

Members

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



Ex-Officio Member

Chief Justice Paul J. De Muniz

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, December 8, 2011
10:00 a.m. – 3:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

AGENDA

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| 1. Action Item: Approval of the Minutes of PDSC's October 21, 2011, meeting
<i>(Attachment 1)</i> | Chair Ellis |
| 2. Action Item: Commission Approval of ongoing OPDS Personnel Rule changes | Nancy Cozine
Kathryn Alyward |
| 3. 2012 PDSC Meeting Schedule and Possible Agenda Topics
<i>(Attachment 2)</i> | Chair Ellis
Commissioners |
| 4. Umatilla/Morrow Counties – Commission Discussion | Nancy Cozine
Chair Ellis |
| 5. Outline of Biennial Report to Legislature and Annual Report of ED to PDSC
<i>(Attachment 3)</i> | Nancy Cozine |
| 6. OPDS Monthly Report | OPDS Management Team |

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

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

Next meeting: The next meeting of the Commission is scheduled for January 19, 2012, 10:00 a.m. – 3:00 p.m. at the Office of Public Defense Services.

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

Official Minutes

Friday, October 21, 2011, 12:30 p.m. – 4:00 p.m.

Wildhorse Resort & Casino

72777 Highway 331, Pendleton, OR 97801

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Amy Jackson

The meeting was called to order at 12:35 p.m.

Agenda Item No. 1 Approval of the Minutes of PDSC's September 15, 2011 Meeting; Approval of the Minutes of Executive Sessions July 8, 13, 21, and 30, 2011.

Shaun McCrea moved to approve the minutes of PDSC's September 15, 2011, meeting; Chip Lazenby seconded the motion; hearing no objection, the motion carried with a unanimous vote.

Janet Stevens moved to approve the executive session minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried with a unanimous vote.

Agenda Item No. 6 Annual Performance Progress Report

Kathryn Aylward shared the annual performance progress report with Commission members. It is a report that must be submitted to Budget and Management and Legislative Fiscal Office on September 1 of every year; it was submitted by that deadline this year. There are three key performance measures.

- The first is the median number of days to file the opening brief for the appellate division – it is at 234; last year it was 226. Commission members asked about the number of days to filing; Mr. Gartlan explained that it was a direct correlation to the number of attorneys in the office. He also confirmed that the case assignment numbers per attorney are still high given the national averages, but explained some efficiencies created through adjustments to case assignment protocols. Commissioner Lazenby commented that while he appreciates the progress here and though this is a good efficiency measure, for him quality is more important than efficiency. If getting from 234 down to 210 means sacrificing quality, Commissioner Lazenby would rather have the number stay at 234.

- The second performance measure is the customer service survey, which is administered only in even years, so the report contains the same information as it did last year.
- The third KPM is best practices for boards and commissions. The PDSC is committed to achieving 100% of the best practices. The Commission reviewed those in October 2010 and met all of the requirements. The Commission will need to review these standards again sometime in the next six months, before next year's annual performance progress report. The Commission discussed the training component of this performance measure, which is provided on an as-needed basis because the current Commission members are now experienced. Chair Ellis asked about prior decisions to eliminate specific performance measures, as there were many more when they were first implemented. Ms. Aylward described the process of elimination, and confirmed that the remaining performance measures are the ones that offer the most meaning. Chair Ellis asked whether the Appellate Division solicited customer feedback from clients, similar to what is done by Mr. Arneson. Mr. Gartlan explained that AD does not survey clients, but that they do receive feedback from clients, and the office also has a formalized complaint process. Chair Ellis asked whether the client's trial attorney is surveyed. Mr. Gartlan explained that they automatically send a copy of our appellate brief to the trial attorney, which can generate feedback from the attorney; Mr. Gartlan has been fielding emails from several attorneys who are very happy with the work that AD has been doing. Chair Ellis suggested adopting a systematic process of soliciting feedback from the trial lawyer.

Agenda Item No. 2

Update on Umatilla/Morrow Service Delivery Model

General Updates

Nancy Cozine introduced the panel of representatives from the sixth judicial district: the Honorable Ronald Pahl, Presiding Judge; Kate Hansen, Deputy District Attorney; Kim Weissenfluh, Juvenile Administrator; Doug Fischer, Executive Director of Intermountain Public Defender (IPD), and Craig Childress, Contract Administrator for Blue Mountain Defenders (BMD). Ms. Cozine indicated that this jurisdiction has had many changes in a very short period of time, which has created quite a bit of flux in the system, and invited the Commission to inquire of the panel members about those changes and how the system is working in the Sixth Judicial District.

Judge Pahl explained that he is the presiding judge of the district, and has been the dependency judge for at least six or seven years. They have started appointing attorneys at the start of shelter care, which is a huge change and not an easy task. He indicated that there is a good supply of quality attorneys, and that he believes they are very qualified. The contractors figure out conflicts. Childress from Blue Mountain Defenders usually takes the child and then either IPD takes the mother or the father, unless there is a conflict, and that all has to be decided within the few hours before the hearing is set.

Chair Ellis asked about the responsiveness and timeliness of the appearances. Judge Pahl indicated that attorneys are, for the most part, timely. The attorneys usually get very short notice of the first dependency shelter hearing.

Chair Ellis mentioned the change of District Attorney. Doug Fischer explained that the situation has led to a certain amount of flux and dysfunction within the district attorney's office - for awhile as they were managed by the attorney general's office. Case filings have been sporadic; IPD will end up this contract period with a substantial underage of cases that they will try to make up during the next contract period.

Mr. Childress explained that they have had much change. They have lost two very experienced judges. Garry Reynolds was an extremely well regarded, highly

respected, highly influential judge, not only in this county but throughout the state. This jurisdiction has two new judges who were just appointed in January, and there has been a learning curve for those judges, and for attorneys, as they adapt to what the new judges want from a judicial standpoint. There is a new juvenile director; the prior director, Chuck Belford, passed away. There are two new CASA volunteers and two new CRB representatives; one of whom will start next month. There is a new DA; Mr. Prentice, who began the job in August – he has a wonderful personality and demeanor and is well equipped for the job. He has about three years of experience. Ms. Hansen is the most experienced DA in the office; she has provided continuity over the last three years while acting as the juvenile prosecutor. Her experience, as well as her style, changed a lot of the problems that were recurring due to an adversarial relationship with the DA’s office; that has smoothed out since Ms. Hansen has been the juvenile prosecutor. There is also a new police chief - the former chief was accused of having a “climate of fear,” an organization with bullying. All of these kinds of things have caused flux.

Chair Ellis asked about the size of IPD and BMD – IPD has eight lawyers, and BMD has seven lawyers. Both entities are fairly stable, with low turnover in recent years. Chair Ellis requested information about the composition, training, and practices of each entity.

Intermountain Public Defender

Attorneys within IPD do not specialize in a particular area; everyone takes all case types. They have moved more toward a one-on-one mentoring training model over the last couple of years, and take advantage of everything that OCDLA has to offer in terms of their trial practice seminar and new lawyer seminar.

Commissioner Ozanne asked for an update on an issue mentioned in the 2009 report: attorneys who weren’t qualified to handle major felony cases getting serious felony cases on the delinquency side. Mr. Fischer indicated that they did address that within their office, and that it is no longer a problem.

Commissioner Ozanne asked whether either entity had availed itself of the MPD invitation to attend MPD trainings, noting that the 2009 report identified that as a possibility. Doug Fischer indicated that they have had only one person brought in since that invitation was made and it hasn’t worked out for them to attend MPD training, but explained that they have availed themselves of the ongoing training offered through OCDLA conferences.

Commissioner Ozanne asked about internal training – lunches, or shared trainings between the two groups. Mr. Fischer indicated that they meet constantly within the office in terms of discussion of cases and exchanges, and that they ensure that attorneys have access to all the publications that they need.

IPD does have an Hispanic lawyer and an Hispanic investigator; both are bilingual.

Commissioner Potter asked Mr. Fischer about recent lack of turnover within the organization, and whether that was related to pay. Mr. Fischer indicated that he believes they are on par with the DA’s office in pay now. He also attributes the stability to the current job market.

Blue Mountain Defender

Five of the seven lawyers take the majority of cases. Mr. Childress explained that in BMD all members are in private practice. Some members are more reliant on criminal practice; others are more active, have a higher caseload and don’t need court appointments; some don’t want to do certain types of cases or categories of cases; and some take cases in certain geographic regions. Most members are solo practitioners; two of them are in multiple law firms, but the individual is in the consortium. As a result, BMD doesn’t have much of a problem finding a conflict free attorney.

Chair Ellis asked about the five lawyers who do the bulk of the work, wondering what percentage of their practice is criminal. Mr. Childress said that it varies, but is around 50 percent. For Mr. Childress, it is 100 percent. Chair Ellis indicated that it had been PDSC's intention to encourage more concentration on criminal practice within consortia because criminal law is a very sophisticated area of the law, and asked whether the group is too diluted that way. Mr. Childress says that all of the lawyers are quite sophisticated, experienced, and exposed to criminal law. Several of them trained with Mr. Fischer at Intermountain Public Defender, have been in a DA's office, or both; these contractors have primarily worked within criminal defense and want to continue that practice in addition to their other work.

Chair Ellis asked about the logic of continuing the two lawyers who don't take as many cases. Mr. Childress indicated that it is helpful for conflicts and serious cases. Because BMD takes conflict cases, they get a lot more Measure 11's, and an awful lot of difficult to manage clients who have fired or are unhappy with their other attorney, and can't be pleased. BMD also gets a lot of drug cases where there are multiple people in a drug house.

Mr. Childress commented that they don't get many conflicts in juvenile court or misdemeanor cases; that the charging practices have changed over the years and there aren't as many misdemeanors filed as there were four or five years ago. The probation violation practice has changed dramatically as well; over the course of two years, 100 or 200 fewer probation violation cases means quite a few thousand dollars. The juvenile caseload has remained consistent and healthy, but conflict cases are down about 20% from what they use to be.

BMD does have a board, but it is very loose and needs to be corrected or amended – it was just recently constituted to meet OPDS policy. The board will meet in December to iron out specific policies and definitions and decide what they are going to do and who is going to do what. It is a nine person board; four of the people are from outside of the consortium. Five of them are either lawyers or employed by the consortium. Mr. Childress explained that judges know that they can come to him if they have a complaint. He then works with the attorney to try to correct whatever the situation is that is being complained about; they meet monthly to talk about general issues and cases, and complaints would be one of the things discussed. Cases can be reassigned to other people within the consortium. With regard to training, each member is responsible for their own training; most are members of OCDLA.

Those who practice juvenile law with BMD keep up with training requirements. There are about 16 hours of juvenile training available every two years. BMD tries to encourage and pay for, for instance, the juvenile training academy that was held last week, because that is a low tuition and a high quality training. Other trainings members try to attend are the road show, model court training, Oregon State Bar CLEs, or OCDLA conferences that have a juvenile component. Several members also attended the "Through the eyes of a child" conference held in Salem last August. The juvenile part is a priority because BMD gets two clients in every one juvenile case, while IPD gets one because of the unit rule.

Chair Ellis asked about Blue Mountain's process for admitting additional members. Mr. Childress indicated that they don't get to ask much because most of the attorneys have either contracts or business law, and don't do criminal law. When approached, Mr. Childress explains what the expectations are regarding quality, and says that they do insist that the lawyer be qualified.

BMD does not have any bilingual lawyers in the consortium, nor does it have a Native American or Hispanic lawyer.

Commissioner Ozanne asked whether Mr. Childress is personally participating in the Juvenile Court Improvement Program; Mr. Childress indicated that he is, and has always done so, since the inception of the program. Mr. Childress explained that Judge Pahl is the head of JCIP in the Sixth Judicial District, and that they are lucky he is there, as he has been a source of continuity.

Drug Court

Judge Pahl provided an overview of the drug court, for which IPD normally provides representation, and described it as a “work in progress.” There are two separate courts, one in Hermiston and one in Pendleton. These courts are unique, and cases are handled very differently than in regular criminal court - more hands-on, more relaxed. They are working on the processes with attorneys because there are some deficiencies in representation when defendants are sanctioned in court; they may not have an attorney at that time. Mr. Fischer has been working on trying to be more involved in that conversation.

When the program started, the drug court defendants plead up front on a case and then go through treatment, like a diversion. Now the drug court gets people coming out of prison on post-prison supervision. There are a lot of Measure 57, drug and property offenders who failed probation, or are facing prison, and instead of that, are now put in drug court. Judge Pahl shared that this is an issue for judges all over the state; massive numbers of people have come into drug courts. They may have had 20 people at one time, and then all of a sudden they have 70 people in each court. The number goes up and down, but the increase is due to the high volume of people coming in from probation; either their probation is going to be revoked, or they are coming in as a condition of post-prison supervision.

Prison Cases

Chair Ellis asked about the high number of cases in the Sixth Judicial District that arise in a prison setting. Mr. Childress explained that there are two prisons; both of them at about 1,600 for capacity. There are many crimes of contraband and other crimes that occur within the prison and must be adjudicated or processed in Umatilla County. Sometimes the defendants get transferred to Snake River; then the initial arraignment happens through video connection with the prison and the courts. Mr. Fischer almost always gets the appointment at first. Those are very difficult to manage; not only to meet the expectations of the court and their timelines, but also to ensure adequate representation, because the defendants are incarcerated and it is difficult to have appropriate attorney/client contact.

Juvenile Delinquency

Nancy Cozine explained that she spoke with some panel members prior to the Commission’s visit, and thought the panel might want to share information about their juvenile delinquency practices. In the 2009 report, there was an indication that the Juvenile Detention Alternatives Initiative (JDAI) program was being implemented in Umatilla County, and that they had hoped it would help alleviate the need for custody space for juveniles. The 2009 report indicated that the introduction of JDAI was, in fact, successful, and that it was reducing the number of youth held prior to adjudication. During telephone interviews, Ms. Cozine had the impression that now more kids are being held. The local detention facility was closed back in 2009, so kids are being held in custody in either Wallowa or The Dalles, which makes it harder for counsel to maintain contact. In addition, most often, the majority of these kids are facing either a sex crime allegation or a potential commitment to OYA because of a prior adjudication history. Most of those kids have not had counsel in the prior cases. There is a tendency to appoint counsel on the more serious cases and not so much on the less serious cases, where kids may be waiving counsel. This pattern was described in the 2009 report, and seems consistent.

Mr. Childress indicated that both at Wallowa and at The Dalles, detention staff make the telephone available, and are very cooperative in trying to get the juvenile to call, and receive calls, from his attorney; this includes after hours and on weekends. Also,

the juvenile department has been very good at transporting them to court for substantive hearings, or for face to face meetings.

Mr. Childress explained that the process for appointment of counsel includes review of a something called a “certificate of constitutionality” (or similar). The parents and the children meet with the juvenile department; then they sign off on a certificate stating whether or not they want counsel. When they appear before the court for the formal, first appearance, the court reviews the certificate of counsel with the parent and the child. If they consent to the waiver then the court goes from there. If they don’t, if they ask for a lawyer, the judge appoints them a lawyer. Mr. Childress suspects that the parents encourage their children to waive counsel because they are under the impression, either told or not, that they are going to have to pay for counsel. The parents don’t want to pay the bill, whether they are innocent or guilty, and it seems that kids are often waiving counsel for the wrong reason. Mr. Childress suggested that perhaps it would be better to appoint counsel more freely, because though it works out nice the first couple of times early on - they are just put on probation and do a little community service - then all of sudden they are in detention and the juvenile department, because they are tired of the kid and they don’t have local resources, are recommending a commitment to OYA, the youth correctional facility. At that point counsel is appointed, but the client is already a sex offender or has some record, and it is hard to argue on their behalf for any option other than what the juvenile department has already recommended. Mr. Fischer agreed, and indicated that the court is inquiring more during appearances for unrepresented juveniles about whether their desire to proceed without an attorney was made knowingly and voluntarily, and suggested that the court is doing what it can and should do in terms of ensuring counsel when it is appropriate.

Commissioner Lazenby asked whether it is being made clear that appointment of a lawyer is something that could be beneficial to the child, and asked whether steps were taken to impress upon the child and their parents the importance of having counsel early. Kim Weissenfluh indicated that her team members are the ones who read kids their rights at the start of a case. She clarified that they do not speak to the parents about the costs. She says that they read them their rights and if there is any indication that a parent is advocating for the kid not to get the attorney based on the money, then they go to court and ask Judge Pahl to waive the fees, if that is the issue. Ms. Weissenfluh explained that she has been in the juvenile department in Umatilla County for 13 years, and when she first started, any kid who wanted an attorney got one with no parent verification. It was very simple. The courts have changed that, and now the parents do have to go through verification. The Juvenile Department has asked for that to not be the case, but it continues. Judge Pahl, on an individual basis, will waive fees; Ms. Weissenfluh cannot remember a case where he has not waived fees if asked. Ms. Weissenfluh does not feel that that is an issue. Kate Hansen noted that there are times, as well, when the constitutional rights certificate is read in court on the record, so it is not entirely happening off the record.

Ms. Weissenfluh also shared that in Umatilla County, there are fewer kids in custody now than when the local detention facility was open. The Juvenile Department makes every effort to transport clients to the attorney’s offices, brings them to court, and offers to arrange appearances through video conferencing. Attorneys have access to Wallowa and Norcor and can visit in a private room; some attorneys take advantage of that opportunity, some do not and they choose to meet with them in court.

As far as waiting to get kids an attorney until the Juvenile Department is recommending placement in an OYA facility, Ms. Weissenfluh suggested that though they used to do that, through the JDAI grant and work within the COJACK region, they have developed sanctions and a model on how to progress on cases. One of the goals is getting the attorneys involved sooner and having more review hearings, so the attorneys are aware as the Juvenile Department makes progress on small technical violations. Ms. Weissenfluh does not believe that a juvenile has been

committed to the Oregon Youth Authority on a technical violation in quite some time.

Ms. Weissenfluh further indicated that they would like the defense to be looking at the issue of competency. They have more and more kids slipping through that first level, and once they start working with them, competency is really questioned. They see more kids who have developmental delays, and drug and alcohol effects; kids who have attachment disorders, and who maybe could be dealt with outside of the juvenile justice system. Both IPD and BMD are wonderful about letting the juvenile department work with kids up front and trying to ascertain that information, and if the juvenile department happens to see it the attorneys have been more than willing to participate and partner with the juvenile department in making sure that the kids are competent. But this is becoming more and more of an issue, and attorneys are, of course, more qualified to make a judgment regarding competency.

Chair's Request for Feedback Regarding PDSC, OPDS, & Contractors

Chair Ellis asked whether the PDSC could do a better job, and how contractors feel about the relationship between their offices, OPDS, and the PDSC. Mr. Childress said that he hasn't had any problems with OPDS, other than an occasional denied non-routine expense request, which is to be expected. Mr. Fischer concurred, but indicated that OPDS could help by establishing a group for the non-profit public defenders to work together to identify and recruit available applicants. Chair Ellis indicated a desire to have OPDS take steps to encourage that.

Chair Ellis asked whether the District Attorney's office or Juvenile Department had anything to add; any observations about how the system is working, whether the quality of defense service is what it should be, whether the defense providers are timely, professional, and competent. Ms. Hansen expressed an interest in having a little more punctuality at 9:00 a.m. on Wednesday mornings. Mr. Fischer explained that Wednesday is generally juvenile court day and everything is scheduled at 9:00; they must prioritize hearings and it places a strain on the office.

Chair Ellis asked whether there was a criminal justice coordinating council of some kind. Mr. Fischer explained that they have a public safety coordinator but no criminal justice coordinator. Mr. Childress added that there is no central docketing either; only individual docketing. Consequently, for instance, at 9:00 on Wednesday an attorney could be booked in one of four other courts. Individual attorneys in the consortium can't just hand the file off to another consortium member.

Judge Pahl commented that communication and feedback is always good, and that, like Mr. Lazenby stated for the Commission, the court values quality over quantity. Judge Pahl would like quality attorneys in the courtroom that do the best they can either defending or prosecuting. He believes they are moving in the right direction, stating that they all want perfect justice, and though they may not achieve it every day, it is the goal.

Commissioner Potter asked the panel about any problems looming on the horizon, and whether this area has a population increase projected. All agreed that a population increase is not likely. Commissioner Lazenby asked whether there are more interpreters now than there were at the time of the 2009 report, which indicated there were only one or two Spanish speaking interpreters working in the entire system. All agreed that it is still the same – two interpreters. Mr. Childress says that it is very difficult to schedule them because their first allegiance is to the courts, and contractors have access only during hours the interpreters are not in court.

Agenda Item No. 3

Staff Recommendation to Approve Capital Contracts

Kathryn Aylward began by noting the following variations from the staff recommendations presented at the last meeting. On line 10, the number of hours for Jenny Cooke should be 2,760 at \$96 an hour. Line 19, Patrick Sweeney –his contract is a 90% contract rather than a 50% of full-time because he took some of the

work that had been Mr. Reiki's. In terms of the mitigation/investigation contracts, Jackie Page, line 3, requested that her contact stay at 900 hours per year rather than staff's original recommendation of 1,350 hours. Line 11, Rhonda Coats - she had originally bid \$49 per hour, but later realized she needed \$54 an hour to cover some insurance requirements.

Commissioner McCrea asked about line 6 on the mitigation services; Ms. Aylward indicated that there was not a change in the amount on that line, and confirmed that the provider did contact the Commission to request a change in the hourly rate. Chair Ellis asked Ms. Aylward to comment on why the rate is less than others. Ms. Aylward explained that, as explained during the last Commission meeting, that was the amount that was bid. Ms. Aylward expressed her understanding of the Commission's directive, which has not historically supported contracting for an amount greater than the bid amount in order to make that contractor closer to everyone else.

Commissioner Ozanne suggested that in the death penalty area, all providers should receive the same amount - all attorneys should receive the same rate, and all mitigation experts should receive the same rate. He expressed the view that these are our most serious cases and the most experienced attorneys, and that the current approach is terrible for morale.

Commissioner Ozanne moved to change the rate for attorneys to make it \$97 an hour for all lawyers, and \$59 per hour for all mitigation services. Commissioner Stevens expressed concern about a model that assumes that all lawyers and all mitigators are equal and therefore worth equal money, because it is probably not very accurate. She asserted that if there are variations in skill and experience and quality of service provided, a model with a uniform contract amount could encourage better people not to do their best jobs. Commissioner Ozanne agreed, but also noted that the current differentiation is not quality based. Commissioner Stevens felt that a switch to a uniform amount now could make it impossible to adopt a quality-based approach in the future. Commissioner Lazenby suggested that the Commission is entering into a place where they are going to become more demanding and much more particular about what they consider to be quality representation. Commissioner Potter questioned whether the current rate variation was justifiable.

Ms. Aylward explained that some providers are paid \$97 an hour because they have more of an emphasis on post conviction relief, capital cases. The \$91 rates reflect a small increase for providers who maintain an office with employees, and that though it should be much higher, there aren't the funds to do it.

Chair Ellis expressed concern about deciding, on an ad hoc basis, to override what staff has recommended without a level of review and understanding about how much money that involves. Commissioner Potter suggested that it would be helpful to have a key on the bottom of the chart explaining what the different amounts mean - that \$97 equals death penalty plus PCR; \$90 equals death penalty without an office; and \$91 equals death penalty with an office. Commissioner Potter also expressed dissatisfaction with the mitigation contract differences of \$44 and \$59, and suggested that he would like reconsideration of at least that issue.

Chair Ellis asked whether the individuals who are receiving one year contracts to do death penalty work have some understanding of the intended process and approach. Ms. Aylward indicated that she had spoken to each one personally; that they understand that there is going to be a review, that Paul Levy is going to spearhead the effort, and that after reviews the office will make a determination about whether they should be extended a second year. Paul Levy explained that OPDS envisions a process that is very much like the peer review process. If the Commission approves this structure, the review will be initiated fairly shortly with a letter to the five contractors describing the process and requested responses. It will entail a review of pleadings, transcripts where available, in court observations where possible, and then

interviews with sources who are fairly knowledgeable with their work. Co-counsel, investigators, prosecutors, judges – providers will need to provide the names of people to whom they think OPDS should be speaking. The review will also entail input from well-respected peers (either directly or as a resource) who don't have an interest in that particular contract, but who have an interest in quality representation in capital work. A draft report will be provided to the lawyers for their input prior to finalization of the report. Concurrent with this, OPDS wants to be looking more broadly at representation in capital cases and not just focusing exclusively on the small group of people.

Commissioner Potter clarified that it was his understanding that the review process would serve as a model that would be applied eventually to all of the death penalty providers, much as OPDS worked through all the trial court and juvenile contracts.

Commissioner Ozanne requested confirmation that the \$90 rate is for a death penalty lawyer without an office; Ms. Aylward confirmed, but noted that most people bid more like \$92 or \$95, and the difference between where they ended up was whether or not they were maintaining an office. Ms. Aylward recommended that if the Commission wishes to move to an administrative contract amount model, that be something that is built into the next contracting cycle. Commissioner Lazenby suggested that the Commission needs to start developing some really crisp and clear criteria about what they want to pay for, and what they consider to be quality representation, both substantively and objectively, so that they can pay people for the quality work that they do.

Commissioner Ozanne asked about the cost of changing contracts to \$97 (death penalty) and \$59 (mitigation), estimating that it appears to be well south of a million; probably around \$500,000. Ms. Aylward explained that OPDS will already be operating in the red if it doesn't get the 3.5% hold back in February.

Steve Gorham offered two comments. First, regarding contract rates, he explained that when negotiating, providers always fear that if they bid too high OPDS will not contract with them. Mr. Gorham explained that he has an office and limited staff, but when bidding, said he would like \$91 but he would accept \$90, and now his contract rate is \$90, even though he has an office and staff. Mr. Gorham also commented on the review of death penalty providers and the one year contracts, indicating that he was talking for everybody who got a one year contract except Ralph Smith (because he was unable to talk to Ralph Smith). They were all kind of surprised to get the phone call from Kathryn, in which they were told that there were concerns about them. When Mr. Gorham asked what those concerns were, he was told they were confidential; he expressed a belief that they should be told in general what the concerns are. He also indicated that he understood that eventually every death penalty provider would be reviewed, and that the five who are being evaluated first would prefer two year contracts. He also asked that the Commission be involved with the evaluation process - maybe review and vote on the process to ensure that it is a fair process, because the way it came about doesn't seem that fair.

Mr. Levy clarified that the providers will have the opportunity to comment on the report, and agreed that it would not be fair or appropriate to produce a report alleging concerns about the representation without explaining the concerns.

Chair Ellis suggested that the Commission consider the lawyer and the mitigation contracts separately.

MOTION: Commissioner Stevens moved to approve the list and recommended payments provided by staff for death penalty lawyers. Chair Ellis seconded the motion.

Commissioner Ozanne moved to amend the motion, raising rates for lawyers to \$97 an hour across the board; Commissioner McCrea seconded the motion to amend.

Commissioner Potter requested further clarification regarding the differences in rates; Ms. Aylward provided additional explanation. Commission members discussed estimated costs associated with an across the board increase in rates to \$97 per hour, and agreed that it was difficult to determine without further review of the numbers, and that it might range from \$500,000 to \$800,000. Commissioner McCrea expressed concern about the state's rate in comparison to the federal hourly rate of \$125 per hour. She also expressed concern that a blanket raise to \$97 an hour could put the Commission in a different position vis-a-vis these reviews of the contracts. Chair Ellis expressed a preference to support the current recommendations, with a goal of change in the future. Commissioner Stevens suggested that finding the money to make this work could be difficult in the current budget environment.

Commissioner Lazenby suggested that there is significant movement going on right now to rekindle the conversation in Oregon around the death penalty and its cost, and cautioned that it would be a detriment to the public debate that is going to start if we can't justify what that number is about. He encouraged the Commission to hold off with the hope that it could get closer to the \$125 than even \$97 if we have quality criteria in the future. Commissioner Ozanne expressed concern that such an expectation places a burden on the Commission that it will never meet, because they will have to wait until the staff produces the work up. Commissioner Ozanne offered his thoughts on potential efficiencies to find the additional money necessary to increase the rates, but offered to withdraw his motion, sensing that the Commission has too many concerns about increasing the rates at this time.

The Commission voted in favor of the main motion – staff recommendations in death penalty contracts – with a vote of **4-2**.

MOTION: Commissioner Lazenby moved to approve the mitigation contracts; Janet Stevens seconded the motion. Commissioner Potter moved to amend that line 6 and line 11 be moved to \$59 an hour. Shaun McCrea seconded the motion.

Commissioner Lazenby noted that this motion to amend involved a much more manageable cost differential.

The Commission voted in favor of that motion to amend, with a vote of **4-2**. The main motion as amended passed with a vote of **6-0**.

Agenda Item No. 7

Budget Update and Approval of OPDS 2011-13 Compensation Plan

Nancy Cozine directed the Commission members to the proposed compensation plan in the Commission meeting materials, and gave an overview of the current budget environment. The Legislative Fiscal Office has requested that agencies submit a plan to reduce budgets by 10.5%, with the reductions taken in 3.5% increments. OPDS continues to hear that the legislature will be hard pressed to authorize release of the 3.5% hold back in February. There will be another forecast coming out in November, which should provide a better idea of where things will land. OPDS is in a different position than some other state agencies, and remains hopeful that in February the legislature will authorize expenditure of the holdback. Still, OPDS has been told to be prepared for the possibility of not receiving the 3.5%, and will need to estimate the number of days during which OPDS could not provide counsel if funds were reduced. Ms. Aylward added that the reduction options need to be submitted by mid-November, and confirmed that the Commission's direction regarding cuts to the account is to estimate the number of days during which OPDS will not have funds to pay for attorney appointments. Ms. Aylward also clarified that reductions from the account and the OPDS operating funds are separate; any changes in the compensation plan for our operating budget do not come out of the account.

Ms. Aylward went on to describe the proposed OPDS compensation plan, noting that it was built after examination of what the Judicial Department and executive branch implemented. The OPDS compensation plan includes:

- An across the board 1.5% cost of living adjustment effective December 1 of this year, and a 1.45% cost of living adjustment in the second year on December 1, 2012.
- Merit increases will have steps frozen in the second year of the biennium.
- The benefit contribution is also the same as with executive and judicial; employees will be asked to contribute 3% toward the premium of their health insurance. In calendar year 2013, that contribution goes up to 5%. There is a subsidy for employees who make less than \$3,000 a month. They get a \$30 subsidy toward the contribution of their health insurance premium.
- 8 – 14 furlough days, with eight fixed days to track days being taken by the Judicial Department. Commission members asked about the scheduling of furlough days, and asked whether staff had been consulted. Ms. Cozine explained that there was a meeting with staff, and that the meeting went well.

Ms. Aylward also requested a reclassification adjustment for OPDS analysts to track changes made within the Judicial Department, where analyst positions were analyzed and reclassified. Ms. Aylward explained that this was a critical step necessary for retention of trained staff.

Commissioner Ozanne asked about the dollar value of cost of living increases and analyst reclassification. The COLAs would be for this coming biennium \$148,000 all together for that first 1.5% COLA. The 1.45% COLA would be about \$53,000, but that is offset by the savings from furloughs which would be about \$193,000. Analyst increases would be between \$10,000 and \$15,000 for the biennium. The total cost of the compensation plan is around \$210,000.

MOTION: Commissioner Potter moved to approve the compensation plan; Janet Stevens seconded the motion; hearing no objection; the motion carried: **VOTE 4-2.** Peter Ozanne and Chip Lazenby voted no.

Agenda Item No. OPDS Monthly Report

Peter Gartlan gave a report for the Appellate Division (AD), which is currently updating its employee manual for appellate division employees. This is the current operating manual for every attorney, and it is moving to include the secretary positions. AD extended offers to two attorneys to join the JAS unit, the Juvenile Appellate Section Unit, and they have accepted. One is Valerie Colas, who is currently with Oregon Law Center. The other is Matthew Bender. Matthew is practicing in Washington. Shannon Storey is the senior deputy that runs that unit. That unit has been doing really well. They had a juvenile academy last week, and the office is getting favorable feedback about presentations given by OPDS attorneys.

Agenda Item No. PDSC Schedule for 2012

The Commission approved all proposed dates, but moved January 12 to January 19, 2012. All meetings are for Thursdays but for the one in October, which is on a Friday.

Agenda Item No. 10 Update Regarding Agency Strategic Plan

Nancy Cozine explained that the strategic plan for 09-11 has nine goals:

- To secure a budget sufficient to accomplish PDSC's mission.
- To assure continued availability of qualified public defense providers.
- To assure quality of public defense services performed by private providers.

- To strengthen the contract and business services contracting process in business services.
- To strengthen working relationships with public defense contractors.
- To continue to provide high quality representation in appellate cases, training, and support for the state's entire public defense system through OPDS appellate division.
- To continue to strengthen the management of OPDS.
- To promote the diversity and cultural competence of Oregon's public defense work force.
- To ensure that PDSC and OPDS hold themselves accountable to the client.

All the goals seem in line with everything that the Commission has expressed is desirable. The strategies within each one need to be examined and adjusted.

The management team would like to look at the Quality Assurance Task Force and the service delivery review models to see whether there are efficiencies available in those processes, looking specifically at confidentiality of QATF reports. The management team will look at strategies under each of the goals to try to align them, with the Commission's approval, to something that would change that structure a bit. The other suggestion from the contractor advisory committee meeting was to look at scaling back on the number of service delivery reviews because OPDS has done one now in almost every judicial district.

Ms. Cozine explained that at some point the strategic plan should receive a thorough review and redraft, but for right now, staff would like to retain the current goals and look at modifying the strategies.

Commissioner Lazenby suggested cycling each goal through on the Commission's agenda, one at a time, to share thinking and get input.

Meeting Adjourned at 3:30 p.m.

PUBLIC DEFENSE SERVICES COMMISSION
UNOFFICIAL EDITED TRANSCRIPT

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

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Peter Gartlan
Paul Levy
Billy Strehlow
Amy Jackson

The meeting was called to order at 12:35 p.m.

Agenda Item No. 1 Approval of the Minutes of PDSC's September 15, 2011 Meeting; Approval of the Minutes of Executive Sessions July 8, 13, 21, and 30, 2011.

0:07 Chair Ellis The meeting of the Public Defense Services Commission will come to order. The first item is approval of the minutes of the September 15, 2011, meeting. Are there any additions or corrections? If not, I would entertain a motion to approve.
MOTION: Shaun McCrea moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

0:32 Chair Ellis These are a little bit delayed but we need to approve the minutes of the executive sessions of July 8, 13, 21, and 30.

0:45 S. McCrea Such as they are.

0:47 Chair Ellis Well, they are very executive and prepared by your chair. So is there a motion to approve the minutes of those execution sessions?
MOTION: Janet Stevens moved to approve the executive session minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

1:14 Chair Ellis Should we move to the monthly report? That might be something that we could do now and then our guests will come.

1:30 N. Cozine That or Kathryn does suggest No. 6 as an option as well; No. 10 as another option.

Agenda Item No. 6 Annual Performance Progress Report

1:38 Chair Ellis Okay. We will start with no. 6, the Annual Performance Progress Report.

1:46 K. Aylward Thank you, Mr. Chair. We are sharing the annual performance progress report. It is required to be submitted to Budget and Management and Legislative Fiscal Office on

September 1 of every year. We did do that. We have only three key performance measures now. One of them is the median number of days to file the opening brief for the appellate division. We are – it is close enough. We are at 234. Last year it was 226. It is in the ballpark; it can fluctuate randomly a little bit. The other two key performance measures are the customer service survey, which we only administer every two years and this is an off year, so what you see in the report is exactly the same as what was in our report last year. The third one is ...

- 2:50 Chair Ellis Are the quotes refreshed?
- 2:52 K. Aylward No. They were such good ones that I left them in there. I want them to be immortalized. The third one is best practices for boards and commissions. As you know we have committed to having this Commission achieve 100% of the best practices. The Commission reviewed – you may remember at your meeting in October, 2010, you went through the list and met all of the requirements. That is what is in this report is based on the 2010 review. Sometime in the next six months we will have to address that again before next year's annual performance progress report.
- 3:30 Chair Ellis It sticks in my memory that there was one of those that was kind of like an egg on end.
- 3:33 K. Aylward The training component – that Commission members receive sufficient training to know how to be a Commission member. As you will recall Paul Levy provided some training on ethical requirements. Hopefully it will be on an as needed basis for different topics that come up. I think maybe the Commission might want to think about just a little starter crash course for new Commission members, but a lot of you have been Commission members for long enough that you – you know how to do it.
- 4:08 Chair Ellis Early training still counts and OTJ training counts?
- 4:14 K. Aylward Absolutely. We are presenting this to you because we are required to do so, but it is not an action item. You don't have to vote on it.
- 4:24 Chair Ellis This might best be addressed to Pete. I like the trend on our filing times but we always had the opening brief filing. I am interested in how our progress compares to the DOJ filing of their answering briefs?
- 4:45 P. Gartlan We tend to file, and the AG was slower than us, and has been a little bit slower than us for the past two years or so. Then when you add on the combination of backlogs to the Court of Appeals, it is ironic that we are almost where we were four or five years ago. When you look at the total length, we are still at that two year length. Now the delays are attributable to different parts of the system. Am I making sense?
- 5:22 Chair Ellis You may be making sense. I am not sure I am getting the comparison.
- 5:31 P. Gartlan We are about the same. I think the AG is a little bit behind us in filing.
- 5:39 Chair Ellis What do you see that we can do to improve it?
- 5:41 P. Gartlan It is always a matter of resources and attorneys. If you remember several years ago we were filing at 350 days at the transcript settlement. That is just filing the opening brief and because of the new attorney positions that we received over the last several biennium we have been able to reduce that to where it is now. It is now about 230 or 235 days. It is directly correlates to the number of attorneys that we have.
- 6:15 Chair Ellis Okay.

6:22 S. McCrea And you still have a really high case assignment. I mean 55 in 2011 as compared to what the recommendation is and what it is recommended in other places. It is pretty impressive to reduce the number of days for filing.

6:35 P. Gartlan What we have done also is kind of allocate special projects. Those cases include the 2351 cases, the guilty plea, probation review cases, so cases with shorter transcripts and also cases that you have to identify a colorable claim of error to even file a notice of appeal. Those take a lot of processing up front to determine whether or not we are going to file a notice of appeal. We have dedicated one attorney to handling all of those cases. In past years we had distributed that caseload out to all of the attorneys. Now we have centralized them with one attorney. That one attorney is doing the ground work to determine whether or not this is a case where we can file a notice of appeal. We have created some internal efficiencies.

7:33 S. McCrea Good.

7:36 Chair Ellis Do you keep similar data on reply briefs?

7:40 P. Gartlan On our reply briefs? The number of reply briefs?

7:44 Chair Ellis No; over time, whether our time for filing reply briefs after receiving an answering brief is shrinking?

7:55 P. Gartlan A reply brief is not a matter of right in criminal cases. One has to move in order to file a reply brief. When we do there are time limits for filing; those are shorter court imposed time limits for filing a reply brief.

8:19 Chair Ellis I think I hear you saying the reply briefs, when they are filed, are not a big factor in the delay to case getting ready for hearing.

8:31 P. Gartlan No; we tend to be selective with respect to when to file a reply brief. We are not filing so many reply briefs that it affects the filing of other briefs in other cases.

8:45 Chair Ellis Kathryn, there is one other question that I had. It used to be that there were at least six or seven of these KPM's and we are now down to three. Why is that and is that a positive thing or just the way it worked out?

9:02 K. Aylward Well, the original key performance measures, as Commissioner Ozanne will remember, we developed over a lot of time. We worked with the Joint Legislative Audit Committee. Because we were a new agency, we had no track record of anything that had been measured previously. It was difficult to come up with things that actually measured outcomes not outputs. We spent a lot of time and we tracked some of the key performance measures. Then after a few years we looked and said, "This isn't useful. This doesn't tell us anything." We worked with Legislative Fiscal Office and they said if it is not useful and it is taking resources to track you don't need it. Then we got down to just the three that we have now.

9:46 C. Lazenby Remind me what are the key measures that we discarded under that?

9:52 K. Aylward We discarded number of business days to process a payment. A percentage had to be less than 10 business days. We had one that was something to do with the percentage of complaints that were founded versus unfounded. We had another one that applied to how quickly we responded to – I don't know it was the percentage of non-routine expense requests that were denied. All of those things as people learn what will and won't be allowed as an expense, they tailor their requests towards that and therefore fewer get denied. It doesn't mean that we are not scrutinizing them as well. They just weren't good measures.

10:38 Chair Ellis I know one of our contractors who is very outstanding is Jim Arneson. He makes quite an effort to get client feedback. Do we make any effort to do that?

10:53 K. Aylward Only to the extent that we have a process for taking complaints from clients. Those go through Paul Levy. But beyond that we haven't attempted any direct survey or questionnaire.

11:10 Chair Ellis It actually fits AD more.

11:14 P. Gartlan We do not survey our clients after the representation is over to ask them whether or not they were pleased. We get anecdotal – we even get feedback, but we haven't generated that feedback. It comes from the clients who volunteer that they are happy or not happy.

11:33 Chair Ellis I recognize in the work you do it may be hard for clients to objectively evaluate it, but do you ever go back to the trial lawyers whose cases you have handled on appeal to get any reaction?

11:51 P. Gartlan What we do is automatically send a copy of our appellate brief to the trial attorney when we file it. That is automatic now and so that can generate feedback from the attorney. I have been fielding emails from several attorneys who are very happy with the work that we have been doing.

12:14 Chair Ellis It might be something that you might consider that more systematically seeks input from the trial lawyers from whom you take cases. They are in a position to react to it.

12:33 P. Gartlan I agree. I was also thinking about checking with the bar and just finding out the number of complaints and tracking them year by year.

12:46 Chair Ellis That is the pathology side. I am looking for more comprehensive data.

12:57 P. Gartlan We do contact the courts when we do evaluations. I get kind of regular and formalized feedback from the courts with respect to the quality.

13:07 Chair Ellis On your lawyers that argue?

13:08 P. Gartlan Yes.

13:09 Chair Ellis I think that is useful, but you might give some thought to try to systematically get any comments or observations from the trial lawyers.

13:19 P. Gartlan Okay.

13:24 Chair Ellis Anything else on item no. 6?

13:26 C. Lazenby Just a comment because I was around when all these performance measures got there and I think the progress Peter that you have all made in reducing the time for filing is really good. That is a good efficiency measure, but speaking for me as a commissioner quality is more important than efficiency. If getting from 234 down to 210 means we are sacrificing quality, I would rather have us stay at 234. I do appreciate the progress that you have made.

13:55 P. Gartlan Thank you.

14:00 Chair Ellis Okay. What is your next candidate?

Agenda Item No. 2 Update on Umatilla/Morrow Service Delivery Model

14:05 N. Cozine I believe we have a full panel from the sixth judicial district. They are going to provide you with information about their jurisdiction. If you would all be kind enough to come up and have a seat. While they are getting settled I will provide a

little bit of information. We have the Honorable Ronald Pahl who is the presiding judge from Umatilla County. We have Kate Hansen who is a deputy district attorney. Kim Weissenfluh who is the juvenile director, although I think in your county they call it the administrator. We have Doug Fischer and Craig Childress who are our contractors in this jurisdiction. I was able to speak over the telephone with several people before I came. I have some pieces of information on parts of the system. I think the biggest thing for you to know is that there have been many changes. I am sure that they will all tell you about that. It has been many changes in a very, very short period, which has created quite a bit of flux in the system. I think you will be interested to hear what they have to say about that. I have some additional details that, maybe as we delve into the various areas, you know, drug court, dependency, and delinquency I can offer some of those pieces if they aren't coming out through the panel. I think everyone has a wealth of information to offer the Commission.

- 15:45 Chair Ellis Judge, are you the leader here?
- 15:48 J. Pahl I end up in that position a lot whether I am a leader or not. I can say we were a little late getting here because three of us were in a shelter care hearing that ran into the lunch hour. I have been the main dependency court judge. I am also the presiding judge of the district. I have been the dependency judge for six or seven years at least. I have seen a lot of changes over that time. During that time, of course, we started appointing attorneys at the shelter care right at the start, which is a huge change and it is not an easy task. You are notified of the hearing and some person has the job of figuring out who can be appointed and who is available. We have a good supply of quality attorneys. I believe they are very qualified.
- 17:03 Chair Ellis How do you handle conflicts?
- 17:03 J. Pahl That is one of the things that takes coordination, because a lot of the people who come through our courts have prior conflicts. You have to make the right decisions up front or it causes problems down the line. We have the public defender's office and Blue Mountain Defenders, so there is one appointment to the public defender's office and then appointments through Blue Mountain Defenders.
- 17:30 Chair Ellis But you rely on them to know the conflict issues?
- 17:34 J. Pahl Right; they have to make that decision.
- 17:40 Chair Ellis There is obviously a difference. The PD office is subject to the unit rule.
- 17:45 J. Pahl Right; they get one.
- 17:47 Chair Ellis The consortium gets ...
- 17:55 J. Pahl The way we usually do it is Craig Childress from Blue Mountain Defenders usually takes the child and then either IPD takes the mother or the father, unless there is a conflict, and that all has to be decided within the few hours before the hearing is set.
- 18:14 Chair Ellis So Nancy mentioned changes that have been happening. Can you fill us in on those?
- 18:29 J. Pahl We are trying to get the attorneys more involved; the child's attorney to either get the children to the court or to get some kind of communication with the court in our dependency cases. Like I said we have the representation right up front now, so it is not like they are meeting them at mediation or down the road further.
- 18:51 Chair Ellis How is the responsiveness, the timeliness of the appearances?
- 19:00 J. Pahl I would say for the most part it is timely. This was an odd timing for a hearing at 11:00 on a Friday. Because of this hearing we moved it from our normal one at 1:15

p.m. I think the attorneys - like I said they usually get very short notice that they have hearings, the first dependency, of course there are lots of other hearings down the road too. I am just talking about the very first one.

- 19:33 Chair Ellis Both the PD and Blue Mountain do both the juvenile side and the adult side?
- 19:40 J. Pahl Right, and drug court - IPD normally does that part.
- 19:54 Chair Ellis I don't know if you all had a presentation order in mind?
- 19:56 J. Pahl I don't think we are well organized so you can ask questions.
- 20:03 D. Fischer I didn't have a particular presentation. As mentioned there have been changes on a number of fronts.
- 20:16 Chair Ellis We know from the papers there has been a change in the DA.
- 20:22 D. Fischer That has certainly been one of them.
- 20:26 Chair Ellis That story gets published on the other side of the mountain.
- 20:33 D. Fischer That situation has led to – and I think Kim would agree with me, a certain amount of flux and dysfunction within the district attorney's office - for awhile as they were managed by the attorney general's office. For us it has meant case filings have been all over the place. The numbers have been all over the place. We will end up this contract period with a substantial underage of cases that we are trying to make up during the next one.
- 21:23 Chair Ellis Remind me of the size of the PD office?
- 21:26 D. Fischer We have eight attorneys right now.
- 21:30 Chair Ellis And the consortium has how many?
- 21:31 C. Childress We have seven total.
- 21:42 Chair Ellis Are you getting a lot of turnover or is it a fairly stable group?
- 21:46 D. Fischer In terms of our history it has been fairly stable. I think that over this last contract when OPDS was kind enough to substantially increase our per case pay, we have been able to hang onto attorneys a little longer than has sometimes been the case.
- 22:21 Chair Ellis How much do you specialize within the office. In other words do you have people that really concentrate on juvenile versus adult?
- 22:27 D. Fischer There really is no specialization. Everybody is getting everything.
- 22:32 Chair Ellis What is your training program?
- 22:40 D. Fischer We moved more toward a one on one mentoring over the last couple of years. We certainly take advantage of everything that OCDLA has to offer in terms of their trial practice seminar and new lawyer seminar.
- 23:18 Chair Ellis In the consortium you said there are seven members but five are the
- 23:23 C. Childress Take most of the cases.
- 23:26 Chair Ellis The two that are doing less - give me a little sense of

23:36 C. Childress In our organization all members are in private practice. Some members are more reliant on criminal practice than some of the other members. Some members are more active and have a higher caseload and don't need court appointments. Others rely on them quite greatly. Some don't want to do certain types of cases or categories of cases. Some are in certain geographic regions that could be more convenient to have an assignment or more burdensome to have an assignment in another geographically area. Some want to be in the juvenile and some don't want to be in juvenile. Those types of distinctions in our membership and they are individual offices.

24:46 Chair Ellis So are each of your members solo practitioners?

24:53 C. Childress Most of them are solo practitioners. I believe two of them are in multiple law firms.

25:10 Chair Ellis But the individual is in your consortium?

25:13 C. Childress Yes. Not the law firm. So there are individual members. We don't have much of a problem at all finding somebody who is conflict free in a case. Some of the other ones on the lower end frankly prefer that. In other words call me only when you need me type of thing. They have scheduling conflicts for them to take a bunch of indigent cases.

25:51 Chair Ellis Do you have a board?

25:54 C. Childress We do.

25:54 Chair Ellis Give me a sense of that? Who is on the board?

25:58 C. Childress It is very loose and needs to be corrected or amended. Our board has just recently been constituted. Frankly, it was done so because ...

26:17 Chair Ellis To meet our policy and our deadline.

26:22 C. Childress Yes to meet the deadline and mandates that have basically been echoed over the last four or five years at your meetings and minutes. We plan on trying to meet in December to iron out specific policies and definitions and decide what they are going to do and who is going to do what, but it is a nine person board. Four of the people are outside of the consortium. Five of them are either lawyers or employed by the consortium.

27:15 Chair Ellis What is your program for quality assurance. In other words what steps do you take to be sure your members are performing at a quality level that you are satisfied with?

27:25 C. Childress Number one, in terms of complaints, the judges know that if they have a complaint they can come to me and I would sort of talk to them and try to correct whatever the situation is that is being complained about. That is one aspect. We meet monthly to talk about general issues, cases, and things that would be one of the things that would come up. If you are having a problem with any particular judge or another attorney or complaining clients, and if so, what is the nature of the complaint and that sort of thing? Cases can be reassigned to other people within the consortium. We are individuals and we sometimes try to help out that situation. Training – each member is responsible for training. Most of them, I believe, are members of OCDLA. Those who practice juvenile law are in compliance with the new regulations adopted, I think, about a year and a half ago. There is about 16 hours of juvenile training every two years. We try to encourage and pay for, for instance, the juvenile training academy that was held last week because that is a low tuition. Paying the subsidy as well as getting reimbursed for the travel expense to get everybody there. That is a very high, quality training. Other trainings we try to go to are put on like at the road show and sometimes the model court people put on a training or the Oregon State Bar or through OCDLA that have the juvenile slant to it. Several of us also went to

the summer one that was through the eyes of a child or something held in Salem in August. The juvenile part is a priority because we are a conflict contract. Mr. Fischer, of course, gets the overwhelming number of criminal cases in the jurisdiction. We get two essential for every one juvenile case he gets on the dependency because of the unit rule. He can only represent one person and somebody has to represent the child and somebody has to represent the other parent or parents. We get multiple appointments in the juvenile area. That is an emphasis for me to make sure everyone is well qualified and familiar with the best practices and requirements and expectations not in the local court but OCDLA and the bar regarding that practice.

- 31:08 P. Ozanne Barnes, a question. Have either of you prevailed yourself of the MPD invitation to go to their trainings? I think the 2009 report it was identified that they were willing to have some of your attorneys go. Has that worked out at all?
- 31:28 D. Fischer I think we have only had one person brought in since that invitation was made and it just hasn't worked out.
- 31:53 P. Ozanne In 2009, Doug, the report said that training was really a concern and it was a concern in years past. Are you saying that the recommendations in here about doing more training either locally or using other than OCDLA it just hasn't been feasible?
- 32:13 D. Fischer It hasn't worked out in this particular case.
- 32:16 P. Ozanne In the particular case of MPD?
- 32:19 D. Fischer In the case of this one attorney that we have added on and MPD, yes.
- 32:26 P. Ozanne I think you would agree that attorneys always need upgrading and training and not just the beginning attorneys.
- 32:37 C. Childress Ongoing trainings?
- 32:40 P. Ozanne The recommendations in 2009 is what I am reading from. There was ongoing lawyer training opportunities and suggestions that they needed to be done is what the recommendations were.
- 32:49 D. Fischer We have certainly availed ourselves of the ongoing training offered by OCDLA in their conferences. The training from MPD, as I understood it, was a new lawyer familiarity.
- 33:14 P. Ozanne How about internally with lunches or shared between the two groups. Anything going on there?
- 33:15 D. Fischer We meet constantly within our office in terms of discussion of cases and exchanges. We ensure that our attorneys have access to all the publications that they need.
- 33:45 Chair Ellis I am going to ask on Blue Mountain. What is your process for admitting additional members?
- 33:51 C. Childress Well, our process is – we have never said no to anybody who has asked. There are a certain – we don't get to ask that much because most of the attorneys, especially if they have multiple attorney practices, they have either contracts or business law. They don't do criminal law. They do juvenile law. When approached I have always maintained adding them to the list and explaining to them what the expectations are the quality is. We have never, ever had a problem where somebody has wanted to be a member or join us to whom we have said no. We do insist that they be qualified. We haven't had anybody come into town, hang out their shingle, and called and say, "Hey, how do I get on the court appointed list." I haven't had any calls like that.

35:17 Chair Ellis Of the five that you say do the bulk of the work, what percentage of their practice is criminal?

35:23 C. Childress That would probably vary, but I would say 50%. That is my estimate; and mine is 100%. I really don't do anything but.

35:42 Chair Ellis We have intended to encourage having more concentration within consortia. Criminal law is a very sophisticated area of the law. It requires people that really spent enough time in it that they really know what they are doing. Have you any views whether maybe your group is too diluted that way, and maybe you ought to concentrate more?

36:08 C. Childress All of the people that we have are quite sophisticated and experienced and exposed to criminal law. Several of them, myself included, trained with Mr. Fischer at Intermountain Public Defender, for instance, or have been in a DA's office, or both. We came from that climate and experience. We don't have any that I am aware of that have no background – people have primarily worked for criminal defense. That is why they come to us, because they know that they have that criminal defense experience and they want to utilize it. You don't get to utilize it too much in a small town when you hang out your shingle. The overwhelming amount of cases are indigent defense clients in criminal defense

37:23 Chair Ellis Except roundup week.

37:24 C. Childress So if they are struggling or even if they are successful they want to affiliate with us. That is strength that they have as individual lawyers and they know it. They don't want to die on the vine while they tried to develop their divorce or civil practice and get their money.

37:59 Chair Ellis What is the logic of continuing the two that aren't doing that much?

38:00 C. Childress For conflicts and serious cases. Because we take conflict cases, statistically we get a lot more Measure 11's. We get an awful lot of difficult to manage clients who have fired their other attorney or are unhappy with their other attorney. They can't be pleased. They are the amateur lawyer type or whatnot. They are demanding an attorney that meets their expectations, as unreasonable as they may be. We tend to get a lot of what I call "difficult to manage" clients. We get a lot of serious cases and then, of course, a lot of drug cases where there are multiple people in a drug house or that sort of stuff. We don't get too many conflicts in juvenile court or misdemeanors. The charging practices have changed as well over the years. We don't seem to have as many misdemeanors filed than we did four or five years ago; those number are down. The probation violation practice has changed dramatically in this county. We don't get as many probation violations. They don't mean anything singularly but over the course of two years, 100 or 200 fewer probation violations mean quite a few thousand dollars. Then treating things as violations like trespasses and petty thefts has cut into the numbers. If it wasn't for the juvenile caseload, which has remained consistent and healthy, our conflict cases are down about 20% from what they use to. That is probably due to Mr. Fischer being down as the primary provider.

40:47 Chair Ellis Do either of you have either Native American or Hispanic lawyers?

40:53 D. Fischer We do have an Hispanic lawyer and an Hispanic investigator.

40:57 Chair Ellis Bilingual?

41:01 D. Fischer Yes.

41:01 Chair Ellis And on your side?

41:05 C. Childress No is the answer to that. We have no Hispanic lawyer in our consortium.

41:17 Chair Ellis I am assuming that both of you contract on a unit basis not an hourly?

41:27 C. Childress Yes.

41:30 P. Ozanne I have another question here. Just going back to the 2009 report and I think this is both to Doug and Craig. There was apparently an observation that there were attorneys who were qualified and were getting serious felony cases in the delinquency side, who weren't as a matter of fact, qualified to handle similar cases on the adult size. This observation was troubling. Has that been addressed?

42:04 C. Childress I think that would primarily be addressed to Doug because he gets the delinquency cases primary out of the gate. Then he also has, as a policy, his attorneys spread the wealth. They don't have specialties in the public defender's office.

42:22 P. Ozanne Is that still an issue or has it been resolved?

42:23 D. Fischer I certainly hope not. We did address that within our office with the clerical person who does appointments within in our office.

42:42 P. Ozanne So it has been addressed?

42:42 D. Fischer Yes, it has.

42:42 P. Ozanne The other thing, Craig, I think the comment that you do so much juvenile court that the Juvenile Court Improvement Project recommended that you participate. I know Doug's office and Doug does personally. Are you going to those meetings now?

42:56 C. Childress I always have.

43:02 P. Ozanne So that was just a mistake.

43:02 C. Childress I have missed a couple over the years because of conflicts in my schedule.

43:12 P. Ozanne I wasn't worried about your attendance.

43:15 C. Childress I have been going since the inception. Judge Pahl is the head of that and we are lucky because that is about the only continuity we have had in this county is Judge Pahl. He has been here since the 90's, and he has been the juvenile judge now for seven or eight years and presiding judge for two years and the drug court judge for four years. That continuity continues today. We are lucky to have that because we lost very experienced judges, Garry Reynolds, was an extremely well regarding, highly respected, highly influential judge, not only in this county but throughout the state. We lost him and so we got two new judges that were just appointed in January. That has taken a learning curve for those judges but also for us as attorneys, to adapt to what they want from a judicial standpoint to try to please them. We have a new juvenile director because Chuck Belford passed away. We got two new CASA people. One just started and we have got two new CRB people. One is going to start next month. We have gotten a new DA. Probably in the four or five years, Kate is the most experienced DA they have. We have been lucky that she is also assigned the juvenile court so we have had continuity the last three years with her being the juvenile prosecutor and her experience as well as her style, I think also changed a lot of the problems we were having before in our adversarial conflict with the DA's office. It has smoothed out since she has been the juvenile prosecutor. In my personal opinion a lot of the problems have been smoothed out mostly with a change in personality and style and understanding of what we are trying to do versus questioning everything as far as what lawyer motives are and what we do. We also just got a new police chief, for instance; a kind of a bad situation for Hermiston. The police chief got forced to be let go under pressure because he had a so called

“climate of fear” - an organization of bullying and stuff like that. They also lost the DA who was a well qualified DA, but a disaster as probably a manager because he had a bullying type of personality there. He is a good attorney. All of these kinds of things have caused flux. Mr. Prentice, I think, just assumed the job in August. I think he has about three years of experience. He has a wonderful personality and demeanor. I think he is well equipped for the job. It is going to be a learning curve for him as well.

- 46:57 Chair Ellis So one of the things we like to do when we visit a community is see if there are suggestions that you have how we could do our job better, and how you feel the relationship between your offices, OPDS, and our group are going. This would be your chance to share any thoughts you have on that.
- 47:22 C. Childress From my point of view, I haven’t had any problems with OPDS. I have had a little bit of a problem with an occasional investigative request having to argue the merits of it, but I think the system is set up for that type of give and take. I haven’t had any problems with my analysts in the region or OPDS. I think over the last year or so our relationship with the DA’s office has also improved with change.
- 48:19 Chair Ellis Doug, how about you?
- 48:19 D. Fischer I certainly concur with Craig about dealing with our analysts. Amy has been terrific and very much of a help. As far as what OPDS can do to help me as a director of a non-profit public defender’s office, I don’t know specifically but I do know this, I think one of the things that has made my life most difficult over the past 15 years as the director is a climate where public defender’s offices are competing against each other for not only the money, but for employees. I have lost more attorneys to other public defender offices than anywhere else.
- 49:49 Chair Ellis Probably a tribute to your good training.
- 49:51 D. Fischer I would like to see an internal group within OPDS of the non-profit public defenders in working together to identify the available applicants and accessing those applicants.
- 50:25 Chair Ellis I thought that happened.
- 50:28 D. Fischer It happened for a moment during BRAC where the PD offices really did come together.
- 50:38 Chair Ellis I am not inclined to want to chill movement if young lawyers want to go to a different location and let the market works it way, but in terms of qualified younger lawyers coming into the field who have an interest to come to various locations, I thought there was much more communication and interchange on that.
- 51:07 D. Fischer If there has been, I have been left out of it.
- 51:10 Chair Ellis If there hasn’t been that I think we do want to take steps to encourage that. That kind of marketplace of opportunity is exactly what should be happening.
- 51:23 D. Fischer I would encourage you to do so.
- 51:26 Chair Ellis That is a good suggestion. We will follow up on that.
- 51:27 J. Potter Having heard what you just said, I also heard earlier that you said you hadn’t had much turnover recently.
- 51:36 D. Fischer Right.
- 51:36 J. Potter And I am assuming that may be related to pay.

51:40 D. Fischer The job market in general I am sure. Pay has been a significant part of that.

51:45 J. Potter Are you on par with the DA's office in pay now?

51:51 D. Fischer I would like to think so. I think generally we are. I don't know. I haven't looked at the other contracts.

51:59 J. Potter I mean locally.

52:01 D. Fischer I think it is important that we be able to at least maintain that.

52:06 Chair Ellis So there are two of you who have been silent so far. Anything you want to share with us?

52:15 K. Hudson What would you like to know?

52:19 Chair Ellis Well, your observation of how the system is working? Whether the quality of defense service is what it should be? Whether the defense providers are timely, professional, and competent?

52:36 K. Hudson I would like a little more punctuality at 9:00 a.m. on Wednesday mornings.

52:44 J. Potter That is specific.

52:50 D. Fischer Wednesday is generally juvenile court day and everything is scheduled at 9:00. Obviously everything is not going to happen at 9:00. We are left sort of having to prioritize attorneys from our office to wait for their calls. That places a real strain.

53:37 Chair Ellis Do you have a criminal justice coordinating council of some kind here?

53:40 D. Fischer We have a public safety coordinator but, no, we don't have a criminal justice coordinator.

53:55 Chair Ellis So there is no sort of systematic way that issues like this get communicated with the court.

54:02 C. Childress There is no central docketing either. We have individual docketing. For instance, at 9:00 on Wednesday you could be booked in one of four other courts. Unless you are lucky enough to be able to plan ahead and say can you take this case for me like some of the public defenders do, and run in there and stand in for me if they call the case. The consortium attorneys don't have that luxury. They are individual attorneys and they can't just hand the file off to another consortium member.

54:45 Chair Ellis Do you have a EDP process or drug process – special drug court?

54:58 D. Fischer We do have a drug court, yes.

54:59 Chair Ellis How is that working?

55:04 J. Pahl I do drug court. Do you want me to talk about the representation a little bit?

55:13 Chair Ellis Yes.

55:14 J. Pahl It is a work in progress is the best I can say. Drug court is really unique. It is a lot different than regular criminal cases. It is more hands on. I want to say drug court is more relaxed that way. We are working on our process with our attorneys. I think we realize that we have some deficiencies in that when we are sanctioning defendants in court and they may not have an attorney at that time. We actually run

two separate courts, one in Hermiston and one in Pendleton. Mr. Fischer has been working on trying to be more involved in that process.

56:09 Chair Ellis I would ask you judge the same question I asked them. Any suggestions how we can do our job better?

56:13 J. Pahl Communication and the feedback is always good. I think when I came in and Mr. Lazenby stated that we are looking for quality and not quantity. That is what the court wants too. I want quality attorneys in my courtroom that do the best they can either defending or prosecuting, either one. We are moving in the right direction. We all want perfect justice. We may not achieve it every day but that is what we want.

56:51 C. Lazenby Does the drug court here function more as sort of an early disposition program for drug cases? Or is it like the drug court that I am familiar with in Multnomah County where there are more treatment components and intensive follow up.

57:10 J. Pahl When we first started the early disposition when they plead up front on a case and then go through treatment it was like a diversion almost. There have been so many changes with drug court with the law changes. We are getting people coming out of prison on post-prison supervision that are coming through our courts. We are getting a lot of Measure 57, drugs and property that have maybe failed probation or are getting ready to go to prison. Instead of that we put them in extensive drug court. These are huge changes for drug courts all over the state. I just came from a judicial conference and we are trying to deal with those – massive amounts of people have come in. That is the thing about drug court. We may have had 20 at one time and then all of a sudden we have 70 people in each court. That goes up and down.

58:07 D. Fischer When it started out it was mostly people on the front end electing to go into drug court to get their charges dismissed. Now it seems like almost all, or the overwhelming numbers of people, both in Hermiston and in Pendleton are coming in for probation. Either their probation is going to be revoked and you go into drug court, or they are coming in as a release of a condition of post-prison supervision. Aren't those the overwhelming number of people you are having?

58:42 J. Pahl Yes, absolutely. When we first started there were people that were pleading on their case up front. Then if they successfully completed it it was dismissed. If not, they would be sentenced. Now there are complete changes.

59:02 Chair Ellis I have a memory that the last time we were here, which I think was 2009 or so, that there were a fair number of in prison cases that you were handling?

59:14 D. Fischer In prison?

59:14 Chair Ellis How is that handled? Do you have to go into the prison?

59:25 C. Childress We do have two prisons here. Both of them are about 1,600 for capacity. That is like a small town. We get a lot of referrals for crimes of contraband and crimes that occur within the prison, to be adjudicated or processed in Umatilla County. They are arraigned through a video connection from the court to the prison that they are in. Sometimes if the crime happened here they get transferred to Snake River, or whatnot, the initial arraignment when they finally do get charged happens through video connection with the prison and the courts. Mr. Fischer almost always gets the appointment at first. Those are very difficult to manage; not only to meet the expectations of the court and their timelines, but also to do your duty as counsel, because they are incarcerated. It is difficult to have attorney/client contact.

1:00:30 Chair Ellis But neither of your offices does PCR work with the prison?

1:00:38 D. Fischer No we don't.

1:00:44 C. Childress We don't.

1:00:45 Chair Ellis Who is doing that?

1:00:48 D. Fischer We had Mark Mardini doing that locally, but I don't think his contract is being renewed. I am sure Kathryn can speak more directly to that.

1:01:00 K. Aylward That is correct. Those cases will now go to the consortium in Salem that is handling most of those cases.

1:01:12 J. Pahl And we do the post conviction an awful lot by video with a senior judge handling those. It is no benefit, really, to have local counsel do that. It works out quite nicely for them to appear on video as well, as the judge is often appearing on video from Salem.

1:01:36 Chair Ellis Okay. Anything else you want to share with us?

1:01:44 N. Cozine One of the areas that we touched on when some of us spoke with representatives was the juvenile delinquency area, and I think there are some interesting things happening there. In the 2009 report, there was an indication that the Juvenile Detention Alternatives Initiative was being implemented in Umatilla County, which they had hoped would help resolve lack of custody space for juveniles. At the time they indicated that the introduction of JDAI was, in fact, a successful program; it was reducing the number of youth held prior to adjudication. In my conversations it seems that more kids are being held again, and the local detention facility was closed back in 2009. These kids are being held in custody in either Wallowa or in The Dalles, which it makes it really hard, it sounds like, for counsel to maintain contact. In addition, the majority are kids who are facing most often either a sex crime allegation or a potential commitment to OYA because of a prior adjudication history. Most of those kids have not had counsel in the prior cases. There is a tendency to appoint on the more serious cases and not so much on the less serious cases where kids may be waiving counsel. That was described in the 2009 report and seems consistent. That was something that I picked up in the conversations that I have had, and I thought the panel might want to talk a little bit about.

1:03:40 C. Childress My standpoint on that – Kim might want to be heard on this because she is the juvenile director now, but they both at Wallowa and at The Dalles make the telephone available. I don't know what Doug does and his staff, but the juvenile department and the detention people in Wallowa and in The Dalles, NorCor, are well versed in are very, very, very cooperation in trying to get the juvenile to have calls to his attorney as well as from his attorney, after hours, weekends, I have called and talked to my client to prepare for a hearing. Also, the juvenile department has been very good at transporting them to the court when we are going to have anything of substance, or for face to face meetings, as well. As far as the appointment of counsel, they have a certain process here where they go through a certificate of constitutionality. I am not quite certain what the title is, but the parents and the children meet with the juvenile department. They sign off on a certificate stating whether or not want they want counsel. Then they appear before the court for the formal appearance, first appearance, and the court reviews the certificate of counsel with the parent and the child. If they consent to the waiver then the court goes from there. If they don't, if they ask for a lawyer, the judge appoints them a lawyer. The problem with that process, I think, is that the parents encourage their children to waive counsel because they are under the impression, either told or not, that they are going to have to pay for counsel. They don't want that kid strapping them with a bill for some of their conduct whether they are innocent or guilty. From my point of view they are often waiving counsel for the wrong reason. Perhaps it would be better if they were appointed counsel more freely, just because of the risk of the penalty and the downside, rather than easily letting them waive by just ascertaining that they consent to not having an attorney and calling that a waiver. What happens

is exactly what you said. It works out nice the first couple of times early on. They are just put on probation and do a little community service, or maybe not even that, but all of sudden they are in detention and the juvenile department, because they are tired of the kid and they don't have local resources, are recommending a commitment to OYA, the youth correctional facility. Now we are being appointed counsel or they are a sex offender. They have some record, and it is hard to argue on their behalf any option other than what the juvenile department has already recommended. I think if they had counsel early on maybe it would correct that situation.

1:07:38 D. Fischer

I think you have covered it, Craig. The court is inquiring more during appearances for unrepresented juveniles about whether their desire to proceed without an attorney was knowingly and voluntarily and wisely made. I think the court is doing what it can and should do in terms of ensuring counsel when it is appropriate.

1:08:22 C. Lazenby

I am sort of channeling my inner Judge Welch since she is not here. The part of what is said is there is this perception on the part of the parents that they are going to get stuck with the payment for this and all these other kinds of things. Is the process being improved to try to clarify that, so that the atmosphere is one when the parent and child are considering whether or not to waive counsel, they aren't doing it on that basis? Is it being made clear to them that this is something that could be beneficial to the child? Is it being explained to them that the implication is – I am old enough to remember *Brown v. Multnomah County*, when they tried to resolve the counsel problem by saying that this first two DUI's you got you will need to have a lawyer to do this. Then later on those convictions get used to amplify punishment for people. It seems like the same process is repeated here. If parents are waiving because they think they are going to have to pay, and they are not being advised of the advantages of having counsel on these early pieces, then we aren't really solving the problem and we are exacerbating the problem. I appreciate your reticence to be overly critical, but that is what I am hearing. I wonder whether or not we are taking steps to impress upon the child and their parents the importance of having counsel early.

1:09:39 K. Weissenfluh

I would like to address that because my office is the one who reads them their rights up front. We do not speak to the parents about the costs. We read them their rights and if there is any indication that a parent is advocating for the kid not to get the attorney based on the money, then we ask that to the court and ask Judge Pahl to waive the fees if that is the issue. We are very vigilant in that because when we first – I have been in the juvenile department in Umatilla County for 13 years. When I first started there any kid who wanted an attorney got it with no parent verification. It was very simple. The courts changed that and the parents do have to go through verification and we have asked for that to not be the case, but they have not waived that. Judge Pahl on an individual basis will waive fees. I cannot remember a case where he has not waived it if it is asked. But that is addressed and if there is any indication that a kid or a family has issues with regards to the case itself, we will take it in front of Judge Pahl and asked for it to be waived. We always encourage an attorney to be present and work with them. I do not feel that that is an issue.

1:11:04 K. Hudson

And I also think that it is important to note that there are times, as well, when the constitutional rights certificate is read in court on the record. So it is not entirely happening off the record either.

1:11:18 K Weissenfluh

The other thing that I would like to address is something that was said about more kids being detained in detention. That is not the case in Umatilla County. We have fewer kids now than when our facility was open. As far as access to counsel, we make every effort – we will transport them to the attorney's offices, we bring them to court whenever they are asked we have offered up our video conferencing system. We have access to Wallowa and Norcor for attorneys to come up. It is a private room. They can utilize that. Some attorneys take advantage of that opportunity. Some do not and they choose to meet with them in court. As far as waiting to get

kids an attorney when we think we are going to place them, I would strongly disagree with that. I think that we used to do that. If kids didn't want it we ran them through the system. However, through the JDAI grant and work within our COJACK region, we have developed sanctions and a model on how to progress cases. One of the goals is getting the attorneys involved sooner and having more review hearings, so the attorneys are aware as we progress on small technical violations. So the courts and the attorneys know what is going on. I do not believe that we have committed a kid to the Oregon Youth Authority on a technical violation in quite some time. They are new law violations if they are probation violations. That has been a big change within the last two years.

- 1:13:18 Chair Ellis Judge Welch, any other questions?
- 1:13:21 C. Lazenby Just finally glad to get you talking.
- 1:13:27 Chair Ellis Any other questions?
- 1:13:30 J. Potter And a follow up to the chair's comment about what the Commission or OPDS could do, what do you see as the problems looming on the horizon? What is out there that may be troubling you? Do you see cases increasing? Do you see an even greater need for services than you can now provide?
- 1:13:52 K. Weissenfluh I would like to address that from the delinquency side. One thing that we are seeing more and more, and we would like the defense to be looking at more and more is competency. We have more and more kids coming through and slipping through that first level. Then once we start working with them the competency is really questioned. We are seeing more kids who have developmental delays, drug and alcohol effects. Kids who have attachment disorders and who maybe could be dealt with outside of the juvenile justice system. One thing that I will say for both Craig and Doug's shops, they are wonderful about letting us work with the kids up front and trying to ascertain that information. If we happen to see it they have more than willing to participate and partner with us in making sure that the kids are competent. That seems to be more and more of an issue. Attorneys are, of course, more qualified to maybe make that judgment than our staff as far as competency with regard to court. Ours is just "there is something not connecting with kid" kind of thing, versus can "they aid and assist in their own defense and are they culpable."
- 1:15:16 J. Potter In there a population increase projected? I only ask that and I see that your community is engaged in a hospital fundraising effort, of some significance, to build a large hospital. Is that indicating something? Is this going to be an area that is going to have more retirees? What are we seeing?
- 1:15:38 K. Weissenfluh I think that the biggest growth that the county has seen has been on the Hermiston side of the county. I don't have the specific numbers but I do know that the number of cases coming into our office, referrals from law enforcement, has decreased to some degree. I don't know the exact percentages or the exact numbers, but there has been a decrease in the last few years.
- 1:16:08 C. Childress Yeah, I am fourth generation in this county and I guess for what it is worth, I don't see this as being the boom area of the state anytime soon. Maybe slow growth. I would like to keep it that way. I don't see that really. I don't think it is like Bend, or maybe the Wallowa area.
- 1:16:32 Chair Ellis Like Bend five years ago.
- 1:16:43 C. Lazenby One more question and just a follow up. Just looking at the 2009 report and it indicated there was only one or two interpreters that were working in the entire system, Spanish speaking interpreters. How has that improved in terms of resources for the system.

- 1:16:55 K. Weissenfluh I think that is the same.
- 1:17:02 D. Fischer Are you talking about court interpreters?
- 1:17:02 C. Lazenby Carla Young is a certified Spanish interpreter. She provides interpreter services in multiple eastern counties and it indicates that she was really the only one providing interpreter services.
- 1:17:22 C. Childress There is one other Brimaya Valera, in 2009, and that is still the case today. Those are our local interpreters. We can get interpreters occasionally through the state and we request funds for that. They are both Spanish so if we have a need for a different language we go through that process. They are both very good interpreters.
- 1:17:48 C. Lazenby And capacity wise, is that working well within the system?
- 1:17:51 C. Childress It is very difficult to schedule them because their first allegiance is to the courts. Then we have to schedule through them their time off. That can be difficult sometimes because we have to work around their schedule and our schedules aren't always compatible with that.

Break

Agenda Item No. 3 Staff Recommendation to Approve Capital Contracts

- 1:18:22 Chair Ellis Okay. Thank you. Kathryn, Item 3, Staff Recommendation to Approve Capital Contracts, Attachment 2.
- 1:19:45 K. Aylward As we discussed at the last Commission meeting, we went through the proposals and what we were recommending. The list that is provided there includes some variations; some things didn't work out the way we had anticipated. Not significant changes, but Commissioner Ozanne pointed out to me that there is a mistake in line 10, the number of hours for Jenny Cooke should be 2,760 at \$96 an hour and the math for the total contract amount is correct, but the number of hours is incorrect. When we had talked to the Commission before we talked about line 19, Patrick Sweeney, we were assuming that we would do a half-time contract with him, but when Forrest Rieke passed away and those cases were redistributed, Mr. Sweeney got one of those cases and so we are now recommending that his contract be a 90% contract rather than a 50% of full-time. In terms of the mitigation/investigation contracts below, with Jackie Page, line 3, we had suggested 1,350 hours for her contract and she said that was too many and she wanted to keep it at 900 per year. The total amount showing there at 1,800, at our last meeting we had stated we would be proposing 1,350 per year. The only other change since we discussed this at the last meeting, no. 11, Rhonda Coats. She had originally bid \$49 per hour. When we sent a specific term contract to her including that figure, she reread the entire contract term and realized that there were some things that she had overlooked, some requirements, regarding insurance. She contacted us and said, "That \$49 is not going to do it. I need \$54 an hour." We agreed to that rate and then reached agreement with her based on that. Those are the only changes.
- 1:22:13 S. McCrea What about line 6 on the mitigation services?
- 1:22:17 K. Aylward That has not changed since the information we presented.
- 1:22:24 Chair Ellis Which one?
- 1:22:25 S. McCrea Line 6.
- 1:22:26 Chair Ellis This is the individual who wrote us?
- 1:22:30 S. McCrea Yes.

1:22:30 Chair Ellis Her rate is obviously less than others. Do you want to comment on that?

1:22:36 K. Aylward At our last meeting Commissioner Potter questioned why that rate was significantly lower than some of the others. We told the Commission at that time that that was the amount that was bid. That was the proposed amount. Our instructions from the Commission in the past, even in times when you have instructed us to mitigate rate differentials, the instruction was clear that if someone bid a certain amount we weren't going to just offer more in order to make them closer to everyone else. There was nothing in the proposal – sometimes there is something in there that says that I really could use more for this. Or my health insurance has gone up, or something that opens the door even for some discussion, but this proposal did not.

1:23:38 P. Ozanne Mr. Chair, I apologize for not being at the last meeting. I spent some time thinking about this. I know the ramifications about what I am about to say. It is no criticism. In fact this was how we did it when I was executive director, but I can't see any reason to have differential rates, at least on the face of it, when I look at the individuals and their experience. I think we could carve this out if it is a problem or precedent. These are our most serious cases; most experienced attorneys. I think they should all get paid the same, and the same with the mitigation. I think at some point we can be formal and I will put a motion on the table, but I don't think it is a lot of money in the scheme of things. I think it is terrible for morale. These people are the most important foot soldiers. Again, no criticism of Kathryn or our staff, but I think we should change the model for this.

1:24:35 K. Aylward Could I put out that we don't pay the same to all mitigators as it is now. The hourly rate for mitigators is \$44 an hour, which is why she had made that proposal. What I am saying is that originally, when we first put out a request for proposals, we had such a huge shortage. The people that we were trying to get were getting \$60 to \$80 an hour in the federal system. We thought "let's try to lure them in with a contract." We want to get the best of the best and give them contracts at a higher rate. There will still be hourly people at \$44 an hour until we can get enough of the really good people and can afford them. Because this proposal came in at \$44 an hour, it didn't matter to us whether this particular provider was of the caliber of the contract people, because it was the same whether they had a contract or not. So we have not evaluated this contract in terms of whether we would recommend providing a contract at all.

1:25:38 P. Ozanne Mine was more global. Now that I hear you say that it reminds me that I think in a perfect world while we want to pay the mitigators an adequate – when you compare it to the attorneys I am not sure we are in sync there. I think the attorneys should be paid a higher rate. I don't want to break the bank but I just don't see the message it sends. It is troubling to me. I admit responsibility for not having raised it earlier, and years ago.

1:26:09 Chair Ellis So what are you proposing?

1:26:11 P. Ozanne I move to change the rate for attorneys to make it across the board \$97 an hour and across the board for mitigators at \$59.

1:26:29 J. Potter Under contracts?

1:26:29 S. McCrea Or hourly or both.

1:26:33 J. Potter These are all contracts.

1:26:36 P. Ozanne Yes. Under contracts.

1:26:36 J. Potter I would second that motion.

1:26:41 J. Stevens Can I say something? I guess it is my basic instinct to say that all contractors and all lawyers and all mitigators are equal and therefore worth equal money kind of strikes me as probably not very accurate. If we think they are all worth that, it is one thing, but if there are variations in skill and experience and quality of service provided, then I don't see why better people should make the same amount as less good people. I think it encourages better people not to do their best jobs. I don't like that.

1:27:23 P. Ozanne I would agree with you Janet. When we do that, and staff hasn't had the resources to do that, we ironically never elevated our capital people. In the absence of that I think this is just simply again what the market said. What people bid on. If it was quality based then I probably would have kept quiet. I don't think it is.

1:27:47 J. Stevens I think if we put this in it will never be quality based. If we say we want quality based first, and then we look at it, that is the correct order of things to go in. We are talking at most a year or two for every single one of these people. That is plenty of time for us to decide what we want to do and how we want to do it. I just think if we authorize a set rate for both groups we will ever have an opportunity to really get in and look to see who is doing the best job and deserves the most money.

1:28:19 C. Lazenby By taking away from the conversation that we had both in the executive session and in the public session afterwards is that we are about to embark upon a new process to do exactly that. To establish some quality mileposts that we really might want to use. Another way of looking at what, I think, Commissioner Ozanne is suggesting is that we pay a uniform rate. These are supposed to be our best, most qualified lawyers. We set a standard rate for what we will then define as quality representation. That is something that we really haven't substantially done before. I think we are at the beginning of that process. I am somewhat supportive of what Peter is saying in terms of making the compensation uniform. Because we are entering into a place where we are going to become more demanding and much more particular about what we consider to be quality representation. I think it is the most important work that we do.

1:29:23 J. Stevens I agree it is the most important work and we do want high quality. I think to raise the salaries and then look to see if we have quality is to put it backwards.

1:29:32 J. Potter I hear what you are saying, Janet, but I am looking at these numbers and I have hard time saying, "Oh Geoff Gokey is \$91 and Duane McCabe is \$90, that Geoff is one dollar better."

1:29:46 K. Aylward Excuse me, could I interrupt for a moment to explain what those rates are and why they are different?

1:29:51 J. Potter Sure.

1:29:51 K. Aylward The providers that are paid \$97 an hour have more of an emphasis on post conviction relief, capital cases, and that is why their rate is \$97. So if anyone had said to us, "Hey, I am happy to do those PCR cases but I need \$97," we would have said fine. The difference between the \$90 and the \$91, a lot of this comes back from us really trying to make rates consistent and nobody likes to come down and we don't have the money to bring people up. One of the things that was different between the \$90 and \$91 is, we were looking at people who would put in their bid and then said that they maintain an office - I have rent, my staff is going up, I need \$91. Somebody else would say, "Well, I don't have an office. I work from home and \$90 is plenty for me." That is loosely what it is and a dollar an hour, that is \$1,850 a year, if you have an office and employees. That is not even covering. It is not even coming close to that. It should be much higher but we don't have the funds to do it. For example in Duane McCabe's case, I think we had previously recommended \$91 an hour because we thought he had an office or he was planning to get one, and during the discussions he said he had decided to go another way. So \$90 is fine for him because he doesn't qualify for the \$91. He doesn't want to have an office and staff.

- 131:21 Chair Ellis I find it troublesome, to on an ad hoc basis, override what staff is recommending without a level of review and understanding about how much money that involves. I haven't heard anything that says to me that staff didn't do a pretty thoughtful job putting this together. I think I would be inclined to agree with Peter that staff should not make tiny distinctions, but I am just not prepared to act ad hoc
- 1:31:59 P. Ozanne Sure. This is reminiscent of a discussion we had about reviewing contracts in general. Here we have a manageable group and what Kathryn is saying is starting to make sense, but in looking at this chart there would be no way for me being asked to approve these contracts of our most important function that I could ratify or vote on this package because I didn't know that the \$97 – I probably should have because I was once director of the operations, but if I knew it I had forgotten it. This maybe is more of an implication, for me at least, getting more supporting knowledge about what we are voting on.
- 1:32:50 J. Potter Maybe even having a key that is on the bottom of this that says that \$97 equals death penalty plus PCR. Then \$90 equals death penalty without an office and \$91 equals death penalty with an office. That would help me. I appreciate Kathryn's remarks. It helps me understand those distinctions up there. I am not satisfied with the mitigation between \$44 and \$59. Based on what Lisa Harmening has sent to us it would appear that she is advocating for the \$59 at this point. She put in \$44 because she thought that was the base rate. She thought that was what had to go in there. Other people did not and that is a significant difference in my mind. Either Kathryn can talk more about that with us, or I would not want to take out if this motion were to fail, reconsideration of at least that issue.
- 1:33:53 Chair Ellis Okay. I had one other question. On the five lawyer contracts that are one year and not two years, have you talked with the providers so they have some understanding of that?
- 1:34:07 K. Aylward I have spoken to each one personally. They understand that there is going to be a review that is not yet refined or defined, that Paul Levy is going to spearhead the effort to take a look at these five in particular, and at the end of a year's time or somewhat less, to then make a determination whether they should be extended a second year. I don't know that Paul has had a chance himself to flesh out what that review would entail.
- 1:34:37 P. Levy We have fleshed out the broad outlines of it. Some of that have been communicated to people who wanted to know about what it would look like. I would be happy to share that with you. This has been shared with some of the contractors who asked about it. What we are really envisioning is a process that in a sense is very much like our peer review process. It will not be me personally or alone, at least, judging the quality of an attorney's capital representation. What I expect to happen is, if the Commission approves this structure, the review will take place during this review period and will be initiated fairly shortly with a letter to the five contractors describing the process and the input that we would like to receive from them. It will entail a review of pleadings, transcripts where available, in court observations where possible, and then interviews with sources who are fairly knowledgeable with their work. Co-counsel, investigators, prosecutors, judges – we will look to each of the providers to give us the names of people who they think we should be speaking to. We will use that as a starting point and they can solicit other input if they would like to do that. Then generally what I will expect to happen – this is the contemplating part. I have told people who have asked that it will also involve input from respected peers who don't have an interest in their particular contract, but who have an interest in quality representation in capital work. Having some input or me using them as a resource. At some point there will be a synthesis of the information that we receive. A draft of that will be provided for the lawyers and we will ask for their input and then finalize that. I think since we have two of the folks who are among the five here, I will tell the Commission and them – what we decided was to look at a small group rather than the entire group during this one year period. We have in each instance of the five,

received either confidentially or otherwise, some degree of concern about their representation. I am expecting that the process will help us understand that some or all of them are actually in fact doing very, very good work or not. That is a broad outline of the process and it is generally one that we are familiar with from our peer review. Concurrent with this, we want to be looking more broadly at our representation in capital cases and not just focusing exclusively on this small group of people.

- 1:38:31 J. Potter I believe that was going to be my follow up question. At least I thought from the conversation that we had last week that it was a model that would be applied and we would work our way through as we have worked our way through all the trial court and juvenile contracts. I think you just said that.
- 1:38:50 P. Ozanne With regards to the rate issue, I may be at a point where I can withdraw my motion and Commissioner Potter could withdraw his second, just so I understand Kathryn's explanation. The variations are fairly limited. You are saying that the \$90 an hour is for someone without an office?
- 1:39:12 K. Aylward Someone without an office who did not bid more than \$90. We are capped by what people bid. Most people bid more like \$92 or \$95, and the difference between where they ended up was whether or not they were maintaining an office. So somebody could have an office and do post conviction relief, but bid \$90 an hour and their contract says \$90. That is what they said was a deal for them. That worked.
- 1:39:45 J. Potter Do they say that is a deal for us or do they just put the number in?
- 1:39:59 K. Aylward It is a viable contract for them at that rate.
- 1:39:54 J. Stevens Kathryn, the one question I had about all this is it clear to all of these people, apparently not, that they have the right to go beyond what the base is and ask for more?
- 1:40:08 K. Aylward If they did a little investigation they could easily find out what others were making.
- 1:40:16 J. Stevens We don't just go out and say, "Oh by the way."
- 1:40:20 K. Aylward No. In fact my recommendation to the Commission would be – because I have been listening to the debate for a long time. Whether we are a competitive process or an administrative process, I think it would be great if this is what the Commission wants to do is to put out an RFP that says, "We will pay \$59 an hour for mitigators. Come one come all and we will pick based on quality who the winners are." That I think is terrific. Unfortunately we haven't been doing this and this request for proposals that was issued was issued as a competitive bid. Now the reason that so many of them settled at \$59, it wasn't an administratively established rate, it was because they bid \$65 or \$80 or \$82 and we said we can't pay that much. They ended at \$59 because we weren't comfortable offering more than we pay our death penalty attorneys, which is \$60 an hour. We thought that argument would win them over. When they are saying they have to have \$80 and we are saying, "Come on. I would if I could. You are worth it, but I can't go above \$59. How bad would that look?" They said, "Okay. Fine." That is why so many of them are settled at \$59, because they bid more than that. My recommendation would be the Commission should decide if they want to move to a more administrative model before the next RFP. If your concern is about Ms. Harmening and her lack of understanding has left her behind the door, I think your options are either to say, "Okay, you won't have a contract because \$44 is the hourly rate and you can propose again at some further time." Or to say, "Okay, you can have a contract but only a one year term." How about during that year she gets thrown in with the other five that are getting reviewed. Then we can say at the end of the year, "Oh, you know what. You are as good as the other \$59 an hour so we will extend you and put you up to that rate." My concern at this point is we did not look at whether this particular provider was anyone that we had more of a desire to hang onto

than someone who just provided services hourly. I would like an opportunity to either have Paul or the reviewers help us know that.

- 1:42:40 C. Lazenby Let me rephrase this a little bit so I am clear about my understanding of what is happening here, and I will be a little bit critical. Even though there seems to be some uniformity in the numbers here that is more of a result of negotiation in those individual circumstances, and it is also with a target number in mind within the total amount of money that we have budgeted to do this. The numbers aren't derived out of any sort of objective standards that we have established about the quality either for the mitigation people or for the representation. That is the journey we are embarking on - to develop those standards and to do that. If we are looking at these numbers in terms of the rate and trying to equate that with some sort of competency, we will look in vain because that is not the basis of it. We are gravitating to these numbers because you are managing the funds and you are doing the negotiations and different people for different reasons. How wrong am I?
- 1:43:41 K. Aylward You are absolutely correct. The only criteria of "quality," the only determination that we made was the break between whether you have a contract or whether you are still hourly.
- 1:43:55 C. Lazenby Ultimately, Commissioners, this is what bothers me and what we need to do over the course of the next year or two is in both of these categories we need to start developing some really crisp and clear criteria about what we want to pay for and quality representation, both substantively and objectively, so that we can do what Commissioner Stevens is saying she thinks we need to do, which is pay people for the quality work that they do. I think our problem right now is we delegate this based on work needed to be done. We don't have any standards about quality around any of these service providers. To that extent ...
- 1:44:40 Chair Ellis Differential quality.
- 1:44:42 C. Lazenby Correct; the differential quality. I certainly came away from the last meeting when we talked about this with a feeling that the Commission was going to go barreling down this road to get this done in the next year or two so that we are really clear with everybody in our process about what we expect and what we consider quality.
- 1:45:09 Chair Ellis Have you exhausted your ...
- 1:45:12 P. Ozanne No. We are all working back to the notion of incentives for differences in pay. The differences here I doubt very much one way or the other and \$97, the top rate, is frankly, sadly far too low. I wondered - I am not prepared yet to withdraw my motion. I wonder, Kathryn, this isn't a fair question, but you would be best to answer it; I think if we went to \$97 and we went to \$59 it looks to me like it is well south of a million and it probably around \$500,000. I think many Commissioners would want to know how expensive it is because even though we are changing, in fairness to you, the process in mid-stream, I don't think anybody is going to complain on the provider side. I am not sure it is a lot of money and it gets people better paid for the most important work. How big of a ticket item do you think it might be?
- 1:46:15 K. Aylward I don't - well we are already operating in the red if we don't get that 3.5% in February. It is a little redder. I can calculate what the amount would be, but the question of can we afford it? That is a tough one to answer because we kind of can't afford even this already.
- 1:46:43 P. Ozanne The implication would be finding money somewhere else to do this.
- 1:46:59 K. Aylward I can calculate what that would be and let you know. It is scary to sort of guess.
- 1:46:54 Chair Ellis We could form a super committee. Steve?

- 1:47:00 S. Gorham I have two comments. I have one comment about the \$90 and \$91, if I might. For example, when you are negotiating these type of things, at least on our side the side is putting in a bid, you always fear that you are going to say an amount and someone is going to say we are not going to pay you that and thus we are not going to contract with you. Most everybody here has been a contractor and that is where we survive. For example, I have just an enormous amount of respect for OPDS and the office, but I have an office and I have a limited staff. When I put in my bid I said I would like \$91 but I would accept \$90. Here I am at \$90. I don't know where that matches where this discussion is. I can tell you that it is pretty much a direct quote from my actual bid. I knew some people were getting \$91 but I didn't know the criteria. But I do have an office that I go to every day. I have a limited staff that is true. That is one comment. I have some other comments about the one year. I don't know if you want to hear those now. I am prepared to talk about those now too.
- 1:48:34 Chair Ellis Go for it.
- 1:48:36 S. Gorham I am talking for myself and everybody who got a one year contract except Ralph Smith because I have not been able to talk to Ralph Smith. I have talked to Steve Krasik, Mark Rader, and Ken Hadley. I think we were all kind of surprised to get the phone call, and it is true we did get the phone call from Kathryn. It was true that we were told that there were concerns about us. I think everybody – those four people said that. I am sorry. I and Mark Rader – excuse me, I and Mark Rader were told there were concerns about us. I in particular asked what those concerns were. I was told they were confidential. I was told that there was going to be an evaluation process. It was my impression that the evaluation process was going to be eventually everybody. I am guess I am assuming that that is what you were told.
- 1:49:42 Chair Ellis That is consistent with what has been said today.
- 1:49:45 S. Gorham But I am kind of wondering why, and I think we are all wondering why we are not getting two year contracts, and then, if the concern is great enough, to cut us back or cut the contract. I think that is the other way to go on this. I think we would all prefer two year contracts. One of my concerns was that the Commission be involved with the evaluation process. In other words be told what the process is and maybe vote on the process to see if you all thought that that process was a fair process for evaluating contractors. I don't think any of us, at least the four that I have talked to, have any problem being evaluated. That is just fine. We want it to be a fair evaluation process. The way it came about just doesn't seem that fair. Yes there can be complaints and even the complaint policy that you have can – I guess they can be confidential but how do you match a confidential complaint behind closed doors. We should at least be told in general what the concerns are. Is it they don't like the fact that I have long hair or what is it?
- 1:51:11 C. Lazenby My understanding is that that is what is contemplated in the process. It is going to be going forward with Paul.
- 1:51:22 S. Gorham I think at least four of us were told that one of the reasons for this was the need for new and younger people involved. That is what we were told. That is certainly what I was told. I think the other four that I have mentioned have that memory of the conversation as well. If you look at the five people who are picked to have one year contracts, I think that except for one person on the list, Mike Barker, we are the oldest. I could be wrong about that but I think we are the oldest. I am just telling you what we were told.
- 1:52:13 K. Aylward My recollection, and you can ask Billy because he sat in on all of these conversations, is that we explained to people that we had eight or nine, I can't remember now, eight or nine proposals from new people whom we had been trying to get to do this work for quite some time and they had finally applied. We were now at pretty good capacity. We hadn't used a private bar attorney in over a year. We wanted to get these people in and make room for them. Now I don't know the ages of any of these

people. I have never laid eyes on any of them. Some of the new bidders I have no idea how old they are. It is new bids, new people, not younger. I never said that.

- 1:52:55 Chair Ellis Good clarification.
- 1:52:57 P. Levy Just for the clarification on the process. I don't think that – if the review and the report or the draft that the providers will have the opportunity to comment on and that the Commission will see ultimately, if it can't identify specific concerns perhaps some with attribution to named sources. Others who have requested, at least, anonymity not, but if it can't identify valid reasons to be concerned if these even arise then we will have nothing other than the good reputation that we now know about with regard to this group generally. I agree entirely with Steve that it would not be fair or appropriate to produce a report with the representation saying we have concerns but we are not going to tell you what they are.
- 1:54:12 Chair Ellis I am going to make a suggestion unless there are other comments to divide between the lawyers and the mitigators. If there is a motion to approve the lawyer recommendation and then Peter can decide if wants to move amend that.
- 1:54:33 J. Stevens **MOTION:** I move that we approve the recommendations ... you withdrew your motion.
- 1:54:43 Chair Ellis We don't have a motion yet.
- 1:54:42 P. Ozanne Yes there is a motion. I moved that the highest rate for both mitigator and attorney be across the board.
- 1:54:57 Chair Ellis I am going to move the motion out of order if it is the first thing that happened. My sense of order is that we should have a motion to approve the list. Then you can move to amend that motion. I am not trying to deny your motion.
- 1:55:14 P. Ozanne Vote on lawyers based on eligibility?
- 1:55:17 J. Potter You just want to vote on the death penalty lawyers first and the mitigators second?
- 1:55:20 Chair Ellis Yes.
- 1:55:22 J. Stevens So I am going to move that we approve the list and recommended payments provided to us by staff for death penalty lawyers.
- 1:55:39 Chair Ellis Is there a second to that motion? I will second the motion. Now is there a motion to amend that motion and what is the motion?
- 1:56:04 P. Ozanne I move that the rates on the lawyers be raised across the board to \$97 an hour.
- 1:56:13 Chair Ellis Okay. There is a motion to amend. Is there a second to the motion to amend?
- 1:56:20 S. McCrea I will second it.
- 1:56:24 Chair Ellis Okay. We will vote on the motion to amend.
- 1:56:24 J. Potter Can we discuss for a second?
- 1:56:25 Chair Ellis You sure can.
- 1:56:28 J. Potter I understand, Kathryn, that the \$97 rate folks that are here and there are only two?
- 1:56:39 Chair Ellis There are only two.

1:56:40 J. Potter Are PCR in addition to death penalty. Are there other people in that group out of the 27 that are also PCR?

1:56:48 K. Aylward There are some \$96 ones. Line 10, Jenny Cook is at \$96. Line 15, Laurie Bender is at \$96.

1:57:02 J. Potter And they are PCR.

1:57:03 S. Krasik And one at \$90.

1:57:06 K. Aylward And may I say one more thing that might explain some things. A lot of these rates were established a long time ago. Death penalty contractors have not been given increases. We have been holding the line while money went elsewhere because they didn't seem to be hurting as bad as everyone else. Some of these rates were established back when – what the office use to do is get a budget and then divide the budget by the number of hours. I remember one year somebody came forward and said, “Well, I had a heart attack last year. So now my health insurance costs a little bit more because I have had that heart attack, so I need one dollar more than everyone else.” Our office said, “Okay.” So once you make weird decisions and end up with a strange configuration and then you say, “Okay. That is frozen. We are not making increases to these rates until we can afford to.” Then that frozen stuff and the weirdness stays in place. So I apologize if it is inaccurate to say that if you have an office or don't have an office. I think those were some of the residual things that we talked about quite some time ago.

1:58:15 P. Ozanne Well as a proponent of change I am not asking for your apology. I am apologizing to you to change horses in mid stream. As I say, those were policies that I was responsible for. This is an awkward situation for me to now be a Commissioner. Mr. Chair, may I add something in way of support for my amended motion?

1:58:42 J. Potter I am going to wait for your add to see if it addresses what I am thinking about.

1:58:44 P. Ozanne I am trying to get a sense of what a calamity it is if someone passes my motion in terms of what financing would be. The way I approached it, Kathryn, was to look at somebody in say line 4, who is a \$90, 3,680 hours for \$331,200 for two years. Then I looked at line 12, for example, a \$97 lawyer with the same number of hours. The difference is \$25,000 over two years. So I multiple that by 20 thinking that is the impact across that list and it comes out to be \$500,000. I don't know if that makes any sense.

1:59:20 C. Lazenby That is my hesitancy is supporting it. I started crunching numbers in a different way and I came up with something close to \$800,000. I would like to see how much more money we are committing to do that. It isn't enough for us to say we will find it someplace. We have the February legislative session coming up where we are going to be looking at even more. We are going to have more less come February. That is true. We are going to have a lot more less. Before we just spend a million more on this, I would like to know how much more it is going to cost us and do it in the context not only how much more money it is going to cost us, but how much more of less money we are going have. That is getting really weird. How much less money we are going to have come February with the legislative session. You may have some ideas about what that deficit looks like. If we are adding a million dollars onto a three or four million dollar hole that is coming our way, it may not be wise to do that. My inclination would be as we start to go down this quality development road to say that uniformity for the next budget cycle, the next negotiation, to add or subject or increase once we get that quality development. That is my feeling about it.

2:00:56 J. Potter I think what I was trying to do is make the determination if there really is a group within that group. A group within the death penalty lawyer group that is different that warrants the \$97. If PCR is it, if there is a case to be made that we are going to pay people PCR, then it seemed like I was going to propose an amendment that would say,

“The \$97 and the \$96 PCR are a group and then the \$90 all becomes \$91. So you would bump the \$90 to \$91. You would bump the \$96 to \$97. I think I heard in the back, if I heard Krasik echoing, was that he is a PCR person and he is only at \$90. I guess I am trying to find out are there other people that are PCR that would be \$90 or \$91 that are in this group.

- 2:01:45 K. Aylward I think we define it as predominantly do PCR or specialize in it; not that the provider will never do one. For example, Mike Barker, I think he has done a PCR. It is people who are taking them on and will go full time with PCR.
- 2:02:13 Chair Ellis I don't want to be the skunk in somebody's garden party, but I am having a hard time in my mind saying PCR should be paid significantly more than lawyers that handle death penalty cases at a trial.
- 2:02:30 J. Potter I am not arguing that.
- 2:02:31 Chair Ellis That is not intuitive to me and now I am having a hard time saying in a period when the legislature is about to meet because the economic projections have gone and we are in jeopardy on our incremental funding. We are then running at a deficit. That in an ad hoc way the Commission says, “Oh, let's spend another half to a million dollars,” without knowing where it is coming from, without doing the kind of analysis that compares these to our other providers. I am just very uncomfortable with this process. For what it is worth I am not supportive of this.
- 2:03:26 S. McCrea I understand what you are saying, Barnes. I am really torn for the reasons that you are talking about. On the other hand if you look at it from a philosophical standpoint, we have two competing charges in the statute. One is cost and the other is quality. Presumably these people are the best of the best. These are our contractors and there was an attribution to Kathryn. I know it is a summary on page two of the minutes about why we provide contracts. We are in a position where we are paying these people who go out and defend defendants from death, and we are paying them less than the federal hourly rate of \$125. It is that constant problem that Oregon indigent defense has had for years and years in that we are constantly - “Well, yeah, we can do it for less. We can make these accommodations.” At some point to me philosophically there is the issue of, if the State of Oregon is going to go out to prosecute and kill people, then the people who defend should be paid as much as we can possibly pay them and the state is responsible for that. That is the one thing, and I balance that against what you are saying in terms of our charge to be fiscally responsible and knowing where the money is going to come from. A further consideration and concern for me is that if we do have a blanket raise to \$97 an hour, then it is going to put us in a different position vis a vis these reviews of the contracts. Are we going to be putting ourselves in a position where we don't have enough contractors to justify this when we do the quality analysis? I am not saying that we don't. It is just that that is another concern. It just bothers me.
- 2:05:32 Chair Ellis I would be perfectly happy urging Kathryn and her group, as we go forward, to try to end up with fewer very small differentials and not be driven entirely by being able to drive a bargain, so that we end up with differentials that are based on perception of either difficulty of the work or quality of the work. I would be happy going forward to have that kind of direction given to staff. I am unwilling to do it on an ad hoc basis because I don't know enough about these contractors to make it.
- 2:06:15 J. Stevens The other thing is that if we are going to end up having to absorb more cuts, which I would not at all be surprised that we would be, it is fine to say that we can find the money some where else. I want to know where we are going to find it. Are we going to take it out of people who handle kids? Not over Betsy Welch's dead body and I don't blame her. But she is right you know. Or are we going to take it from Pete? So when they are in jail and they want to appeal they get inferior work because that is all we can afford to pay for?

- 2:07:01 C. Lazenby Another thing that has occurred to me is that this conversation re-enforces what I said earlier in that I don't think we are ready to make that decision. The rate we are paying people is not a reflection of either quality or any substantial standards in terms of what we expect and what we are paying for. Let me also say this, I have been getting a lot of calls in the last three weeks to a month from people because I was Governor's Kitzhaber's legal counsel when the last two executions occurred. There is a significant movement going on right now to kind of rekindle this conversation – and probably people here have been getting those phone calls too, about rekindling the conversation around the death penalty and how much money we are going to spend. I think if we are going to be in a position, as this motion would do to just sort of unilaterally raise the rates that we are paying people to do defense of death penalty cases, I think that that would be a detriment to the public debate that is going to start going on around that we can't justify what that number is about. I think this Commission has to be in a position where we are saying in a very principled way, we have taken a look at this, we have established what we think are the quality characteristics of quality death penalty representation and it is worth this much money and this is what you have to pay to do it correctly, rather than us just saying let's just make the numbers uniform and raise them up there. I don't think that we will bolster that conversation that is about to happen about the expensiveness of – just the incredible travesty of death penalty in Oregon today. I think we need to be more principled as we go there. I think we get there, Peter. We may get closer to the \$125 then even \$97 if we have quality criteria but we are not ready to do this today.
- 2:08:58 P. Ozanne This goes again to my appreciation being a Commissioner as opposed to being on the OPDS staff. That puts a burden on the Commission that we will never meet. We will have to wait until the staff produces the work up. I certainly would have – I sense Shaun that you might want to withdraw the second. I sense where we are on the vote and I don't want to press this matter. I certainly would have proposed, if we want to defer it a month, to suggest some places where there ought to be cuts. I for one would stop supporting these early disposition programs in some counties. They are ridiculous in my mind. I think we could get to \$500,000 on some of the things we do. We might want to cut the Commission's travel budget. On our agency later we are considering COLAs for employees in this climate. I have a sense and I respect all of the views that have been expressed. I think this is the way that we have to react because we are a volunteer board and we don't have the time to work these things up. If somebody wanted to defer the motion and come up with alternatives I would be happy to cooperate with that. I am also willing to withdraw my motion. Shaun, do you want to withdraw your second?
- 2:10:30 S. McCrea Can you withdraw your motion?
- 2:10:35 P. Ozanne I can.
- 2:10:34 S. McCrea I can. Let's do it.
- 2:10:38 Chair Ellis So then there is on the floor the main motion for the attorney contracts 1-27. Is there any further discussion? All those in favor say aye. **VOTE 4-2.** Then on the mitigation is there a motion to approve the 1-12 mitigation contractors? **MOTION:** Chip Lazenby moved to approve the mitigation contracts; Janet Stevens seconded the motion: Is there a motion to amend?
- 2:11:22 J. Potter I would move to amend that line 6, be moved from \$44 to \$59 an hour. Shaun McCrea seconded the motion. Is there discussion on that?
- 2:11:41 P. Ozanne John, there is a \$54 rate there. What do you think about that?
- 211:58 J. Potter In this case for consistency – before I amend my amendment I would like to hear from Kathryn on line 11.
- 2:12:03 K. Aylward Information regarding line 11?

- 2:12:05 J. Potter Yes.
- 2:12:05 K. Aylward She bid \$49 an hour and we wrote up her contract for \$49. She read the contract and thought, you know, \$49 just doesn't quite do it for me. If I had \$54 then that would be fine. Okay. We will write up the contract for \$54. All of these are signed, by the way, by the providers if that makes a difference.
- 2:12:32 J. Stevens So the reason there is \$44 is the person bid \$44 and didn't ask for any more?
- 2:12:42 K. Aylward That is correct.
- 2:12:42 Chair Ellis But has asked after.
- 2:12:48 J. Potter Rhonda Coats is not here. Will she ask after the fact?
- 2:12:55 J. Stevens If she is smart she will.
- 2:12:57 K. Aylward This happens a lot where people get what they bid and then they find out how come he got \$91 and I only got \$90. We say that you bid \$90 and that is what you got. Sure enough two years later they bid higher than that. So as my earlier recommendation, which Paul is reminding us about, this suggestion that you could approve a one year contract. That does get us around the political problem of paying people more than they bid, but it doesn't tie her into a two year period for her failure to be fully informed, and it gives staff the opportunity to determine whether they would in fact have made a recommendation to the Commission at \$59 if her work gets reviewed together with the rest of the one year people.
- 2:13:51 C. Lazenby This is much more manageable cost differential. My crude math here shows me that if we were to bump both of these up to \$59, it is \$72,000 for two years, which is fine in a more lesser budget. My concern about the financial part of it is if we bump them both to \$59. My understanding was that the lowest was a person that said I don't want anymore than this.
- 2:14:20 K. Aylward She said I have no needs beyond what my current contract meets at \$44 an hour.
- 2:14:27 J. Potter My amendment to the motion is that we raise both line 6 and line 11 to \$59 an hour.
- 2:14:36 S. McCrea Second.
- 2:14:42 Chair Ellis Any further discussion on the motion to amend? All those in favor of that motion to amend to say aye. **VOTE: 4-2.**
Call the question on the main motion as amended. All those in favor say aye: **VOTE 6-0.**

Agenda Item No. 7 Budget Update and Approval of OPDS 2011-13 Compensation Plan

- 2:15:36 Chair Ellis Why don't we do the budget update. Nancy and Kathryn.
- 2:16:15 N. Cozine Chair Ellis, Vice-Chair McCrea, members of the Commission, you have in your packet the proposed compensation plan. Kathryn will go over that in detail. The back drop of the budget picture right now is that we have been asked to provide to the legislative fiscal office, a plan to reduce by 10.5% that is in 3.5% increments down the line. We are still getting the message that the legislature will be hard pressed to authorize release of the 3.5% hold back in February. The 10.5 reduction appears to be more of an exercise. Of course we will have another forecast coming out in November. That will give us a better idea of where we will land. It is clear that we have a unique situation that is different than other entities. We are very hopeful that in February we can get the legislature to authorize us to spend that 3.5, but we have been told, as I said at our last meeting, to be prepared for the possibility that we will

not. Now we have also been asked to prepare the additional cuts. We have talked somewhat about what those cuts would look like within our office. We have not thought about what the impact would be to the account in terms of the time at which we would run out of funds to pay for the contracts that we have already entered into. So, again, Kathryn can give more detail on that. We do need to talk more about what the account impact would be at the 3.5 to 10.5 amount.

- 2:17:59 K. Aylward We have to prepare and submit those reduction options by mid-November. What we have done in the past is simply to, as Nancy has said, is measure it in terms of days of service. Each 3.5 cut roughly equates to 25 days of service for the account. So it would look like we stopped 25 days early, or 50 days early, or 75 days early and those would be the options. I don't know if the Commission wants to have us look at other suggestions, but for some years now the Commission's position has been that the Commission doesn't have the authority or the constitutional legal authority to actually determine which right to counsel is more important than any other one. We were assuming, but please correct us if we were wrong, that we would do something similar in terms of falling off a cliff.
- 2:18:59 Chair Ellis I know we debated this in 2003, and you are correct in your recollection. Really the chief justice is the one who made the decision which cases would be processed or not. That is a better process if we end up with that kind of shortage.
- 2:19:23 K. Aylward Okay. Well that is our plan to put something similar together as we have whenever requested to do this. It is fairly routine. It is actually a statutory requirement that budgets include a 10% reduction option. In all of the budgets that you have reviewed and we have submitted that 10% reduction option was measured in terms of days of service that would not be provided.
- 2:19:47 Chair Ellis Right. Anybody feel otherwise. Do you want to walk through the compensation plan and explain what is going on there?
- 2:19:59 K. Aylward First of all let me clarify that our budget has separate allocations. Any changes in the compensation plan for our operating budget do not come out of the account. Any reductions in our operating would not be available for the account to use. Put aside our last discussion and get a fresh thought in your head. Now I am asking for operating and now I am in favor of it. We looked at what the judicial department is doing as a compensation plan. We looked at executive branch.
- 2:20:37 Chair Ellis We read about that in the paper.
- 2:20:38 K. Aylward That was the Department of Justice. This is very similar with slight changes here and there. I think there were two executive branch unions and because of the mix of their people, slightly different start date/end date salary levels but this is comparable. It would be an across the board cost of living adjustment effective December 1 of this year. It would be a 1.5% increase. Then in the second year, and that date is wrong it says December 2, I think it is more likely December 1, of 2012, a 1.45% cost of living adjustment.
- 2:21:23 P. Ozanne What is the dollar value of that?
- 2:21:24 K. Aylward For a typical employee it is between \$50 – maybe \$75 a month.
- 2:21:32 P. Ozanne I mean the total budgetary cost?
- 2:21:33 K. Aylward I don't have that handy. I love my iPad but it is too teeny. I have access to it but I don't have it in my head. We provided that information to LFO prior to putting this compensation plan together. Merit increases will have steps frozen in the second year of the biennium. So a typical step, if you have a step available, will be provided during the first year and then frozen in the second year. The benefit contribution is also the same as with executive and judicial. The employees will be asked to

contribute 3% toward the premium of their health insurance. So for an employee whose spouse and children are covered the premium it is about \$1,500 a month, so a 3% contribution would be \$75, so there went your 1.5% that you just got. All of this is carefully crafted together. The effective date of the 1.5% COLA you get in your paycheck January 1, and January 1 paycheck is the first paycheck that takes out the amount that would be your contribution toward health insurance. The only reason these COLAs are here is to keep an employee whole when they have to contribute to health insurance. That is my understanding of how the negotiations went with the unions.

- 2:23:01 Chair Ellis This is the first time they have had to do that?
- 2:23:01 K. Aylward That is correct.
- 2:23:03 P. Ozanne This tracks the state general package.
- 2:23:08 K. Aylward Yes. Absolutely.
- 2:23:08 P. Ozanne Which, of course, is outraging the public.
- 2:23:17 K. Aylward In calendar year 2013, that contribution goes up to 5%. There is a subsidy for employees who make less than \$3,000 a month. They get a \$30 subsidy toward the contribution of their health insurance premium. The next is furlough days. The cuts that we have to take, the 5.5% personal services cuts and the 6.5% services and supplies, there is no way you can budget to that. There is nothing. You have to take it out of people's pockets. So rather than do layoffs we are looking at furloughs. Executive branch is having a series of 10, 12, and 14 furloughs depending on the pay scale that you are on, but they are actually having physical closures for executive branch. Judicial started a little bit late. They are going to have nine official closures. They will still do the 10, 12, and 14. We are proposing to you that we can do it with eight office closure days. We can do that because we have some small amount of vacancy savings that if – again there is no logic to filling a vacancy with an inexperienced attorney that needs training so that you can furlough the experienced attorney. There is obviously a very strong argument of: Why would you fill a vacancy and then furlough all your attorneys? It makes no sense at all. We are kind of blending what we think we can manage and balance the resources that we already have trained. Those dates the first date with be March 23. Then we will be the same for closure dates as the court. The nice thing about that is there was some discussion in our office about – just because you give someone a furlough day and say, “You can't work and I won't pay you,” as an attorney you have an ethical obligation to meet those deadlines. If your brief is due on Friday, you are going to work on Friday whether someone pays you or not because you have that ethical obligation. This way, at least, if the court is closed on Friday, that brief that you had due on Friday now cannot be due until Monday, so you can't work Friday and you can do all that last minute work on the Monday. The closure thing I do feel better about if the courts are closing and we are closed. It sort of keeps everything even. There is one other change that I would like to make to the compensation plan and that is a reclassification. Judicial Department analyzed and reclassified their analyst positions. They have quite a lot of analysts and they range through four different levels of analysts positions. Those reclassifications went into effect January 1, 2011, so nearly a year ago. We don't have the money to have our analyst positions match the reclassification of the Judicial Department, but let me give you some examples. The first lowest level analyst in Judicial – annual salaries are easier for a lot of people so \$59,000 a year. Their second analyst is \$69,000 a year. The third analyst is \$84,000 a year and their top analyst is \$97,000 a year. Now according to the position description the work that the analysts in my office do correlates to analyst three in the Judicial Department. That would be \$84,000 a year at the top. Currently the analyst's pay tops out at \$72,000 a year. That is what should have been about a 16% increase due to a reclassification back dated to January 1. We don't have the money to do that. We also have in addition to matching what judicial has – because our analysts are

extremely experienced, extremely well known, and extremely professional. Word is out; it is like a hunting ground. LFO had a vacancy recently and John Borden called me and he said, "You know where I am going when I am looking for analysts." They were paying \$102,000 a year and they were trying to take my \$72,000 a year analysts. As much as you love working at OPDS, who would jump ship for \$30,000 a year. I am a sitting duck; we have gotten this group to a level of expertise that I don't want to lose. I obviously don't have \$30,000 to put them up to where they wouldn't get pinched by LFO. I am proposing about a 4.9% increase moving toward that reclassification level and hopefully being able to do it again later until we get them at the proper classification.

- 2:28:25 Chair Ellis I was struck reading the paper about DOJ's 4%, 6% increases. How do they get to do that?
- 2:28:37 K. Aylward Well, they didn't. They ended up getting knocked back. Those are different. Those are pay raises. That's where someone says, "You are doing the same thing you use to do and I am going to pay you more because I think you deserve it." This is a reclassification. That is where when you started doing this job your job was data entry with no responsibility. Maybe you made a little spread sheet. Now that we have a program that does the data entry for you, we have got spreadsheets that are linked to databases. We even have programs that look cases up in OJIN for you. What an analyst does now is not the same job as they were hired and paid to do when they started. The job itself has changed and the caliber of the people that are doing the job. That is a reclassification and not a pay raise. It results in more pay for them, but it is something that probably should have happened eight to 10 years ago.
- 2:29:31 C. Lazenby So how much more money is this going to cost us? If you could pull the spreadsheet up on your iPad.
- 2:29:47 K. Aylward I will do that. I recall that it was quite a small amount. It was \$12,000 or \$13,000. It was something between \$10,000 and \$15,000.
- 2:30:02 J. Potter On a related question you might be able to answer off the top of your head, the furlough days that you have identified there. Did the staff have input into that? Did they choose those particular days? The reason I ask the question is I heard you talking yesterday about the state shutting down various days. They had more days to shut down than you do. One of those days the court is down is the day after Thanksgiving. Yet you chose not to take the day after Thanksgiving. Just wondering as a staff person working there I would have furloughed out there for a four day weekend.
- 2:30:35 K. Aylward We knew that we wouldn't be able to get approval for any kind of compensation plan until this meeting. What our goal was is to give people as much warning as possible. The people on the lowest end of the pay scale this hurts. You need until March to buffer yourself against these days that are coming.
- 2:30:52 N. Cozine Could I also add while you find the spreadsheet that at the last meeting I indicated that we would present a proposal to staff and talk with them about what the options were. We did that. The meeting actually went very well. The staff was very receptive and they understand choosing these closure days gives them time to plan and it works out well to coordinate our furlough days with the statewide closure days. Those are days that executive branch and judicial branch agencies are closed, which makes it difficult for our staff to get work done when all the departments with whom they work and the courts are closed. The court closure days has additional benefit in that it is very easy to manage. When you allow floating furlough days you have to make sure that employees are taking them within the given time frame so that you can budget accordingly throughout the biennium. It can become a challenge to keep track of which employees have taken which days and when, and it becomes an administrative task that we avoid by choosing fixed days.
- 2:32:12 C. Lazenby These days don't conflict with Commission meetings?

2:32:14 N. Cozine They do not. They are all Fridays.

2:32:21 Chair Ellis Any other discussion on the budget and compensation plan?

2:32:25 N. Cozine The other thing that I would add and I don't know that Kathryn did, I'm sorry, the analyst positions it is 3.8 positions.

2:32:38 K. Aylward FTE

2:32:45 Chair Ellis I take it on the comp plan we need approval?

2:32:46 N. Cozine We do.

2:32:46 Chair Ellis Is there a motion to approve the comp plan?

2:32:51 S. McCrea I think we are still waiting for Kathryn to get us a figure.

2:32:58 P. Ozanne Just for one piece of it.

2:33:00 K. Aylward I think it is in the same spreadsheet. Can we pick another agenda item or something so I don't hold up the show?

2:33:44 Chair Ellis We are going to lose John. I do feel like the story of the Russian Sputnik and the American Sputnik and they end up in orbit together. One leads over to the other and says, "Now that we are alone let's speak German."

2:34:37 J. Potter Is this a multiple motion?

2:34:39 Chair Ellis I think the only one that requires approval is the comp plan.

2:35:15 K. Aylward The total cost of the merit increases is – I didn't do a total. The COLAs would be for this coming biennium \$148,000 all together for that first 1.5% COLA. The 1.4% COLA would be about \$53,000, but that is offset by the savings from furloughs which would be about \$193,000. Let's put it this way the total cost of the compensation plan is \$210,000.

2:36:10 S. McCrea And what about the reclassification amount?

2:36:12 J. Stevens Does that include the offset?

2:36:14 K. Aylward Yes. That is not on this chart, but it is between \$10,000 to \$15,000 during the biennium to make that change. Frankly I didn't make note of it because I thought this is a required classification. I do remember putting it in and thinking, oh good, that is not so bad. My recommendation should have been to put it up to the level of judicial's but that would have been three times that cost.

2:36:57 J. Potter **MOTION:** I would move to approve the compensation plan; Janet Stevens seconded the motion; hearing no objection; the motion carried: **VOTE 4-2.** Peter Ozanne and Chip Lazenby voted no.

Agenda Item No. OPDS Monthly Report

2:37:41 Chair Ellis Shall we do the monthly report?

2:37:44 N. Cozine It will be brief today. I think you have already heard about the majority of things happening in the office. Pete has some nice updates from the appellate division.

2:37:57 P. Gartlan The appellate division is currently updating its employee manual for the appellate division employees. We try to do this yearly and we have been doing this for the last

couple of years. That is the current operating manual for every attorney and it is moving to include the secretary positions. That is an arduous task that we do every year but it is kind of important. It is an update of our internal practices and procedures. The other piece of information is that we extended offers to two attorneys to join the JAS unit, the Juvenile Appellate Section Unit, and they have accepted. One is Valerie Colas. The other is Matthew Bender. Matthew is practicing in Washington. He has been practicing juvenile law ...

- 2:39:00 Chair Ellis It is also the name of a big publishing firm.
- 2:39:05 P. Gartlan We are excited to have both of them. We think they are going to contribute. The juvenile appellate section unit is really thriving. Shannon Storey is the senior deputy that runs that unit. That unit has been doing really well. I think I have reported to the Commission before about how well they are doing that. They had a juvenile academy last week.
- 2:39:48 N. Cozine This week. Monday and Tuesday.
- 2:39:50 P. Gartlan I didn't attend but I am getting favorable feedback about how our attorneys did. We are really happy with what that unit is doing. These two attorneys are starting staggered for the training. We can accomplish some individual training with them. Valerie is starting on November 25 and Matthew will start in January. That is the update.
- 2:40:23 N. Cozine If I could tag on to what you have heard. I had the pleasure of attending an oral argument that Shannon Flowers made to the Court of Appeals. She was very well prepared. She had anticipated every single question. She clearly out performed the DOJ lawyer in my humble opinion. It was a really nice argument to watch. Shannon Storey won two cases on Wednesday. The opinions came out from the Court of Appeals. Both of those attorneys did speak at the juvenile law training academy with favorable reviews. I was able to watch that, as was Paul Levy. It was really inspiring to see our attorneys having a big impact statewide. It was very nice.
- 2:41:02 Chair Ellis Good. Anything else on the monthly.
- 2:41:10 K. Aylward I've got nothing. I am spent.
- Agenda Item No. PDSC Schedule for 2012**
- 2:41:36 N. Cozine Did I forget to attach it?
- 2:41:35 P. Levy It was an email.
- 2:41:47 J. Stevens It was? I missed that one.
- 2:41:51 N. Cozine I can bring it up, but I did forget.
- 2:41:54 J. Stevens Can someone send me a copy of it again by email. I promise I will open it this time.
- 2:42:37 N. Cozine Maybe what we should do is put this up here for the Commission's benefit. So the meeting dates are January 12 – proposed. They are all Thursdays but for the October Friday.
- 2:43:00 Chair Ellis I happen to know that I am not going to be available for January 12. I am gone from January 8 to 18.
- 2:43:20 N. Cozine What would the pleasure of the Commission be on that? Should we move it out one more week to the ...
- 2:43:26 Chair Ellis I would appreciate that. I like to attend. The 18th is what day of the week?

2:43:47 N. Cozine That would be the prior Wednesday. We could move it to the 19th.

2:43:56 Chair Ellis I would be safe.

2:44:10 P. Levy March 15 and then May 10. June 14 is the date that at the annual conference in Bend at Inn of the Seventh Mountain. July 12 and then September 13 and then October 19 is a Friday as all of the October meetings are at this conference.

2:45:32 J. Stevens You switched your day so they could stay closed and then one day to be determined ...

2:45:37 K. Aylward No. We float.

2:45:42 J. Stevens I thought it was much more fun my way.

2:45:58 K. Aylward They would be fine without us like today.

2:45:52 P. Levy The last date is Thursday, December 13.

2:46:06 Chair Ellis Sounds okay to me. Any other issues?

Agenda Item No. 10 Update Regarding Agency Strategic Plan

2:46:22 N. Cozine The strategic plan is there. We can talk about that at the next meeting you prefer.

2:46:30 Chair Ellis Let's do that. Go ahead.

2:46:35 N. Cozine I will make this very brief. The current strategic plan for 09-11 has nine goals. The nine goals are to secure a budget sufficient to accomplish PDSC's mission. To assure continued availability of qualified public defense providers. To assure quality of public defense services performed by private providers. To strengthen the contract and business services contracting process in business services. To strengthen working relationships with public defense contractors. To continue to provide high quality representation in appellate cases, training, and support for the state's entire public defense system through OPDS appellate division. To continue to strengthen the management of OPDS. To promote the diversity and cultural competence of Oregon's public defense work force, and lastly, to ensure that PDSC and OPDS hold themselves accountable to the client. Those are our goals. All the goals seem in line with everything that the Commission has expressed is desirable areas to hold onto. The strategies within each one we need to look at and we need to make some adjustments. What I have talked with management team members about is the idea of looking at the Quality Assurance Task Force and the service delivery review models that we have in place to see whether or not we can capture some efficiencies in those processes. We had a productive meeting this morning with the Contractor Advisory Group. They all agree that one of the stumbling blocks we have had is that the Quality Assurance Task Force reviews yield a confidential product. The contractor advisory group seems on board with abandoning that idea of confidentiality with regard to the findings and conclusions in those initial reports. They would still want source confidentiality offered, which I think we are all in agreement is a good thing because it helps people feel comfortable with sharing information. So we want to look at our strategies under each of these goals to try to align them with the Commission's approval to something that would change that structure a bit to allow the confidentiality pieces to be removed from the QATF report and try to capture some efficiencies between those two models. The other suggestion from the contractor advisory committee was to look at scaling back on the number of service delivery reviews because we have done one now in each judicial district. Is it really everyone? Is says so in the 09-11 Strategic Plan.

2:49:27 P. Levy Douglas County is one where we know that we haven't.

- 2:49:35 N. Cozine We need to look at the option of slowing that down as we increase, potentially, our look at specific case type areas like death penalty. At some point we would like to engage in a review of civil commitments. These are some of the ideas that we would like to work on.
- 2:49:52 Chair Ellis To my knowledge we have never really done civil commitment at all.
- 2:59:57 N. Cozine We have not. We would like to work on the structure of the strategic plan. It seems to get modified every year with slight variance and we will probably do the same thing again this year. At some point we might want to take a whole, fresh look at the strategic plan. For right now the idea of just keeping those goals and looking at our strategies and trying to make a few changes with the strategies to mirror what we think might be a more efficient system.
- 2:50:32 Chair Ellis Any thoughts or comments?
- 2:50:40 C. Lazenby Might think about cycling those through on the Commission's agenda, just sort of one at a time, to share thinking and get input from us.
- 2:50:47 N. Cozine I think that is a great suggestion. I felt a lot of pressure to get this strategic plan created and implemented by January 1. Then when I went on the website I realized that they are actually dated in the biennium. So, for example, the 09-11 Strategic Plan came out in 2010. So I feel less pressure and I think we will get a better quality product if we do take it in chunks. There is a lot there and a lot to work on.
- 2:51:21 Chair Ellis Okay. Any other business? Is there a motion to adjourn?
MOTION: Shaun McCrea moved to adjourn the meeting, Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Meeting Adjourned 3:30

Attachment 2

2012 PDSC Meeting Schedule and Possible Agenda Topics

Possible PDSC Retreat Topics

- Discussion of Policy and Procedures on Contracts
 - 2011 Contract Process
 - Commission feedback
 - Discussion of Contractor feedback
 - Contract amendments and extensions
 - Process for extending one-year death penalty contracts
- Service Delivery Reviews & Quality Assurance Task Force Peer Review Processes
 - Discussion of current processes, contractor feedback
 - Discussion of possible changes
- Strategic Plan; Review of Goals & Strategies
- Discussion of 2012 Cost Containment Strategies
- ED communication with Commission members
 - Feedback & Preferences

January 19

- Biennial Report to the Legislature
- Annual Employee Survey Results
- OPDS Monthly Report

March 15

- Update on Clackamas County (Analyst)
- Report on Statewide Public Defense Survey
- Executive Director's Annual Report
- Update Regarding Budget & 2012 Legislative Session
- OPDS Monthly Report

May 10

- Service Delivery Review for Douglas County
- Update on Service Delivery in Lincoln County
- Review of Best Practices for Boards and Commissions
- OPDS Monthly Report

June 14 (OCDLA Annual Conference)

- PDSC 2013-15 Budget Request Policy Option Packages; Contractor Recommendations
- OPDS Monthly Report

July 12 (request that we move this meeting to August 2, 16, or 23) to allow time for building budget)

- Discussion and Approval of PDSC 2013-15 Budget Narrative
- Customer Service Survey Results
- Update Regarding Death Penalty Contractor Review
- Post-Conviction Relief Presentation
- OPDS Monthly Report

September 13

- OPDS Monthly Report

October 19 (Annual Management Conference)

- Commission Review of One-Year Death Penalty Contracts
- OPDS Monthly Report

December 12

- Service Delivery Review for Linn County
- OPDS Monthly Report

Attachment 3

Biennial Report for 2009 - 2011
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Service Delivery Reviews
Site Visit Process
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Public Defense Services Commission
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Introduction

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- Service Delivery Plans
- Statutory oversight duties
- Subject Matter System Reviews
- Budget – request/approval
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2. OPDS's Contract and Business Services Division

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- Facilities
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 - Analysts
 - subject matter experts available to courts & contractors
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 - QATF
 - Complaint Process
 - Attorney Certification Process
 - NRE reviews
 - Organization and Oversight of Death Penalty Peer Review & Resource Attorney Programs
 - CLEs

- CBS Division Director
 - Draft compensation plan for the 2011-13 biennium
 - Legislative work

3. Appellate Division

- Changes
- AD Manual Revision
- Recruitment and Hiring
- KPMs
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- Trial Bar outreach & support
- AD Attorney Committee work
- CLEs
- Legislative Proposals

4. Executive Director

- Statutory obligations as set forth in ORS 151.219
- Commission's agenda for 2012
- Organization of hearings and presentations at Commission meetings
- Budget and Legislative efforts
- Governor's Public Safety Team
- Management team meetings
- CLEs
- Committee work & External Advisory Committees
- OPDS Advisory Groups (Contractor Advisory Group, Quality Assurance Task Force, and the Death Penalty Peer Panel)

Challenges for 2012

1. Budget