wanted to do whatever we could to assist him.
- 620 Chair Ellis This is where this integrated structure really plays in because it may be someone from your shop ought to be assigned to help prepare that brief if that is the role that we play. I really do want us to step up in the most effective way we can to fight that case. You can see from the Yamhill presentation that it ripples all through our system. Then you haven't reported, but you were very involved with the Marion PD organization, and you might want to report on that.
- 636 I. Swenson It has been about three weeks, I think, since the organizational meeting of the board of the public defender office was held at John Hemann's office in Salem. The special assistance of both Jim Hennings and Bert Putney was requested to provide some information to this group about the formation of a public defender office. They each talked a little bit about what their experiences had been and provided some advice about how go about this initial effort of organizing a board. There was some discussion among the members about the history of the commission's visit to Marion County and the information that was the basis for the determination that a public defender's office was appropriate. We talked about the potential size and functions of that office. Well, Mr. Chair, you were there and Kathryn was there too. I think it was a good meeting and we have scheduled two more meetings. The next one is Monday afternoon and we hope to make some progress there. We are getting out some samples which Jim and Bert provided of bylaws and so forth and then they will move on to the effort to recruit and to identify a candidate for the Executive Director of that office. I think that would be the next major step along the way. I think there is progress.
- 673 Chair Ellis I thought it was a very constructive meeting. Among other subjects, they talked through the relationship with MCAD, which I think is going to be positive. I thought good people are involved and there's a pretty good sense of where we are going. Any other business that we need to discuss?
- 685 I. Swenson I don't think so Mr. Chair.
- 685 Audience member Could you update us on what is happening to the Oregon State Bar's group that is working on the two resolutions. Those resolutions mandated that OPDS or the Commission work with the bar and OCDLA.
- 690 I. Swenson Well, Susan Grabe, who is the lobbyist for the bar, contacted both OCDLA and our office asking who we thought should participate in the discussion, so Kathryn and Paul Levy and I

will be participating on behalf of OPDS. The first meeting is set for the 27th which must be about a week away. That is as far as we have gotten at this point.

703 Chair Ellis

Any other business.

MOTION: John Potter moved to adjourn the meeting. Jim Brown seconded the motion. Hearing no objection, the motion carries. **VOTE 3-0.**

Thank you all. I think the new administration is off to a great start.

Meeting was adjourned at 2:47 p.m.

Attachment 2

Attachment 2 is not included in this mailing because of its size. It will be available at the meeting.

Attachment 3

Presenter: Kathryn Aylward

Public Defense Services Commission
Meeting Action Item
December 7, 2006

Issue

Through employee contract negotiations, Executive Branch agencies agreed to a “bonus” step increase for represented employees who were continuously employed by the state of Oregon from July 1, 2003 through February 1, 2007. The bonus step is awarded on February 1, 2007 unless an eligible employee’s salary eligibility date falls on or between February 2nd and June 30th, in which case the bonus step occurs on the salary eligibility date. Should the Office of Public Defense Services provide a similar bonus step?

Discussion

The bonus step is designed to partially compensate employees for the suspension of merit increases during the 2003-05 biennium. The June 2006 Emergency Board authorized the Department of Administrative Services to distribute additional funding to state agencies (including the Office of Public Defense Services) to cover the cost of the bonus steps.

Recommendation

Approve awarding of bonus step increases for eligible employees and, for the purposes of bonus step eligibility, define “continuously employed” as a break in service of one work-week (40 hours) or less.

Required Commission Action

Vote to approve awarding of bonus step increases for eligible employees as defined.

Attachment 4

FINAL REPORT

(December 7, 2006)

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

Introduction

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

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

This report includes the results of the Office of Public Defense Services' (OPDS) preliminary investigation into the conditions of Clatsop County's public defense system, and the comments and discussion that occurred during PDSC's public meeting in Clatsop County held on Thursday, September 14, 2006 in the Clatsop County Courthouse in Astoria. The Commission heard from judges, public defense contractors and other justice professionals in Clatsop County regarding the condition of county's public defense system and how the delivery of public defense services in the county could be improved. The final version of this report will contain PDSC's service delivery plan for Clatsop County.

PDSC's Service Delivery Planning Process

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

Second, starting with preliminary investigations by OPDS and the preliminary

draft of a report such as this, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

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

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

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

Background and Context to the Service Delivery Planning Process

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

is now responsible for the provision of competent public defense attorneys.

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

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

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

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

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

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

“Structure” versus “performance” in the delivery of public defense services.

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

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

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

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

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

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

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

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in

Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

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

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

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

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

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

organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

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

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

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

³ Id.

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

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

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

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

individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

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

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

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

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

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

OPDS's Preliminary Investigations

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

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

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

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

A Demographic Snapshot of Clatsop County⁴

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

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

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

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

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

In 2000, Clatsop County had one of the lowest unemployment rates among Oregon's 36 counties at 4 percent. Its per capita annual income was \$19,515, compared to a statewide average of \$20,940. The county had a relatively high

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

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

poverty rate, however, at 13.2 percent, compared to an 11.6 percent rate in Oregon and a 12.4 percent rate in the United States. The teen pregnancy rate in the county is below average at 15.9 per 1,000 residents, compared with the statewide average of 16.7. Clatsop County's high school dropout rate was Oregon's 14th lowest over the past decade.

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

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

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

OPDS's Preliminary Findings in Clatsop County

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

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

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

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

most of their time to public defense practice.

Both consortia pay their members each month based on the percentage of work they perform under the consortia's contracts each month, and the attorneys settle up with their consortia based on value of work at the end of their respective contracts. Kris Kaino assigns arraignment pickup days for both consortia. Based upon the experience of OPDS's Contract and Business Services Division (CBS), all the attorneys in both consortia work well together. There are minor variations in contract rates between CCDA and the Murk Consortium; however, both consortia are aware of the differences and apparently prefer this option because of the difference in their mix of cases.

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

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

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

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

Representatives of other justice agencies in the county were unaware of any means to bring problems or complaints to the attention of the consortia or whether anyone in either consortium was responsible to handle problems and complaints.

During the course of its interviews, OPDS identified five significant concerns regarding the future of public defense in Clatsop County. First, the Circuit Court, in particular, is deeply concerned about the limited supply of qualified public defense attorneys in the county. Assuming that six defense attorneys can continue to competently handle a caseload generated by a District Attorney's office with six or seven prosecuting attorneys,⁸ both judges in Clatsop County wonder what the court will do when one of those six attorneys leaves public defense practice.⁹ Apparently, no other attorneys in the county have expressed a willingness to engage in public defense practice and, due to the quality of the attorneys from outside Clatsop County who have been willing to take appointments in the past, the judges believe importing attorneys from other counties on a regular basis is not a feasible solution. Indeed, one of the Circuit Court's judges is so concerned about the impending shortage of public defense attorneys in the county that she traveled to the University of Oregon Law School to encourage recent graduates to enter law practice in Clatsop County and take court appointments.

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

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

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

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

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

Fourth, OPDS is concerned about (1) an apparent absence of criminal defense attorneys in Clatsop County's early disposition program (EDP), (2) differing perceptions in the county about the reasons for this absence of defense attorneys, including perceptions of PDSC's lack of support for EDPs, and (3) the possibility in light of these perceptions that defense attorneys may be excluded from other specialty court programs in the county such as drug courts. One of the county's judges reported that defense attorneys do not participate in his department's EDP in part because a staff person at OPDS informed him that the agency refuses to provide financial support for the participation of lawyers in EDPs. The county's other judge noted that defense attorneys do not participate in the EDP because they have refused to do so for philosophical reasons. One of the consortium's administrators informed OPDS that defense attorneys feel ethically bound not to participate in Clatsop County's EDP because the District Attorney has refused to provide discovery before the court appearances of defendants who qualify for the EDP. The District Attorney, on the other hand, indicated that police reports are available for review in the courtroom at EDP proceedings and that defendants are given a week to consider the prosecution's settlement offer or consult with an attorney.

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

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

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

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

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

1. The supply of public defense attorneys in Clatsop County. OPDS recommends that PDSC discuss with the judges and lawyers in attendance at the Commission's September 14th meeting feasible options for increasing the supply of qualified public defense attorneys in Clatsop County. For example, in light of efforts by at least one judge in the county to recruit recent law school graduates into public defense practice, the Commission might consider joining forces with Clatsop County and other similarly situated counties to establish formal law school recruitment teams. These teams could appear at Oregon's three law schools during the hiring season for the purpose of encouraging law students to consider public service positions in underserved areas of the state that offer unique opportunities for legal employment and quality of life.
2. The demands of Clatsop County's public defense caseload. With additional analysis and information from CBS's contract staff, such as comparative data on caseloads across the state, PDSC should inquire into whether the rate at which cases on Clatsop County's Circuit Court docket are processed is unusually high. If so, the Commission might also inquire into the prospects for relieving the pressure of the court's docket, such as the pending addition of another judge, and how PDSC and the Commission's contractors in Clatsop County can assist in relieving that pressure.
3. The contract rates for Clatsop County's consortia. With the benefit of further information from CBS on comparative contract rates, the Commission should discuss the experiences and perceptions of judges and lawyers in Clatsop County regarding (a) the unique challenges of public defense practice in the county, (b) how those challenges might compare with the challenges of public defense practice in counties with higher contract rates (such as Multnomah County) and (c) why the contract rates in Clatsop County should be equal or closer to counties with higher rates. If, in the opinion of PDSC, it appears possible that the contract rates in Clatsop County should be raised to match the rates in

other counties, or it appears that further study of these rates and the rates in other counties is justified, the Commission should consider directing OPDS to conduct a study of contract rates in furtherance of PDSC's policy to establish more rational and predictable public defense contract rates in Oregon.¹²

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

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

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

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

expeditious resolution of case and cost savings.

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

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

Like some relatively small, well-established consortia in other parts of the state that deliver public defense services to the general satisfaction of local courts, Clatsop County's consortia appear to operate primarily for the purposes of submitting contract proposals to PDSC and administering their contracts in accordance with CBS's contracting policies and procedures. Neither consortium appears to have adopted the organizational components that the Commission has recommended to other consortia in the state, such as a board of directors, a formal organizational structure, a complaint process, an attorney disciplinary process and training, mentoring, recruitment and quality assurance programs. As a result, Clatsop County's delivery system may not be capable of adapting to a future that will inevitably include population and caseload growth, personnel changes on the Circuit Court,¹⁴ in the consortia and in the District Attorney's office,¹⁵ and changes in state and local justice and law enforcement policies.

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

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

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

(c) the current demands on the six attorneys who provide public defense services in the county.

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

The commission heard testimony from the two circuit court judges for Clatsop County, Judge Phillip Nelson and Judge Paula Brownhill, from the Director of the Clatsop County Juvenile Department, Georgia Gates, from R. Hendricks of the Oregon Youth Authority, and from public defense attorneys Mary Ann Murk, Kris Kaino, Ty Settles, Don Haller and John Orr. Comments were also received from Cora Lane, the Director of Community Corrections, and from Josh Marquis, the District Attorney for Clatsop County. Peter Ozanne and Kathryn Aylward provided additional information.

In general, the witnesses testified that the six consortium attorneys are competent and hardworking. They were particularly praised for their work in juvenile cases – for attending meetings for which they are not directly compensated and for continuing to represent their clients after the initial disposition. It was reported that they appear to be trying the appropriate cases and litigating appropriate motions. They are also actively involved in the local criminal and juvenile justice systems.

Witnesses and commission members also discussed each of the five potential issues identified in the draft report.

The supply of public defense attorneys in Clatsop County.

There is currently, or almost certainly will be in the near future, a need to add new public defense attorneys in Clatsop County and to replace current members as they pursue other professional options. Some witnesses said that the six consortium attorneys are overwhelmed by their caseloads. One of the judges said that more lawyers are needed. One of the consortium administrators said that, while he believes they are able to handle the current workload, in a perfect world where the system was adequately funded they could use one or two more attorneys. In addition, a third judge will be added in January of 2007. While some believe this may lighten the load for the attorneys, others anticipate that it will have the opposite effect.

Attracting new public defense attorneys to the county could be difficult. Some of the obstacles to successful recruitment are case rates¹⁶, which are lower in Clatsop County than in some other counties; high caseloads¹⁷; the rising cost of

¹⁶ The director of the juvenile department testified that “In order to bring attorneys into this town, you are going to have to pay them.”

¹⁷ Of course, as a number of witnesses testified, if case rates were increased the consortia might then be in a financial position which would allow them to hire additional attorneys and lower their caseloads.

living in the area; the significant indebtedness of many newly admitted attorneys; the inability, due to time constraints, of current consortium members to mentor new members.

Possible solutions include increased case rates, a loan forgiveness program through the state or federal government, stipends to assist with relocation costs and assistance with recruitment as outlined at page 16 of this report.

The demands of Clatsop County's public defense caseload

Judge Nelson said he wondered how the consortium attorneys could keep up with the caseload. He suspected that they were overwhelmed by the number of cases and appearances. The director of the county juvenile department said that juvenile attorneys are overwhelmed by the demands of juvenile practice.

The recent implementation of an early resolution process may help resolve cases sooner and prevent set-overs. In recent years the number of trials has fallen dramatically. Some witnesses believed that the addition of a third judge might help to slow the pace. The local legal community previously came together to review docketing practices. After approximately a year of discussion the current docketing system was implemented and had positive results.

Possible solutions to the caseload issue include continued coordination among members of the local legal community to reduce unnecessary appearances; increased case rates which would permit the consortia to add new attorneys; the use of trained professional volunteers such as the AmeriCorps attorneys currently placed at the Juvenile Rights Project in Portland; the use, when appropriate of investigators to assist in the observation and assessment of child clients' placements and circumstances.

In addition, in the next biennium there may be supplemental funding available to reduce caseloads, increase compensation and improve representation in juvenile dependency proceedings.¹⁸

The contract rates for Clatsop County's consortia. Judge Nelson told the commission "You need to pay your providers here more money." Judge Brownhill noted the difference in rates for juvenile attorneys in Clatsop County compared with juvenile attorneys in other counties. One consortium attorney testified that he had examined the contracts of other providers in the state and determined that the rates in Clatsop County were among the lowest in the state. Another consortium attorney reported that she was paid \$210 for representing a child client at a dependency hearing. In order to prepare for that hearing it was necessary to spend several hours at meetings and twenty to thirty hours driving to Ontario, Oregon to visit with her client.

¹⁸ A bipartisan group of legislators has formed the Dependency Representation Workgroup to explore methods of improving representation in juvenile dependency cases.

Chair Ellis explained that the commission had directed OPDS to address any rate disparities (that were not based on articulable differences in circumstances) as resources permitted, but without reducing the rates of any contractor. He acknowledged that the elimination of disparities could not occur immediately.

As suggested above at page 15 of this report, the Commission may wish to weigh the unique challenges of public defense practice in Clatsop County against the challenges of practice in counties with higher rates and determine whether Clatsop rates should be equal or closer to those higher rates. The commission could also direct OPDS, prior to the next contract cycle, to conduct a study of contract rates in furtherance of PDSC's policy to establish more rational and predictable public defense contract rates in Oregon.

The participation of defense attorneys in Clatsop County's EDP and other specialty court programs

Witnesses testified that the county's early disposition program permits defendants charged with relatively minor offenses to resolve their cases at or shortly after arraignment.

Consortium attorneys testified that they had declined to participate in the county's EDP program because they did not believe they would have adequate discovery or time to investigate the case, and because the compensation offered them was inadequate. One attorney was concerned that his reputation among the general public would be negatively affected by involvement in a program that "just moves people in and out." Judge Nelson said that when the program was in the development stage he asked the Indigent Defense Services Division about compensation for the defense attorneys and that he didn't "think there was anybody willing to work for that price."

An experienced Marion County attorney reported that he and other Marion County attorneys had participated in that county's early disposition program from the beginning. He believed the program served a useful purpose for clients charged with minor offenses who wanted to resolve their cases quickly. He attributed the success of the program to the involvement of experienced defense and prosecution attorneys.

Members of the commission noted that an early disposition program could be of benefit to out-of-town weekend visitors without significant criminal records who did not want to return to Clatsop County to contest the charges. Currently, because defense attorneys are not present, these individuals receive no legal representation¹⁹. While the position of the Clatsop consortium attorneys appears to be a principled one, some reconsideration of their position might be in order in

¹⁹ A consortium attorney said that one of his clients in a retained case had accepted an EDP offer without realizing that it would result in the loss of his driver's license.

view of the experience in Marion and other counties and the importance of providing legal representation to the participants in the program.

Further discussion, including a discussion of the appropriate compensation rate, might be productive, particularly if experienced attorneys from jurisdictions such as Marion County were included.

The organizational development of Clatsop County's consortia

Testimony from consortium attorneys as well as OPDS staff clarified that the existence of two separate consortia in Clatsop County was the result of a number of historical events rather than conscious planning. Both consortia operate with a minimum of organizational structure.

While there is general satisfaction with the services provided by both consortia the Commission could nevertheless recommend to both groups consideration of the benefits that might accrue from consolidation of the two consortia and from adoption of some of the organizational components that the Commission has recommended to other consortia in the state. Participation in the consortia workgroup currently being organized by consortia managers would give the Clatsop County organizations an opportunity to discuss these issues with similarly situated contractors.

PDSC's Service Delivery Plan for Clatsop County

PDSC is grateful for the cooperation and hospitality extended to its staff and its members during its visit to Clatsop County and the initial investigations made in preparation for that visit. PDSC expresses its sincere appreciation to all the members of the Clatsop County criminal and juvenile justice communities for their assistance in informing the commission and helping to guide the creation of this service delivery plan for the County.

PDSC incorporates into this service delivery plan as its factual bases for the recommendations that follow: (a) The information that OPDS received during its visit to Clatsop County on August 24 and 25, 2006 and reported to PDSC in the preliminary draft of this report, and (b) the presentations and comments to the commission at its September 14, 2006 meeting, which are summarized above.

Based on these factual bases and the commission's discussions and deliberations during its October 20th meeting, PDSC adopts the following four components of a service delivery plan for Clatsop County.

1. Appropriateness of Contractual Structure. The two-consortia model seems to be working satisfactorily in Clatsop County. Both consortia members and

OPDS's contract and business services staff report that the system works effectively; and virtually all of the local justice officials and professionals interviewed express satisfaction with the operation of the defense system and the quality of defense services provided in the county. No structural changes appear to be needed in Clatsop County.

While neither consortium has a board of directors or formal policies and procedures as outlined in OPDS's developing list of "best practices" (Exhibit A), these practices may be of limited utility in such small organizations. Both consortia are encouraged, however, to be aware of recommended practices and to consider the potential benefits some of those practices might have for them and their members.

2. Caseloads/Compensation/Recruitment. High caseloads, compensation rates that are lower than rates in some areas of the state and difficulty in recruiting new public defense attorneys to the county are interrelated problems that will need to be addressed by PDSC and the Clatsop County consortia working together.

During the current legislative interim a bi-partisan group of Oregon legislators has been examining the relationship between high caseloads, low rates of compensation and the quality of representation in juvenile dependency cases. It is anticipated that this group will propose legislation in the 2007 session to improve quality by, among other things, limiting caseloads and increasing compensation.

If additional funds are available to PDSC for dependency representation in the next contract cycle, OPDS staff and the two Clatsop consortia will need to consider how to use those resources most effectively to address the interrelated caseload, compensation and recruitment issues in the county.

Whether or not additional resources are available for the next contract cycle, PDSC will need to determine how funds that are appropriated will be distributed among its providers. In order to facilitate this discussion OPDS staff will need to develop a method for comparing rates that takes into account the many variables that affect the appropriate values for particular case types from one county to another. If the Commission determines that its goal is consistency of rates, these many variables will have to be articulated and assigned appropriate values.

In 2003 the Commission identified a number of strategies for assisting public defense providers in outlying areas of the state to attract and retain attorneys. These included offering extended contracts with guaranteed caseloads, establishing apprenticeship training programs in larger contract offices for attorneys willing to commit to practicing in underserved areas, offering housing support, technical support and/or capital assistance for attorneys

willing to relocate to underserved areas. If caseload and compensation factors indicate that the Clatsop County public defense community needs additional attorneys before the next contracting cycle and that it would be feasible for both the new attorney(s) and the current consortium attorneys to add a new attorney or attorneys, OPDS should be prepared to assist in the effort by exploring ways of implementing these strategies in such a way that they benefit both the new attorney and the current providers.

In addition, OPDS should establish a law school recruitment team to appear at Oregon's three law schools during the hiring season to encourage students to consider public defense employment opportunities in all parts of the state, including underserved areas. OPDS should work with the Diversity Task Force to coordinate recruitment efforts.

3. Participation in EDP programs. Early Disposition Programs that meet PDSC's standards can be a cost-effective alternative to full prosecution and can provide significant benefits to many defendants. Defendants given the option of participating in these programs are entitled to the assistance of counsel. Indigent defendants in Clatsop County are not being afforded such representation.

OPDS will offer to work with Clatsop County judges, the district attorney and both consortia to identify and address any obstacles (including inadequate discovery) to defender participation in EDP programs in the county. Experienced defense attorneys from counties with effective EDP programs will be invited to participate.

In view of the Commission's mandate to promote quality, cost-effective defense services, OPDS will also initiate a discussion with the Oregon District Attorney's Association about creating statewide standards for EDP programs.

4. Juvenile law practice. Murk Consortium attorneys were reported to be doing superior work on behalf of their child clients in juvenile dependency cases. CCDA, however, like many of PDSC's other contractors who provide legal representation in juvenile cases, apparently needs to improve the quality of its juvenile law practice. Some CCDA attorneys are reported to be inadequately committed to their parent clients and ill prepared for initial hearings in delinquency cases. The Commission recommends that CCDA attorneys review the Oregon Rules of Professional Conduct, PDSC contract requirements, and the revised bar standards²⁰ regarding appropriate

²⁰ The General Principles for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases, the General Standards for Representation in All Criminal, Delinquency, Dependency, and Civil Commitment Cases, the Specific Standards for Representation in Criminal and Juvenile Delinquency Cases, the Specific Standards for Representation in Juvenile Dependency Cases, and the Specific Standards for Representation in Civil Commitment Proceedings

representation in these cases. The commission further recommends that OPDS consider sending a Quality Assurance Task Force site team to Clatsop County to examine the quality of representation in juvenile cases. PDSC requests that CCDA report back to the commission no later than October 1, 2007 regarding steps taken to address these issues.

Appendix A

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

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

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

Commentary

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

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

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

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

Commentary

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

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

STANDARD 1.1 – Prerequisites for Representation

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

STANDARD 1.2 – General Duties and Responsibilities of Counsel to Clients

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

STANDARD 1.3 – Role of Counsel

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

STANDARD 1.4 – Initial Client Interview

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

STANDARD 2.5 – Initial Court Appearances

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

STANDARD 2.6 – Independent Investigation

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

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

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

Commentary

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

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

STANDARD 2.8 – Pretrial Negotiations and Admission Agreements
Counsel should:

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

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

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

Commentary

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

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

Commentary

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

RULE 1.16 DECLINING OR TERMINATION REPRESENTATION

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

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

RULE 1.7 CONFLICT OF INTEREST: CURRENT CLIENTS

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

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

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

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

RULE 2.1 ADVISOR

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not

only to law but to other considerations such as moral, economic, social and political.

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

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

Attachment 5

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

Revised ~~11/10/05~~ 02/8/07

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EXHIBIT B ABA GUIDELINES FOR THE APPOINTMENT AND PERFORMANCE OF
COUNSEL IN DEATH PENALTY CASES

EXHIBIT C PRINCIPLES AND STANDARDS FOR COUNSEL IN CRIMINAL, DELINQUENCY,
DEPENDENCY AND CIVIL COMMITMENT CASES (Chapters 1-4 of OSB Task Force
Report adopted by the Board of Governors September 25, 1996, revised June, 2006
remainder of report
(generally, appendices and annotations) not reproduced)

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

The Public Defense Services Commission adopts the following standards pursuant to ORS 151.216(1)(f)(F), effective **March 1, 2007**. ~~October 21, 2005.~~

STANDARD I: OBJECTIVE

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

STANDARD II: ATTORNEY CASELOADS

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

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

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

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Either:
 - A. Meet the qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the qualifications specified below, and who demonstrate to **the satisfaction of** the Office of Public Defense Services' ~~satisfaction~~ that the attorney will provide competent and adequate representation; or
 - C. ~~Work under the direct supervision of an attorney who does have the requisite qualifications or experience at a public defense organization that certifies to the satisfaction of the Office of Public Defense Services that it will provide management and oversight of attorney performance, frequent attorney trainings, and routine performance reviews in order to ensure assure~~ competent and adequate representation. ~~On request, an attorney qualifying under this section may be required to provide a written statement explaining why the attorney believes he or she has the qualifications to handle the case types to be assigned to him or her, and be required to provide up to five letters of reference, at least two of which are from judges, attesting to his or her expertise and competence.~~

3. Have adequate facilities such as sufficient support staff or answering service/machine and email capability to ensure reasonable and timely personal and telephonic contact between attorney and client, and between the court and attorney;
4. Have adequate legal research access through an online service or other electronic means or by being located near a law library of sufficient size to ensure the attorney has ready access to legal references and research material; and
5. Have reviewed and are familiar with the current edition of the Oregon State Bar's Indigent Defense Task Force Report, "Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases." (Exhibit C to this policy statement.)

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

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

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

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

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

Lesser felony cases include all **drug cases and all** Class C felonies other than sexual offenses ~~and the manufacture and delivery of controlled substance cases.~~

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

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

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies **other than drug cases**, all sex offense felonies, ~~all manufacture and delivery of controlled substance felonies~~, and all homicides other than murder and capital murder cases.

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

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

~~significant equivalent experience under Standard III, section 2.B.~~

4. Murder Cases in Trial Courts

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in murder cases, not including capital murder, if he or she:
- a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has ~~met~~ ~~continued to meet~~ the qualifications in Standard IV, section 3 for ~~at least~~ three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent and vigorous representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, psychiatric issues and scientific evidence;
 - d. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which ~~should~~ include at least one homicide case that was tried to a jury and went to a final verdict; and
 - e. On request, can demonstrate the above by:
 - (1) A written statement explaining why the attorney believes that he or she has the qualifications required to handle a murder case; and
 - (2) Certification from those with direct knowledge of the attorney's practice, indicating that they believe that the attorney should be allowed to defend murder cases and explaining why the attorney has the qualities required. Certification must include at least five letters from ~~persons representing~~ at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; and
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
 - f. ~~In lieu of meeting the qualifications of a through e above, an attorney possesses significant equivalent experience under Standard III, section 2.B.~~
- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, c, and e or must possess significant equivalent experience under Standard III, section 2.B.

5. Capital Murder Cases in Trial Courts

- A. *Lead Counsel.* An attorney is qualified for appointment as lead counsel in capital murder cases if he or she:
- a. Meets the qualifications specified in Standard IV, section 4;
 - b. Has tried major felony cases for at least five years;
 - c. Has acted as lead counsel or co-counsel in a significant number of major felonies tried to a jury, which ~~should~~ include at least one homicide case that was tried to a jury and went to a final verdict. Lead counsel in capital cases must have acted as counsel or co-counsel in at least one murder case that was tried to a jury and went to a final verdict;
 - d. Has completed or, prior to trial will have completed, comprehensive training in the defense of capital cases. Such training should include, but not be limited to, training in the following areas:
 - (1) relevant state, federal, and international law;
 - (2) pleading and motion practice;
 - (3) pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
 - (4) jury selection;
 - (5) trial preparation and presentation, including the use of experts;
 - (6) ethical considerations particular to capital defense representation;
 - (7) preservation of the record and of issues for appellate and other post-conviction review;
 - (8) counsel's relationship with the client and his or her family;
 - (9) post-conviction litigation in state and federal courts;
 - (10) the presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.
 - e. Has attended and successfully completed within the last two years at least 18 hours of specialized training on current issues in capital cases through an established training program awarding CLE credits;
 - f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) a commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital

cases;

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

financially eligible defendant. For qualification under this paragraph, attorneys:

- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized ~~postgraduate~~ training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Limited Caseload.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

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

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

- A. Meets the qualifications specified in Standard IV, section 2;
 - B. Has **handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was** ~~considered by the attorney and discussed with the client.~~ **experience handling psychiatric or psychological evidence and psychiatric or psychological experts;**
 - C. Has knowledge of available alternatives to institutional commitment; ~~and~~
 - D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and mentally retarded; ~~and,~~
 - E. **Satisfies one of the following:**
 - (a) has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or**
 - (b) has observed five civil commitment hearings that have been submitted to a judge for determination.**
- ~~FE: In lieu of meeting the qualifications of A through D above, an attorney possesses significant equivalent experience under Standard III, section 2.B.~~

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

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

- A. For all cases, has knowledge of juvenile justice statutes, case law, standards, and procedures; ~~has observed at least one contested juvenile court case;~~ is generally

familiar with services available to children and parents in the juvenile system; and has reviewed and is familiar with the following materials:

- a. Oregon Revised Statutes, Chapters 419A, 419B, and 419C, Oregon Juvenile Code.
- b. Oregon Revised Statutes, Chapter 417, Interstate Compact on Juveniles and the Community Juvenile Services Act.
- c. Oregon Revised Statutes, Chapter 418, Child Welfare Services.
- d. Oregon Revised Statutes, Chapter 420, Youth Correction Facilities; Youth Care Centers; and Chapter 420A, Oregon Youth Authority; Youth Correction Facilities, and applicable administrative rules.
- e. Oregon State Bar, Juvenile Law, (current version).
- f. Pub. L. 105-89, Adoption and Safe Families Act of 1997.
- g. Pub. L. 95-608, Indian Child Welfare Act of 1978, 25 USC §§1901-1963 (1982) and Refugee Child Act, ORS 418.925-418.945.
- h. Pub. L. 105-17 Individuals with Disabilities Education Act.
- i. Pub. L. 93-112, Title V §504, Rehabilitation Act of 1973³⁵, as amended, 20 USC §794 (1982).

~~j. Oregon State Bar Indigent Defense Task Force Report – General Standards for Representation in all Criminal, Delinquency, Dependency, and Civil Commitment Cases, Specific Standards for Representation in Criminal and Juvenile Delinquency Cases, and Specific Standards for Representation in Juvenile Dependency Cases.~~

- B. For juvenile delinquency cases, meets the qualifications for the equivalent adult crimes specified in Standard IV, sections 1-4; **and satisfies at least one or more of the following:**
 - (a) has served as counsel or co-counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judge which involve alleged conduct at an offense level at least as serious as the level of qualification certified; or**
 - (b) has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judge which involve alleged conduct at an offense level at least as serious as the level of qualification certified.**
- C. For status offense cases, meets the qualifications specified in Standard IV, section 1;
- D. For ~~abuse and neglect cases and~~ **dependency cases, meets the qualifications specified in Standard IV, section 2; or has had equivalent experience, civil or criminal, involving complicated child-custody issues; and satisfies at least one or more of the following:**

(a) has served as counsel or co-counsel in at least two dependency cases adjudicated before a judge or

(b) has observed at least five dependency cases adjudicated before a judge;

- E. For waiver proceedings, meets the qualifications specified in Standard IV, section 3. Where the underlying offense is equivalent to adult murder or capital murder, the attorney must meet the qualifications specified in Standard IV, sections 4 and 5, respectively. In addition, the attorney satisfies one of the following:

(a) has served as counsel or co-counsel in at least two delinquency cases adjudicated before a judge which involve alleged conduct at or above the major felony level; or

(b) has observed or reviewed transcripts in at least two contested waiver hearings which involve alleged conduct at or above the major felony level;

- F. For termination of parental rights cases, meets the qualifications specified in Standard IV, section 3, or has had equivalent experience, civil or criminal, involving complicated child-custody issues. In addition, the attorney satisfies at least one of the following:

(a) has served as counsel or co-counsel in at least two termination of parental rights cases submitted to a judge for determination; or

(b) has observed or reviewed the transcripts of at least two termination of parental rights cases submitted to a judge for determination.

- G. ~~In lieu of meeting the qualifications of B through F above, an attorney possesses significant equivalent experience under Standard III, section 2.B.~~

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

8. Appeals Other Than in Murder and Capital Murder Cases

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

- A. Has reviewed and is familiar with:
- ORS 138.005 - 138.504 in the case of appeals of criminal cases;
 - Oregon State Bar, Criminal Law (current edition) in the case of appeals of criminal cases;
 - ORS 419A.200 - 419A.211 and ORS Chapter 19 in the case of appeals of juvenile cases;
 - In the case of appeals of juvenile cases, Oregon State Bar, Juvenile Law, (current edition);

- e. The Oregon Rules of Appellate Procedure;
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
- a. Has experience as appellate counsel, either in practice or under the Oregon State Bar's Law Student Appearance Rule commensurate with the seriousness of the underlying case;
 - b. Has served as co-counsel in at least ~~two~~ **one** appellate cases **which were briefed on the merits and argued to the court** under the supervision of an attorney eligible for appointment to appellate cases under this standard;
 - c. Has observed oral argument and reviewed the appellate record in at least five appellate cases, at least one of which was an appeal from conviction of a major felony or murder;
 - d. Has significant experience in motion practice and arguments in state circuit court or federal district court;
 - e. ~~Has significant equivalent experience under Standard III, section 2.B, or W~~ **will be working under the direct supervision of an attorney who does have the requisite qualifications or experience.**

9. Appeals in Murder and Capital Murder Cases

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

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

- G. *Alternate Procedures for Meeting Minimum Qualifications.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the capitally charged financially eligible defendant. For qualification under this paragraph, attorneys:
- a. must be prescreened by a panel of experienced capital murder attorneys to ensure that they will provide competent representation; and
 - b. must have either:
 - (1) specialized ~~postgraduate~~ training in the defense of persons accused of capital crimes, or
 - (2) the availability of ongoing consultation support from other capital murder qualified attorney(s).

10. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases

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

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

11. Post-Conviction Proceedings in Murder and Capital Murder Cases

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

- A. Meets the qualifications specified in Standard IV, section 4;
- B. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- C. For capital murder cases, meets the qualifications specified in Standard IV, section 9 for co-counsel in capital appeals. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 9.
- D. *Alternate Procedures for Meeting Minimum Qualifications.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in murder and capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation to the financially eligible petitioner. For qualification under this paragraph, attorneys:

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

12. Habeas Corpus Proceedings

An attorney is qualified for appointment in habeas corpus proceedings if he or she **meets the qualifications specified in Standard IV, section 2.** ÷

- ~~A. Meets the qualifications specified in Standard IV, section 2; or~~
- B. ~~Possesses significant equivalent experience under Standard III, section 2.B.~~

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT LISTS

1. Certificate and Supplemental Questionnaire

Effective **March 1, 2007** ~~April 1, 2006~~, in order to receive an appointment to represent a financially eligible person at state expense, **unless covered under Standard III, section paragraph 2.C 2.3 of this Standard**, an attorney must have submitted a certificate of qualification together with a completed supplemental questionnaire and have been approved for inclusion on an appointment list. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards. **An attorney who has submitted a certificate prior to the March 1, 2007 effective date of these revised standards is not required to submit a new certificate unless the attorney seeks to accept appointment to cases not covered by a previous certificate, or unless submitting a new contract for execution.**

2. Submission Requirements

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. *Assigned Counsel (for all Noncontract Appointments).* Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.
- C. ~~Public Defense Organizations that certify that they will provide management and~~

oversight of attorney performance, frequent attorney trainings, and routine performance reviews in order to assure competent and adequate representation will provide, and update as needed, certificates of qualification for supervising attorneys and a list of those attorneys working under their direct supervision, along with a description of the organization's management, supervision, evaluation and training procedures: *Public Defense Organizations*. Public Defense Organizations seeking to qualify attorneys pursuant to Standard III, section 2.C, shall submit:

a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;

b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;

c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 2.C, signed by an authorized representative of the organization that states:

(1) The direct supervisor for the attorney, and

(2) The type of cases for which the attorney is eligible to receive appointment; and

d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 2.C, completed and signed by each attorney.

3. **Supporting Documentation**

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

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

4. **Appointment Lists**

A. *Review of Submitted Certificates.* OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications will be approved for inclusion on appointment lists. OPDS's goal is to select attorneys who:

- a. if possible, are more than minimally qualified,
- b. have specialized skills needed in a particular community,
- c. are available to cover cases in the appropriate geographic area,
- d. are able to meet specific needs of the court such as availability at specific times,

- e. are both effective and efficient, and/or
- f. have other qualities which would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney 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 obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, 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 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 shall notify the attorney and the court 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.

CERTIFICATE OF ATTORNEY QUALIFICATION

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:

5. Number of years and location(s) of legal practice outside Oregon:

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

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

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

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

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

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

12. List two cases by county and case number that have been tried and submitted to a jury, **or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge**, in which you served as counsel or co-counsel within the last two years.

13. ~~Are there any Oregon State Bar complaints pending against you? If yes, please explain.~~ **Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction.**

14. ~~Has the Oregon State Bar ever found you in violation of a Disciplinary Rule? If yes, please describe and cite to opinion.~~ **Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.**

15. **Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?**

165. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.

17. ~~15-16~~ Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there was one.

I certify that the above information is true and complete.

SIGNATURE

DATE

Attachment 6

PROPOSED PDSC AGENDA FOR 2007

<u>Meeting Date</u>	<u>Agenda Items</u>	<u>Location</u>
January 11	<ul style="list-style-type: none"> • [Cancel meeting to meet with legislators and prepare for service delivery plan for Death Penalty Representation] 	Salem
February 8	<ul style="list-style-type: none"> • Hold hearing on service delivery plan for Death Penalty Representation • Approve amendments to Qualification Standards • Progress report on PDSC's 2005-07 Strategic Plan • MDI Proposal for increased felony caseload 	Portland
March 8	<ul style="list-style-type: none"> • Hold hearing on service delivery plan for Death Penalty Representation • Progress report on service delivery plans for Marion County and Judicial District No. 7 	Salem
April 12	<ul style="list-style-type: none"> • [Cancel meeting to prepare Service Delivery Plan for Washington County and to complete Service Delivery Plan for Death Penalty Representation.] 	
May 20	<ul style="list-style-type: none"> • Hold hearing re a Service Delivery Plan for Washington County • Finalize the Service Delivery Plan for Death Penalty Representation 	Hillsboro
June 14	<ul style="list-style-type: none"> • Finalize the Service Delivery Plan For Washington County • Progress report on Clatsop County • Preliminary Discussion of 2007-2009 Strategic Plan 	Bend (OCDLA meeting)
July 12	<ul style="list-style-type: none"> • [Cancel meeting to prepare for Service Delivery Plan for Coos Curry Counties] 	

August 9 – 10	<ul style="list-style-type: none"> • Board Retreat • Hearing on Coos/Curry Service Delivery Plan • Discussion of PDSC 2007-2009 Budget Priorities (including plan for improvement of representation in juvenile dependency, post conviction relief and death penalty cases) • Finalize PDSC 2007-2009 Strategic Plan 	Coos Bay
September 13	<ul style="list-style-type: none"> • Further discussion of PDSC 2007-2009 Budget Priorities • Finalize Service Delivery Plan for Coos/Curry Counties • Progress Report on Service Delivery Plans for Washington County and Clatsop Counties 	Salem
October 11	<ul style="list-style-type: none"> • Finalize Service Delivery Plan for Coos/Curry Counties 	Hood River (OCDLA Mgmt Conf)
November 8	<ul style="list-style-type: none"> • Hearing re Service Delivery Plans for Umatilla/Morrow, Union/Wallowa Counties 	Pendleton
December 13	<ul style="list-style-type: none"> • Finalize Service Delivery Plan For Umatilla/Morrow, Union/Wallowa Counties • Contract Approvals 	Salem