

Members

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Henry H. Lazenby, Jr.
John R. Potter
Per A. Ramfjord
Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Friday, December 14, 2012
9:00 a.m. – 2:00 p.m.
Linn County Circuit Court, Room 200
300 Fourth Ave. SW
Albany, OR 97321

AGENDA

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| 1. Action Item: Approval of minutes - PDSC meeting held on October 19, 2012 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Oregon eCourt – OJD’s Odyssey | Byrant Baehr |
| 3. Linn County Service Delivery Review (<i>Attachment 2</i>) | Invited Guests |
| 4. PDSC – 2013 Schedule – Date Selection (<i>Attachment 3</i>) | Chair Ellis |
| 5. PDSC Policy Option Package Priorities (<i>Attachment 4</i>) | Chair Ellis
Commission Members |
| 6. Action Item: Adjustment to furlough schedule | Kathryn Aylward |
| 7. OPDS Monthly Report <ul style="list-style-type: none"> • Office Space • Appellate Division Update • Fuller Update • Budget Update | OPDS Management Team |
| 8. Executive Session* - Executive Director Evaluation | Barnes Ellis |

Executive Session: *The Public Defense Services Commission will meet in executive session at approximately 1:30 p.m. The executive session is being held pursuant to ORS 192.660(2)(i).*

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

Next meeting: *January 23, 2013, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>*

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, October 19, 2012
12:30 p.m. – 4:00 p.m.
Oregon Gardens,
879 W Main St., Silverton, OR 97381

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens
Hon. Elizabeth Welch

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

The meeting was called to order at 12:30 p.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 12, 2012

Chair Ellis requested edits to the September 12, 2012, minutes; Commission members agreed with suggested amendments.

MOTION: J. Stevens moved to approve the minutes as amended. John Potter seconded the motion; hearing no objection, the motion carried. **VOTE 6-0.**

Agenda Item No. 2 Representing Clients as a Court Appointed Attorney; Perspectives from around the state

Nancy Cozine introduced three attorneys who provide public defense services in Oregon: Conor Huseby, with Metropolitan Public Defender (MPD), who handles a death penalty caseload, Erik Eklund, with Public Defender of Marion County, who has a Measure 11 caseload, and Karen Stenard, who practices juvenile law in Lane County.

Connor Huseby began by giving his background, which included a year of practice at Intermountain Public Defenders in Pendleton, then five years with MPD in Washington County. For the last three years his caseload has included death penalty cases, and he currently practices at MPD in Multnomah County.

Chair Ellis asked whether Mr. Huseby worked with a high number of Hispanic clients. Mr. Huseby said that he was on the Spanish team, so probably 90% of his Measure 11 clients were Hispanic. He explained that he doesn't speak Spanish well enough to discuss legal concepts, but works with a Spanish speaking assistant and investigator, and always has an interpreter with him whenever he speaks to clients.

Chair Ellis noted that for many years MPD did not provide representation in death penalty (DP) cases, and asked when that changed. Mr. Huseby indicated that it started about three years ago, and that he believes they have had a total of seven aggravated murders during that time. There are two full-time first chairs dedicated to representation in aggravated murder cases, and they handle two at once. There is a rotating cast of second chairs, and in-house investigators, who are dedicated to the capital team. Mr. Huseby was one of the second chairs for a couple of years. About three months ago, Mr. Huseby became one of the first chairs; Bob Axford is the other. Chair Ellis asked Mr. Huseby to estimate the percentage of his day, or year, spent on DP cases. Mr. Huseby said he is still finishing up a few non-death penalty cases that were too complicated and too far along to transfer when he took the position as a first chair. He anticipates that starting in December his whole day will be exclusively dedicated to death penalty work.

Mr. Huseby moved on to talk about some of the things that he likes most about the job, and some of the challenges. Mr. Huseby provided the following statement.

The things that I like most about the job are – first of all, I think any public defender loves working for the neediest clients. I love that. I love the constant amount of learning that you have to go through. Every case, I have got to learn about something brand new. I have got to become an expert on arson. I have got to become an expert on gun shot residue, whatever it is.

He noted that attorneys at MPD who are providing representation in more serious cases have a reduced caseload, that he is able to fully prepare the cases, and that he enjoys that aspect of having a more serious caseload. He also noted appreciation for the great camaraderie within the public defense community, speculating that it comes from a sense of shared peril.

Mr. Huseby then talked about the struggles - money is always a problem. Mr. Huseby said that he would like to be a public defender for the rest of his life, if he could, but explained that his law school debt will make that difficult. Chair Ellis asked Mr. Huseby about his current level of student debt. Mr. Huseby estimated that he owes about \$100,000. Chair Ellis offered an observation that many young lawyers today graduate with a mortgage but no house. Mr. Huseby said that this is absolutely true; he is unable to buy a house because he has, essentially, a mortgage payment to make every month, just to cover school loans. Mr. Huseby said that ultimately, he will want to have children, buy a house, and do all that, but says that it is just too difficult to do that with the amount of funding for public defense.

Chair Ellis asked whether Mr. Huseby is getting any relief from the federal legislation that passed two years ago that authorizes full-time defenders to qualify for the debt forgiveness program, but was poorly funded. Mr. Huseby said that he is not, noted that he needs to get more aggressive about that, but indicated that his understanding is that the applicant must go through some debt consolidation, and must work for 10 years full time as a public defender or as a public service attorney before eligible for relief. Chair Ellis shared his view that this is one of the biggest problems with the profession as a whole, but particularly for lawyers like Mr. Huseby, who want to do public defense work. Chair Ellis asked Mr. Huseby about the percentage of his take home pay required to stay current on his student loans. Mr. Huseby said that, though he doesn't know the percentage, between his loans, his rent, food, and living a pretty frugal lifestyle, he breaks even every month. Chair Ellis asked Mr. Huseby whether he is current on his loans; he answered in the affirmative. Chair Ellis asked how long he

would have to be paying. Mr. Huseby said that it has taken him six years to pay off \$25,000 or \$30,000, and he has another \$100,000 to go, so probably 15 or 20 years.

Chair Ellis complimented Mr. Huseby on his work, and lamented the student loan debt situation. Mr. Huseby said that the problem would be solved if there was some sort of parity between district attorneys and public defenders. He explained that in California, where he went to law school, there is parity; there were substantial salaries. At the San Francisco public defender, it is almost impossible to get a job because once people get in, if they are dedicated public defenders who love their job, they stay forever because they can make a career out of it, eventually buy a house, and pay off their loans. They can have a family. In the State of Oregon that is pretty rare unless you are lucky enough not to have student loan debt. It is hard to last very long in public defense under the current system.

Chair Ellis asked whether there was other information Mr. Huseby wanted to share. Mr. Huseby indicated that funding is the number one problem; that there are issues unique to Washington County, but those are just part of the job. Chair Ellis asked Mr. Huseby to focus a little on the Hispanic minority representation, and asked him whether he is getting adequate support to make the communication problem not too bad. Mr. Huseby said that he does, and that he is lucky to have a phenomenal assistant who is constantly there to translate if he gets a phone call. All of his clients are in custody because most of them are facing serious charges, and he can get an interpreter in an hour if he needs to go see a client, so he doesn't have any problem communicating with clients.

Chair Ellis asked Mr. Huseby whether he has had adequate training in the immigration area to be able to provide assistance, noting that there are some very tricky issues. Mr. Huseby responded by explaining that immigration consequences become complex with more minor crimes, things like thefts and forgeries, because that is where a person might be able to negotiate something that would avoid possible deportation consequences. Mr. Huseby said that he doesn't think he could provide really sophisticated immigration advice; it would take a lot of work to get up to that level. With a serious caseload, clients are all facing horrible crimes - Jessica's Law, murder, armed robbery, and virtually all of them require advice to the client indicating that with a conviction they will likely be deported; it is not a complicated analysis. Chair Ellis recalled that the Commission heard about immigration issues about two years ago and intended to move down the track of trying to get some immigration qualified lawyers available for practitioners, like Mr. Huseby, who don't pretend to be sophisticated in that area, to get more sophisticated knowledge when necessary. Mr. Huseby said that in each MPD office, Washington and Multnomah County, one attorney is assigned as an immigration expert available to people at MPD and outside MPD. Mr. Huseby said that these attorneys have been helpful.

Karen Stenard next addressed the Commission. She has been a practitioner in Lane County juvenile court for about 14 years; prior to that she briefly worked for Pat Horton as a criminal defense attorney. Two-thirds of her caseload is a mix of parents and children involved in a dependency case. Chair Ellis asked whether she also represents parents in termination of parental rights cases. Ms. Stenard said that she does, and explained that in Lane County attorneys provide what they call "cradle to grave" representation; attorneys are in court on certain days, and clients assigned that day become the attorney's client for life. Ms. Stenard said that she has done this long enough now that she has represented clients as dependent kids, then delinquent kids, and now as parents. Attorneys keep their clients through the termination of parental rights process unless the client would like another attorney.

Chair Ellis asked Ms. Stenard how her office tracks potential conflicts, noting that identifying conflicts early can conserve public defense resources. Ms. Stenard explained that court clerks, who orchestrate attorney assignments, provide a preliminary check. Her office then runs a check in its conflict system, which goes back many years. Her staff does additional checking, and it is rare that they miss something. There have been only a couple from which

she has had to withdraw, often due to something remote, like someone living in a house with someone Ms. Stenard represented long ago. There are three attorneys in Ms. Stenard's office, and she feels the system is working pretty well. Having cases forever does allow attorneys to serve clients well, and it is gratifying.

Ms. Stenard explained that there are scheduling challenges because most of the work is pretty crisis driven, and clients' schedules don't always match up with the attorney's. Attorneys can get a call late in the afternoon saying that a client had a baby, and the attorney has to be in court even though it wasn't a morning the attorney was planning to be in court. Lane County has a cattle call docket for disposition review hearings, which are the hearings that occur in juvenile court after jurisdiction is attached, which is the bulk of the work. It starts at 10 in the morning, often goes through lunch, and is very unpredictable. Attorneys try to schedule visits with kids that live, often in rural areas, and take a lot of time. Chair Ellis pointed out that with this model, many meters are ticking, or not ticking as the case may be, and asked whether Ms. Stenard feels like this is an efficient use of time. Ms. Stenard said it is not an efficient use of time, and there are ongoing discussions with the judges. Part of the problem is that some of the hearings last three minutes because it is just a child, with one attorney, waiting for an adoption, so it is just really a status check. Other hearings are much more complicated. Contested hearings go to a different part of the docket, but scheduling is a challenge because attorneys don't have a lot of control.

Chair Ellis noted that about four years ago there was a big restructure in Lane County's representation model, that it went away from the old rolodex system for conflict counsel to a consortium group, and asked whether this impacted juvenile providers. Ms. Stenard explained that she is part of a consortium with 16 attorneys, that the public defender has three attorneys that are full time in juvenile court. Her consortium is not part of the Lane County Consortium. Chair Ellis asked whether the new model is working better than the previous system. Ms. Stenard said that she thinks it is working well, and that the sentiments against the changes have subsided.

Chair Ellis asked Ms. Stenard to share the things she loves about her job. Ms. Stenard said that she likes that she represents people for many years, and that she is able to help them. She said that it is gratifying to see families reunited or kids in a better place. Resources are very challenging right now, and every time resources for families disappear, the work gets harder because people are waiting to get into services and progress is slower.

Chair Ellis asked how waivers of counsel in juvenile cases are handled in Lane County. Ms. Stenard said that it doesn't happen - every kid has an attorney and every parent has an attorney. The only time that someone may not have an attorney present with them is occasionally a Citizen Review Board meeting takes place at the exact same time of court hearings, so some CRB participants may be unrepresented at the moment.

Ms. Stenard said that though it is a gratifying job, attorneys don't have as much time as they would like for planning - it is difficult to get enough of a caseload to pay the bills without having too many cases. Chair Ellis asked Ms. Stenard whether there are other issues touched upon with Mr. Huseby that she would like to address. Ms. Stenard said that immigration issues come up in juvenile court, and that much like Mr. Huseby explained, the attorney has to be an expert on everything. In juvenile court schooling issues also arise. When kids are injured in foster care, the attorney is wondering what obligations they have to provide personal injury advice. There are always things to learn. Ms. Stenard noted that she has the benefit of having a bilingual staff member, which has been very important, as some of the cases in Lane County in juvenile court involve non-English speaking clients, most of whom speak Spanish.

Chair Ellis asked whether her consortium experiences problems attracting people into juvenile work because of student debt. Ms. Stenard said that it is a huge problem. New members

don't have any caseload at first, and the consortium is usually starting someone from scratch - they have to build the practice, and the consortium wants the attorney to be available to the juvenile court, but meanwhile the attorney is only getting a small amount of money. This creates a challenge for most consortiums. Commissioner Lazenby asked whether the courts have adequate interpreters and services, and where are there gaps. Ms. Stenard explained that there are excellent interpreters in town, but they are spread very thin. Sometimes the case is scheduled around the interpreter more than anyone else, that the court must often hear the matter when the interpreter is available. It can also be hard to find an interpreter. Ms. Stenard explained that she recently had a Thai client for whom it was difficult to find an interpreter who was court qualified and familiar with the process.

Commissioner Ozanne commented that there was an increasing awareness around the state and the country that the school disciplinary process is a feeder system for the juvenile system and that it is impacting kids of color disproportionately, and asked what the reality is in Lane County. Ms. Stenard said that it is an issue - that things like locker searches result in police involvement, but said that there doesn't seem to be a disproportionate impact in Lane County. She shared her perception that the Juvenile Department is very judicious in its decision making process, and seems to treat kids in a pretty fair manner.

Commissioner Potter asked about the current judicial policy about rotating judges into the juvenile department. Ms. Stenard said they had Judge Leonard for many years, and Judge Henry, who is the full-time dependency judge, has been on the bench now for about two years and is planning to retire. Judge Love will be the new dependency judge. Termination trials get assigned to the general judicial assignment rotation. Judge Carlson, who used to be at Lane County Public Defenders, is the delinquency judge, and she is there a little less than half time.

Erik Eklund introduced himself as a deputy public defender in Marion County. Mr. Eklund explained that he had tried to open his own shop in Oregon City, with the goal of joining the Clackamas Consortium, but that never came to fruition and probably largely because of some of the student loan issues explained by Ms. Stenard. Mr. Eklund ended up returning to the Public Defender of Marion County office to cover a maternity leave, and then filled a vacant position. He also spent about eight weeks at the Southern Oregon Public Defender. Mr. Eklund said that he has received excellent training at the public defender's office.

Chair Ellis asked whether there is a large Hispanic population, and Mr. Eklund estimated that 20 to 25 percent of his clients are Hispanic. There are good local interpreters, but he suggested that the ideal would be to have a local firm dedicated to representation of Hispanic clients. The Marion County PD does have an in-house expert for immigration issues, and agreed with Mr. Huseby's analysis that immigration advice is more complex for lower level crimes.

Mr. Eklund said that he and one other attorney, Jessica Kampfe, are the designated Measure 11 attorneys. The office used to give each attorney a mixed caseload, and Mr. Eklund enjoyed having the mix of cases, but that model created logistical and scheduling problems. Chair Ellis asked whether the addition of a public defender to the mix in Marion County has been a good thing, and whether the wounds have healed. Mr. Eklund noted that it is hard for him to be objective, but said that it is working out and that feedback from the bench seems to be overwhelmingly positive. Mr. Eklund noted that in Marion County, the trial judge is assigned weeks if not months ahead of time, which is beneficial because the lawyer can advise clients on a more particular basis, and make a better assessment of whether it is appropriate as a court or jury trial. Chair Ellis asked whether Mr. Eklund often affidavits judges; he said not often, and that the decision is up to the individual lawyer.

Chair Ellis asked the panel to comment on what, if anything, they could suggest that would help the Commission do a better job. Mr. Huseby suggested that the quality of public defense

is good in Oregon, but that it would be improved significantly by allowing people to stay longer, which is primarily a financial issue. He noted that many people try public defense, do it for two years, then leave. Chair Ellis asked whether they leave because of burn out or frustration or money. Mr. Huseby said it is almost always money, and that it is detrimental to the client because it prevents talented attorneys from staying in public defense.

Chair Ellis asked whether panel members' offices have experienced lawyers, career lawyers. Ms. Stenard said that members of the consortium are career lawyers, but some of that is because they are able to supplement; a lot of them have a domestic relations practice; a couple are on the federal panel. This creates some challenges because the attorneys have to be in more than one place. She notes that they are a very mature group who have been practicing a long time. Mr. Eklund said that besides Mr. Sermak, there are only two lawyers in the office that have significantly more bar time under their belt than Mr. Eklund, but also noted that it is a relatively new office. Mr. Eklund said that he has seen people leave because they can't afford to stay, but that it is often a mix of issues. Mr. Huseby said that MPD has experienced lawyers, but that there is a difference between counties. In Washington County it is a much younger group. In Multnomah County it is a little bit older group, but he suspects that the group of very experienced attorneys arrived before the debt load became so extreme, and noted that it is the new attorneys who can't afford to stay. Chair Ellis asked whether it was entry pay, or that the scale just doesn't go up very far. Mr. Huseby said that it is both. Mr. Eklund added that most law school tuition amounts are so high that students must also acquire private loans, and these are not covered by loan repayment programs. He explained that he is on an income sensitive repayment schedule, which is not the full monthly payment.

Ms. Stenard encouraged Commission members to watch court when possible, noting how eye opening it has been for her to participate in site reviews to see how things are done in different counties.

Commissioner Lazenby touched back on the subject of interpreters, and asked whether in the Woodburn area there is a substantial number of Russian speakers, and whether the interpreter services are better for Russian clients. Mr. Eklund said that his experience offers too small a sample size, but notes that a Russian interpreter is more difficult to locate because there are more Spanish interpreters. He also noted that it is difficult to get into the jails to see clients, and that when an interpreter must also be scheduled, it makes the scheduling very difficult.

Chair Ellis commended the panel and thanked them for their work.

Agenda Item No. 3

Budget Update

Ms. Cozine reminded Commission members that immediately after the September PDSC meeting, she and Ms. Aylward appeared before the Emergency Board subcommittee to request that the legislature allocate the \$2 million dollars recommended by LFO, and indicated that the \$2 million was approved by the full Emergency Board that Friday. She noted that PDSC will need to return to the Legislature during the next legislative session to request funds needed to cover expenses for the remainder of the biennium.

Commissioner Stevens asked whether the budget process is working better with the legislature meeting annually. Ms. Aylward said that it is. Ms. Aylward provided an explanation of the budget narrative included in the Commission meeting materials, and noted a few technical changes that will be included in the final version. Commissioner Potter asked Ms. Aylward whether, despite the poor budget outlook, there are strategic efforts the Commission should be making to ensure that legislators are aware of what is a fairly acute need to start addressing this additional compensation package. Chair Ellis indicated that he is very stressed about what he is observing, and is thinking that there must be a way to present this to the legislature that might free up some money to go to this group of talented young lawyers with a huge monkey on their back. Ms. Aylward recollected a Commission

discussion a long time ago about a possible policy option package that had to do with loan forgiveness. The Commission didn't actually draw it up or cost it out, but it was discussed, and there was a decision to see how the John R. Justice program worked. Ms. Aylward suggested that the Commission could pursue creation of a loan forgiveness program. Commissioner Ozanne suggested that this would require a serious conversation with the legislature that would include the law schools, as they are the ones that are generating these huge costs. Judge Welch asked whether there could be some kind of tax break, or an adjustment to that person's taxation of their income. Ms. Cozine noted that interest paid on student loans is deductible. She also noted that she is on the committee that reviews the J. R. Justice applications for debt forgiveness from the federal government, and that her recollection is that there were 12 applications this year, all of which were granted. The applications that the committee reviews are free of names, so there is no way to determine who in PDSC's provider pool actually received the funds, but there are some people accessing them. Ms. Cozine suggested that this is a critical topic, and one that should be included in the future as a separate agenda item so that the Commission can hear more about the different loan forgiveness options, and include a representative from each of the law schools to talk about the resources available to help PDSC's provider community navigate through the options; she noted that there are different loan forgiveness programs and they each have different criteria.

Commissioner Stevens asked whether the narrative could include information about lawyers who have to leave the business because they can't pay the debt. Ms. Aylward indicated that it could be put into the Ways & Means presentation materials, and that it could be made a little more gripping. Commissioner Potter suggested talking about the strategy for the Ways & Means presentation. He mentioned that Commissioner Ozanne, while he was executive director, brought in sheriffs and DAs to explain the importance of funding the defense function. He suggested that we should consider having someone like Mr. Huseby provide a short narrative.

Commissioner Lazenby asked whether 12 applications for the debt forgiveness program was a low number and an indication that there would be higher numbers if people were more aware that the option existed. Ms. Cozine said that was possible, but that it could also be that the criteria are such that there aren't very many people who actually qualify. This particular loan forgiveness had a cap of about \$5,000 forgiveness per year, so not a huge amount of money, and the applicant can't earn more than a certain amount, about \$50,000 per year, and what is really difficult is that if you are a double income household the amount is increased somewhat but not much. If the applicant has a spouse with a huge amount of debt, they get punished under the scheme. Commissioner Potter noted that there was only about \$60,000 divided up between the 12 people, an embarrassingly small amount, in addition to being tough to qualify under the established criteria.

Chair Ellis wondered whether the website could be structured to alert people about forgiveness options. Ms. Aylward suggested that if the Commission wanted to do something, she would suggest a line item in contractor budgets – give the provider a specified amount, ask them to give us the criteria, and they can administer the funds.

Chair Ellis suggested that someone needs to be focusing on this issue. Ms. Cozine asked whether the Commission would be interested in hearing from a panel with a few more practitioners who are struggling with the loan issue and also from the law schools. Chair Ellis said the Commission would welcome such a presentation.

Ms. Aylward reminded Commission members that they need to decide whether to approve the budget narrative. Ms. Cozine noted the need to slightly modify one paragraph on page 99.

MOTION: John Potter moved to approve the budget with proposed amendments; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Agenda Item No. 4

PDSC Personnel Rules Regarding Reemployment

Ms. Cozine reminded Commission members of their discussion of PDSC rules regarding reemployment, and the Commission's request to amend the existing personnel rules to include a new provision requiring Commission approval for any reemployment following retirement. Ms. Cozine noted that the one request that had been made before the Commission meeting must proceed through under current personnel rules, but noted that it was helpful to have the Commission's feedback. Ms. Cozine also noted that the reemployment provision can be used not only for reemployment after retirement, but also for an employee who left and wishes to return. She suggested that when considering the proposed language, the Commission should keep in mind that there might need to be two separate provisions - one that addresses reemployment generally and one that addresses reemployment after retirement.

Commission members discussed the two options, and Chair Ellis expressed his preference for the version that requires Commission approval. Ms. Cozine indicated that she wanted to be sure Commission members knew the conversation would have to be on the public record, and noted that this could be uncomfortable for an employee. Commissioner Potter asked whether that would be because the Commission will know the name of the employee, or that the employee might need to show up to talk to the Commission. Ms. Cozine indicated the latter. Chair Ellis expressed support for having the discussion on the public record as part of establishing the documented business need and criteria, and suggested that the Commission adopt Proposed Revision #2, but after the words "...subject to the discretion of ..." insert the "the Public Defense Services Commission upon recommendation of the Executive Director"

Commission members discussed options, and various proposals covering the maximum duration of a post-retirement reemployment agreement, with Commission members concluding that the rule should not specify a particular maximum length of time, but simply require compliance with state statute so that the revised rule would start with: "Reemployment Following Retirement." "Pursuant to [applicable ORS]" an OPDS "employee who wishes to retire may....." Then, regarding discretion, the rule will say, "...subject to the discretion of the Public Defense Services Commission upon recommendation of the Executive Director, but shall be authorized only when there is a documented business need for the employment or reemployment is necessary to ensure an adequate transfer of knowledge." Everything else goes away.

MOTION: John Potter moved to approve with the suggested revision; Hon. Elizabeth Welch seconded the motion. **VOTE: 6-0.**

Agenda Item No. 5

PDSC policy regarding disclosure of billing records (ORS 135.055(9))

Paul Levy presented revisions to the PDSC policy regarding disclosure of billing records, as requested by Commission members during the last two PDSC meetings, noting that the critical language is in subsection (5). Mr. Levy reminded Commission members that OPDS and the Commission operate under a statutory obligation to maintain the confidentiality and shield from disclosure requests for non-routine expenses, authorization of those expenses, and the bills that are submitted pursuant to those expenses. He confirmed that OPDS is required and does maintain the confidentiality of those documents until the conclusion of the case. Chair Ellis asked for clarification about whether it was after the conclusion of the case or the trial. Mr. Levy indicated that the rule applies until the conclusion of the case. Prior to the conclusion of the case OPDS may disclose, and in fact does disclose, total expenses upon request, which is authorized by statute. Mr. Levy noted that this is an exception to the overarching requirement that OPDS not disclose billing information prior to the conclusion of the case.

Mr. Levy explained that the statute says the following may not be disclosed to the district attorney prior to the conclusion of the case, and “the district attorney” has been interpreted in an opinion from the attorney general to include the entire public. It then says the total amount of monies determined to be necessary and reasonable for non-routine expenses may be disclosed to the district attorney at the conclusion of the trial in the circuit court. He offered that this is what is repeated more or less in paragraph (1) of the revised policy.

Mr. Levy explained that he doesn’t see the proposed language as barring OPDS from providing disaggregated information, so long as it is honoring the spirit of the statute and what it is meant to accomplish, which is to protect against the disclosure of a particular expense and the justification for those expenses, all of which are subject to disclosure at the conclusion of the case. Chair Ellis expressed concern that reading “conclusion of the trial” as “conclusion of the case” means that a death penalty case may never conclude if PCR is included as part of the time during which disclosure is prohibited. Mr. Levy responded by noting that at the conclusion of the trial the total amounts of monies can be disclosed. He further clarified that the revision suggests that the PDSC not try to define when the case is concluded, not to anticipate the case law, but to say that OPDS shall disclose the information as required by law. This approach allows OPDS to litigate in a case by case fashion and as necessary, whether it should be required to disclose the information. Whether information should be disclosed when OPDS receives a subpoena for information requires consideration of a number of things, and sometimes it is necessary to have the court determine whether it should be released. The principal question is whether the petitioner in a post conviction relief case has waived the attorney/client privilege by making allegations in the petition about the conduct and competency of trial counsel. Mr. Levy explained that this is a difficult analysis even for the Attorney General’s office, and that OPDS should not be the entity to decide whether the petitioner has waived the attorney/client privilege. The proposed policy includes important preface information that explains all of this. It explains that OPDS asks for and requires that lawyers provide to OPDS highly sensitive, confidential information and that OPDS promises to protect it. That the legislature intended, and the legislative history is clear, that the attorney/client privilege applies to these communications. So if OPDS is being asked to reveal information, OPDS should do so only when it is clearly required by law.

Chair Ellis posed a hypothetical scenario: assume there is a very highly controversial DP case with three or four trials and there have been enormous costs. A reporter wants to write about that and there may be some suggestion either too much or too little was spent on non-routine expenses. If that reporter makes a request after the first direct appeal, during the post conviction stage, does the proposed policy authorize OPDS to release information to that reporter? Mr. Levy responded by saying that in the recent Guzek case, which is still pending on direct appeal, OPDS received a similar request from a judge and did provide information about the total amounts of money. Because it is still pending on direct appeal OPDS must protect the particularities. OPDS would resist any inquiry because it is obligated to do so, but the reporter is not without recourse. She or he can use the mechanism of the public records law. If OPDS denies a request, the matter can be litigated through the attorney general’s office and then ultimately through the circuit court in Marion County.

Chair Ellis asked whether it would make sense to make the language clearly authorize release of disaggregated information, with non-routine expenses and attorney expenses as separate amounts. Ms. Aylward clarified that this is the way the information is usually provided. Chair Ellis expressed support for the proposed language as long as OPDS interprets it to mean that disaggregation is permitted.

The Commission entertained some discussion regarding records generated before the creation of the PDSC, which are still in the possession of providers, and determined that the issue was beyond the scope of the current conversation.

MOTION: Hon. Elizabeth Welch moved to approve the proposed amendment to the PDSC confidentiality policy; Chip Lazenby seconded the motion. **VOTE 6-0.**

Agenda Item No. 6 Request for Input Regarding PDSC Agenda for 2013

Commission members requested one addition to the agenda items for 2013, to address law school debt and loan repayment options. Ms. Cozine agreed to circulate an email to set a specific date for the January 2013 meeting.

Agenda Item No. 7 OPDS Monthly Report

Peter Gartlan provided an update regarding the appellate division. First he shared that AD is hiring right now. There were 141 applicants for the criminal deputy one position; eleven candidates will be interviewed next week. Second, one of the charter members of the juvenile appellate section, Shannon Flowers, left the office to practice with a firm in Portland. Third, since the last PDSC meeting, the Supreme Court allowed review in four new cases; Mr. Gartlan provided a brief summary of each. Finally, appellate attorneys met with contractors from around the state at yesterday's management conference, and the appellate division is about to launch the exchange program with the Public Defender of Marion County office.

Mr. Levy advised the Commission that MPD does provide immigration advice for the entire state. They call it the Padilla Project, and as a consequence OPDS is now receiving very few requests to hire immigration lawyers on a case by case basis. He also let the Commission know that a peer review team performed a site visit in Clatsop County, and is in the process of drafting reports regarding the providers. This was the first peer review with a modified confidentiality protocol. OPDS will be reporting to the Commission about the process in June. Mr. Levy reported that the peer members, all of whom have been on other site visits, didn't notice any chilling effect; it was a good visit with lots of information. The next peer review will look at the criminal providers in Marion County. Mr. Levy informed Commission members that he provided training for all staff on the state statute that prohibits public employees from promoting candidates and ballot measures during work hours, and reminded them that they are subject to the same restrictions. Finally, Mr. Levy provided an update regarding *State v. Fuller*, which held that when misdemeanor offenses of theft are reduced to violations by the district attorney the defendant is entitled to constitutional protections including trial by jury and proof beyond a reasonable doubt, and though it wasn't addressed, it flows naturally that the defendant is also entitled to appointed counsel. It is not yet clear where the line will be drawn with the right to other misdemeanor charges that are reduced to violations, but OPDS will need to provide counsel in any case where a judge determines it is necessary under the *Fuller* analysis.

Ms. Cozine provided an update regarding the Juvenile Law Training Academy and the Management Conference. She also noted that she, John Potter, and Shelley Winn, would be spending two days in Albany preparing for the Linn County Service Delivery Review.

Agenda Item No. 8 Thank you to Peter Ozanne

Chair Ellis began the last agenda item by reminiscing about Peter Ozanne's achievements during the creation of Oregon's public defense system. Commissioner Potter noted the importance of Commissioner Ozanne's work and his commitment to providing quality public defense. All Commission members recognized Commissioner Ozanne's significant contributions and thanked him for his years of service as a member of the Commission.

MOTION: Peter Ozanne moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Friday, October 19, 2012
12:30 p.m. – 4:00 p.m.
Oregon Gardens,
879 W Main St., Silverton, OR 97381

MEMBERS PRESENT: Barnes Ellis
Chip Lazenby
Peter Ozanne
John Potter
Janet Stevens
Hon. Elizabeth Welch

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

The meeting was called to order at 12:30 p.m.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on September 12, 2012

1:54 Chair Ellis If we could bring the meeting to order. Thanks everyone for coming. Let's start with the minutes of the meeting of September 12, 2012. Are there any additions or corrections? I have several so see if others agree. On page 1, agenda item no. 3, third line from the bottom where it refers to "... a special purpose appropriate..." I think that should be "appropriation." Then pages 2 and 3, I think a lot of readers could get confused because you kept referring to Mr. Ellis, meaning Jeff Ellis, and then Chair Ellis, meaning myself. I would suggest – and for awhile I was going to correct all of those but there are too many of them. I would suggest that the first time the word "Mr. Ellis" appears, which is the fourth paragraph down, I would suggest a footnote that explains to the reader that the minutes will refer to Mr. Jeffrey Ellis as "Mr. Ellis" and the Chair Barnes Ellis as "Chair Ellis." That will cover the next pages where that same issue arises. Then on page 5, the sixth line down the sentence reads now "Mr. Levy explained that OPDS tells the provider community to divulge secrets..." I suspect there should be a "not to divulge secrets." Am I right?

3:45 P. Levy No. I would have to read this but if I recall the comment we tell them to. Maybe this is not exactly the words that I used but we ask them to divulge secrets and we promise to maintain those confidences.

4:07 Chair Ellis So the idea is the provider is to divulge to us secrets.

4:17 P. Levy Yes.

4:17 Chair Ellis I don't think that sentence is very clear. I sure tripped up on it when I read these.

4:25 J. Stevens Could it say divulge secrets to us?

4:27 Chair Ellis Why don't we say ... "to divulge to OPDS including confidential, protected information about their case." So we will insert the words "to OPDS" after the word "secrets." Those were the corrections that I would suggest. If someone wants to make a motion to approve the minutes with those corrections in them?

MOTION: J. Stevens moved to approve the minutes as amended. John Potter seconded the motion; hearing no objection, the motion carried. **VOTE 6-0.**

Agenda Item No. 2 Representing Clients as a Court Appointed Attorney; Perspectives from around the state

5:03 Chair Ellis Okay. The next item on the agenda is invited guests. Nancy, why don't you orchestrate this.

5:17 N. Cozine Chair Ellis and members of the Commission, we have today three practicing attorneys who are providing public defense services in the State of Oregon, to share with you some of their experiences as public defense providers. We often hear from contract administrators and folks who manage offices. So we have providers here today, one of whom, Conor Husby, handles a death penalty caseload. We also have Erik Ecklund. He is in Marion County and he has a Measure 11 caseload. We also have Karen Stenard who practices juvenile law in Lane County. I should have mentioned that Conor Husby is with the Metropolitan Public Defender. I will let each of them tell you a little bit more about what they do and what their practice involves.

6:10 Chair Ellis I would have all three of you here because I am guessing you each had something you want to share with us and then we may have some questions for the group. I don't know if the three of you have talked about this. Is there someone who wants to lead off?

6:36 C. Husby I can lead off. I am Conor Husby. I was asked to come here by Nancy through Lane Borg. Lane said Nancy wanted a lying attorney. I think she meant a line attorney.

6:54 Chair Ellis Let's get the minutes right. L-i-n-e versus another pronunciation.

7:02 C. Husby For a year I practiced in Pendleton with Intermountain Public Defenders. I then moved to Metropolitan Public Defender in Washington County and I have been there for five years. So for the last five years the first four were just largely handling all Measure 11 cases. There are a lot of trials in Washington County because the Measure 11 offers are not very good.

7:31 Chair Ellis High percentage of Hispanic clients?

7:31 C. Husby For me, in particular, yes, just because I was put on the Spanish team. So probably 90% of my Measure 11 clients were Hispanic.

7:43 J. Potter Do you speak Spanish?

7:47 C. Husby I don't speak Spanish. Well, I speak Spanish but not well enough to talk about important legal things. I have a Spanish assistant. I have a Spanish speaking investigator. I always have an interpreter with me whenever I speak to clients. Most of my clients are Hispanic, the vast majority. It is hard to know, compared to the percentage of general Measure 11 defendants in Washington County, what that was. I don't know. Then for the last three years I started handling death penalty cases half time. So I would be the second chair on a death

penalty case and the rest of my caseload would consist of my usual Measure 11, Spanish speaking clients.

- 8:34 Chair Ellis Now MPD use to not do DP. When did that change?
- 8:37 C. Husby That started about three years ago. I was talking with Lane about this, Lane Borg, at lunch. I think we have had a total of seven aggravated murders in the last three years. The sort of setup is there are two full-time first chairs who do nothing but aggravated murders and they handle two at once. There is a rotating cast of second chairs and that is what I did for a couple of years until one of the first chairs, Devon Fuchs, left our office for the federal defenders in Mexico. I took over his position about three months ago. I am now, along with Bob Axford, one of the two first chairs. We each had two death penalty cases at once. Then we have in-house investigators who are dedicated just to the capital team.
- 9:37 Chair Ellis So what percentage of your day, or year, is now being spent on DP cases?
- 9:46 C. Husby Right now the majority. The only reason it is the majority is because I still have non-death penalty cases that were on before I took over the full-time death penalty position, which were just too complicated and too far along to give up. Those will hopefully resolve either through trial or plea bargains this month. After November, starting in December, my whole day will be exclusively dedicated to death penalty work. That is sort of the work history. I think I was asked to come and Nancy said I might talk about some of the things that I like most about the job and some of the problems that I see. I think the things that I like most about the job are – first of all I think any public defender loves working for the neediest clients. I love that. I love the constant amount of learning that you have to go through. Every case I have got to learn about something brand new. I have got to become an expert on arson. I have got to become an expert on gun shot residue, whatever it is. With the more serious cases I like the fact that at least MPD does a very good job of giving us a reduced enough caseload that I never feel like there are things that I should have done that I just didn't have time to do. I always feel like before I go to trial I have done everything I possibly could to prepare for trial. I enjoy that about having the more serious caseload. Then I think in any public defense community there is a great camaraderie that I think probably comes from a sense of sort of shared peril especially in Washington County and I love that. I think some of the struggles of it are – of course money is always a problem. If I had my way I would be a public defender for life if I could, but the realities of the situation are simply that me, like a lot of people, have law school loans.
- 12:04 Chair Ellis If I can ask what level of student debt do you still carry?
- 12:06 C. Husby Probably about a \$100,000. I don't like to look at it so that is a guess.
- 12:11 Chair Ellis I was at a meeting this morning at the Lewis & Clark Law School and the phrase was used that I thought really captured what an awful lot of young lawyers are experiencing today. They graduate with a mortgage but no house.
- 12:32 C. Husby Exactly. That is absolutely true, which prevents me from buying a house because I have essentially got a mortgage payment that I have to make every month just to cover my loans. Ultimately I will want to have children and buy a house and do all that. It is just difficult to do that with the amount of funding of public defense.
- 12:50 Chair Ellis Are you getting any relief at all from the federal legislation that passed two years ago that authorizes full-time defenders to qualify for the debt forgiveness program, but then didn't appropriate very much money for it. I am wondering how that is playing out? Are you getting anything?

- 13:12 C. Husby No. Probably largely my fault. I hate finances so much that I don't pay a whole lot of attention to those things. I need to get more progressive about that, but my understanding is you have to go through some debt consolidation that they have and you have to work for 10 years full time as a public defender or as a public service attorney before we get the relief.
- 13:41 Chair Ellis I want to stay on this. I think this is one of the biggest problems with the profession as a whole, but particularly lawyers like yourself who want to do public defense work has. What percentage of your take home pay do you end up having to pay to stay current on your loan?
- 14:06 C. Husby I don't know for sure. What I know is this. Between my loans, my rent, my food, and I am not by any means an extravagant person – I lead a pretty frugal life style – I break even every month. I am not saving any money. Maybe some months I might save a few hundred bucks. Other months I might be a couple hundred dollars in the hole. I am just sort of basically living month to month.
- 14:44 Chair Ellis Are you current on the loan?
- 14:45 C. Husby Yes.
- 14:47 Chair Ellis How long do you see that you are going to have to be paying at the level before it will pay off?
- 14:56 C. Husby I don't know the whole complex math of how much interest I have paid off and how much principal I have paid off and all that, but it has taken me six years to pay off \$25,000 or \$30,000 and I have another \$100,000 to go so probably 15 or 20 years.
- 15:21 Chair Ellis I am not trying to pry. I am serious. I think this is one of the worst things that our culture has managed to create for itself. I think here you are a terrific, young lawyer doing great work and you are put in this position that you may not be able to do it even though you love it and you are good at it because of this rock hanging around your neck.
- 15:48 C. Husby I absolutely agree. I think the problem would be solved if there was some sort of parity between district attorneys and public defenders. I went to law school in California and the starting salaries for public defenders in California – there was parity there. There were substantial salaries there. For example the San Francisco public defender, it is almost impossible to get a job there, because once people get in if they are dedicated public defenders who love their job they stay forever because they can. They can make a career out of it. They can eventually buy a house. They can pay off their loans. They can have a family and all that. In the State of Oregon that is pretty rare unless you are lucky enough not to have student loan debt. It is hard to last very long in public defense under the current system.
- 16:44 Chair Ellis Do you have more you want to share with us?
- 16:47 C. Husby I think that is the number one problem. Of course there are issues unique to Washington County but those are just part of the job.
- 17:00 Chair Ellis Focus a little on the Hispanic minority representation. You are not bilingual but are you getting adequate support to make the communication problem not too bad?
- 17:15 C. Husby Absolutely. I am lucky I have a phenomenal assistant. She is constantly there if I get a phone call to translate for me. All my clients are in custody because most of them are facing serious charges. I can get an interpreter in an hour if I need to go down and see a client, so I don't have any problem communicating with clients.
- 17:41 Chair Ellis Do you feel you had adequate training in the immigration area to be able to provide the assistance you need because there are some very tricky issues?

17:59 C. Husby I guess my answer to that question would be if I was handling more minor crimes, things like thefts and forgeries. That is really where the immigration consequences become complex because that is where this person possibly could be – you might be able to negotiate something that is going to prevent them from having immigration...

18:20 Chair Ellis Deportation may be a bigger risk than incarceration.

18:25 C. Husby If I had to do that, if I had to provide that really sophisticated immigration advice I don't think I could. It would take a lot of work to get up to that level. The thing about my particular caseload is that my guys are all facing horrible crimes. Jessica's Law, murder, armed robbery and virtually all of them you can just say that this plea offer guarantees you are getting deported. It is not a complicated analysis for that. The Washington County DA's are almost never willing to negotiate something that is going to help them avoid being deported. In the more serious caseloads I don't think the immigration consequences are so complicated because the consequences are always just fatal. Whereas in the more minor cases, I notice our misdemeanor attorneys in our office, a lot more are having questions like if this person pleads to whatever, an assault with this particular mental state and gets probation, are they going to get deported? If this person pleads to this type of theft or that type of, you know lots of questions.

19:34 Chair Ellis We talked about this about two years ago and I am trying to remember. I think it was at the time you argued that case involving the treaty and the need to get notice to the consulate's office. My memory is we were going to move down the track of trying to get some immigration qualified lawyers available for practitioners like yourself that don't pretend to be sophisticated in that area for you to contact if you have a situation where you needed more sophisticated knowledge. I don't know the current status of that issue.

20:23 C. Husby MPD has in each of their offices, Washington County and Multnomah County, one attorney who is assigned that role to become an immigration expert and to be that resource to people in our office and also people outside it. I have used those attorneys before and they have been helpful. Like I said in my particular caseload I don't have to go to an attorney and say, "Well, gee, my guy is thinking of taking a 10 year offer on a rape because he is facing a 25 year sentence under Jessica's Law." It is pretty easy for me to conclude that they are going to get deported. I don't have to use them as much. When I have used them I have been able to get good answers.

21:11 Chair Ellis Thanks a lot. Do you want to go next?

21:12 K. Stenard Sure.

21:17 Chair Ellis We are not here to cross-examine but to learn.

21:22 K. Stenard The debtor's exam continues. Thank you.

21:33 Chair Ellis That is a nice ring you have got there.

21:33 K. Stenard I am Karen Stenard and I have been a practitioner in Lane County in juvenile court for about 14 years now and prior to that I worked for Pat Horton as a criminal defense attorney for a brief time. We have more dependency cases than delinquency cases in Lane County. I would say two-thirds of my caseload, at least, is a mix of parents and children that are having a dependency case involving the children either being in their home with DHS supervision or children in foster care.

22:16 Chair Ellis Do you represent parents in termination of parental rights cases?

22:20 K. Stenard Yes. One of the things that I think we do really well in Lane County is we represent, we call it cradle to grave, so when we have a system where there are attorneys that are on call for certain days and a client that comes to you that day is your client for life. I have done this long enough now that I have represented them first when they were dependent kids. Then they graduated to be delinquent kids. Then they have kids of their own. We keep our clients and keep them through the termination of parental rights process unless they would like another attorney.

23:01 Chair Ellis How does your office handle keeping track of potential conflicts. One of the things that we have learned over the years is one place that this system can save money is to identify those conflicts a lot of earlier than sometimes happens. Can you address that?

23:22 K. Stenard First the court clerks who are kind of dividing up which person is going to get which party you do kind of a preliminary check, which just gets some of it. Then we have a conflict system within my office that goes back for a long time. There are three attorneys in my office. Then my staff does additional checking and it is rare that we miss something. It does come up sometimes. I can only think of a couple that I have had to withdraw from. A lot of times it is sort of the remote thing where it turns out that someone was living in this house that I represented a long time ago.

23:59 Chair Ellis But you feel like the system is working pretty well.

24:01 K. Stenard I do.

24:02 Chair Ellis You don't get these surprises when you are five months into a case and all of sudden you have to drop out and someone else has to start over and we are duplicating costs?

24:10 K. Stenard No. I feel like it does work well. I think there are those occasions but they are infrequent. Again, some of it is if I have some of these clients for a long time there is no conflict there. We have cases forever which I think really does allow us to serve our clients well and is gratifying in that way. It does make for scheduling challenges in that most of the work is pretty crisis driven and our clients' schedules don't always match up with our own. For example, you get a call late in the afternoon that somebody had a baby and you have to be in court even though it wasn't a morning that you were planning on being in court. Lane County has a cattle call docket. Most of our disposition review hearings, which are the hearings that occur in juvenile court after jurisdiction is attached, and that is kind of the bulk of our work. It starts at 10 in the morning and often goes through lunch and it is very unpredictable. That is a challenge that all of us out there face. We are trying to schedule visits with our kids that live often in rural areas and take a lot of time.

25:26 Chair Ellis So you are all in court as this cattle call process unfolds.

25:29 K. Stenard Correct.

25:29 Chair Ellis Which means an awful lot of meters are ticking or not ticking as the case may be. Do you feel like that is not a very efficient use of time?

25:42 K. Stenard It is not a very efficient use of time and it is one that we have ongoing discussions with both the current judge and the judge that was there. We have tried different things to manage that docket. Part of the problem is that some of those hearings last three minutes because it is the child. There is one attorney. Kid is just waiting for an option and it is just really a status check. Then there are hearings that are much more complicated. Contested hearings go to a different part of the docket, but scheduling is a real challenge for all of us because we don't have a lot of control.

26:21 Chair Ellis I could be off on my memory on dates, but I think it was like four years ago we had a big restructure of not the juvenile side but the PD side in Lane County. It went away from the old rolodex system for conflict counsel to a consortium group. I gather you are not in that because you are in juvenile?

26:47 K. Stenard We have a consortium. The public defender has three attorneys that are full time in juvenile court. My group has 16 attorneys and we are a consortium.

27:01 Chair Ellis But I think you are not part – I forget the name now but the Lane County Consortium.

27:03 K. Stenard Correct.

27:06 Chair Ellis I am interested as a practitioner in Lane County do you feel that is working better than the system that we had before which, frankly, we were very unhappy with?

27:17 K. Stenard So full disclosure that I am director of the consortium. We had a consortium before you suggested those changes be implemented, so I think the consortium system works well. We have a board and we have an active....

27:44 Chair Ellis There was a lot of sentiment in Lane County when we did that. You know what are you doing messing with us and we want to protect our lawyers and we want everybody to have an opportunity etc, etc. Has that sentiment kind of subsided and are people, the bar group there, feel satisfied with how things have worked out?

28:13 K. Stenard I think the sentiment, which was pretty strong, I think it has softened. Some of those people including Brad Cascagnette, who is here, when he was looking at beginning the consortium he and I had a lot of talks. I told him some of what I think are the pros of the consortium. I think there is a lot less work for the attorneys on sort of managing the administrative parts of their own caseload. I think people have to come to see those benefits. I am sure some of the people who no longer get cases are not very happy, but the rancor seems to have quieted down.

28:59 Chair Ellis So what do you love about your job?

29:04 K. Stenard I like that I represent people for years and years. I am able to help them. Juvenile court is an opportunity for people to actually make positive changes in their lives. Obviously most of them want DHS to go away and that is my job to get DHS out of their lives. Other people actually come to appreciate the services that are offered to them. It is gratifying to see families reunited or kids in a place that they need to be. Resources are very challenging right now and every time resources that are available to families goes away, my work gets harder because people are waiting to get into services and progress is slower.

29:52 Chair Ellis How is waiver of counsel in juvenile cases handled in Lane County?

29:55 K. Stenard It doesn't happen. Every kid has an attorney. Every parent has an attorney. I guess in some counties people aren't going to disposition review hearings or post-dispositional hearings and that is not an option. We go. The only time that someone may not have an attorney present with them is occasionally a Citizen Review Board meetings take place at the exact same time of hearings. So some CRB participants may be unrepresented at the moment. Our court has had a long tradition of appointing children attorneys and, frankly, even when the parents may not technically qualify for court appointed counsel they err on the side of appointing attorneys.

30:43 Chair Ellis I don't mean to monopolize the questioning.

- 30:47 K. Stenard It is a very gratifying job. I don't think we have as much time as we would like to, to do planning - it is crisis driven and that can be challenging managing and having enough of the caseload to pay the bills but not having too much of a caseload. That is an issue.
- 31:07 Chair Ellis Anything you want to add. It doesn't have to be about yourself, but the group you are working with on the issues that I talked to Conor about?
- 31:13 K. Stenard Immigration issues come up in juvenile court. Much like he was saying you have to be an expert on everything. In juvenile court schooling issues come up and immigration issues come up. I have kids injured in foster care so all of a sudden I am wondering what my obligation is as a personal injury attorney. I think there are always things to learn. I have the benefit right now of having a bilingual staff member that has been really hugely important. Most of the cases in Lane County in juvenile court are white families but we do have some non-English speaking clients, most of whom speak Spanish, so having a person in the office who speaks Spanish has been hugely helpful.
- 31:58 Chair Ellis You are on the management side of your consortium. Are you experiencing problems attracting people into juvenile work because of student debt or is that not a problem?
- 32:08 K. Stenard It is a huge problem. It is a really big problem. I have got mostly older members in my group so their student loans were a little smaller to begin with and they are in the rearview mirror, but it is always an issue. When you are starting a new member they don't have any caseload at first. Usually we are just starting someone from scratch. They have to build their practice and we want them to be available to be at the ready call of the juvenile court, but meanwhile they are only getting a small amount of money. That is a challenge for most consortiums is getting someone involved without having an existing caseload.
- 32:52 C. Lazenby You said that you have a new bilingual staff member and that helps. What about the courts? Do they have adequate interpreters and services, or actually rather than have you say they don't, where are there gaps?
- 33:05 K. Stenard I think there are gaps. We have some excellent interpreters in town but they are spread very thin. A lot of times we have somebody that will come and we are all waiting for the interpreter and I feel sometimes the client doesn't get the benefit of as much before court time with the interpreter because they have someplace to be. It is sometimes astounding how you kind of schedule things around the interpreter more than anyone else. You know we have to take this case now because we have the interpreter here. The interpreter's quality is good, but I think there are times that clients probably don't get as much time with their attorney on that particular day as they should because of the scheduling issue. It is difficult to find - I had a Thai client recently and it was hard to find a Thai interpreter that was court qualified and was familiar with the process.
- 34:01 C. Lazenby It is a growing problem around the state we are finding as we go around.
- 34:05 P. Ozanne Karen, there is an increasing awareness around the state and the country that the school disciplinary process is a feeder system for the juvenile system and it is impacting kids of color disproportionately and the reality of kicking kids out of school. What is the reality in Lane County?
- 34:30 K. Stenard I think that there is that issue. A lot of our delinquency cases are brought because something happened in school. You know lockers get searched and police get there. Frankly, those are really tough cases to defend because there have been multiple interviews with multiple people and, of course, most kids are more than happy to clear everything up. I don't know that I see a particularly disproportionate amount of minority kids coming from the schools. I think in general we have a group right now that is studying it and minorities are over represented in delinquency cases in Lane County, but I can't necessarily correlate that to the school issue. I

certainly agree that it is a bad deal for kids to get in trouble and get kicked out of school. Sometimes that was the only stabilizing thing that they had going on. It doesn't make things better. We do have a program in Lane County. It is the MLK School and it used to be co-located in detention. It is now next to detention. It is for kids who have basically been expelled and aren't welcome anywhere else. It is a great program. It is small but it is an opportunity for some of those kids to go there. I would have to say that I think that our juvenile department in Lane County is excellent. They are very, very judicious in their use of Measure 11 cases and they do a lot FAA's, which are Formal Accountability Agreements, which allow the kid never to go to court. I can't really complain about them being heavy handed in Lane County. My caseload is low because of it. I think that they generally treat kids pretty fair.

36:11 Hon. Elizabeth Welch

Karen you said something that intrigues me just now. The juvenile department makes the decisions about Measure 11?

36:20 K. Stenard

That I misspoke. Although actually they have ...it is still the DA's office although they consult heavily with... I would say the culture in general in Lane County is kids don't go Measure 11 very often. I think I have had two in the 14 years that I have done this. One was a sex offense and then just recently there was a vehicular homicide. I am sorry that I misspoke.

36:46 J. Potter

What is the current judicial policy now about rotating judges into the juvenile department?

36:55 K. Stenard

We have had Judge Leonard for many years and then Judge Henry has been on the bench now for about two years. She is our full-time judge and then Judge Carlson, who use to be at Lane County Public Defenders, is the delinquency judge and she is there a little bit less than half time. So there are two judges and Judge Henry wants to retire. They have identified another judge, Judge Love that is going to be coming out there. Dependency is basically one judge, except for termination trials get assigned to the general judicial assignment rotation.

37:32 J. Potter

Is that an assignment that is based on a year or five years, or is there no policy?

37:41 K. Stenard

I think there is a secret policy. I don't know. Judge Leonard didn't want to go and the PJ at the time had a good relationship and so he got to stay. Recently it has been told to me that no one wanted to come out there, but that they were able to recruit somebody to do it. It is in a whole separate facility and you are the only judge out there, so some of the judges, I think, feel really isolated and the judge out there works longer hours than I would say most of the other judges in town do. It is five days a week and most of the time from 8:00 until 5:00 and often through lunch. I think it is a challenging judicial assignment.

38:20 J. Potter

Is it your preference to have a judge that has been out there for multiple years or ...

38:24 K. Stenard

That depends on the judge. I think there are pros and cons to both. The judges that we have had have been amazing in their familiarity with some of the families. Sometimes that is really not to my client's benefit, frankly, but they do remember and some clients feel a real connection with the judge because they have seen them for so long. I think that there is good and bad. It would be good to have someone come out there for just a year if they didn't have the background it is just a different place to be than other courts. Thank you.

38:59 E. Ecklund

I am Erik Ecklund. I am a deputy public defender here in Marion County. I work for Tom Sermak who is back there somewhere. He told me I would be coming down and basically give the board a perspective on what it is like to be a public defender on the ground level. My initial reaction was sort of the reaction I give people when I tell them I am from Alaska and they say, "Well, what was it like growing up in Alaska where it is like light all summer long and dark all winter long?" My answer is usually like, "Well, I don't really have a different

frame of perspective so I can't really compare it to anything else." What seems like mundane down here is commonplace to me. The limitation on that analogy is that I did do nine months on my own. I opened my own shop in Oregon City and was trying to catch on with the Clackamas Consortium, which is something that never really came to fruition and probably largely because of some of the student loan issues and things that you were talking about before. I ended up first going back to cover a maternity leave and then just worked out that someone else was leaving and settled back into my old job at the public defender here. I did when I was on my own get a little taste of what it is like to practice.

- 40:26 Chair Ellis Were you an MCAD lawyer?
- 40:29 E. Ecklund No. Never. I did about eight weeks at the Jackson County Public Defender in southern Oregon.
- 40:39 Chair Ellis For Bert.
- 40:39 E. Ecklund Primarily for Bert doing dependency work, but functionally the job I have now is pretty much the first job that I got out of law school.
- 40:54 Chair Ellis So how good was the training and supervision that you got?
- 40:55 E. Ecklund Beyond par. I might be angling for a raise.
- 41:07 Chair Ellis I was trying to speed it up for you a little bit.
- 41:07 E. Ecklund I appreciate that. When I was in my own practice, I did a little bit of criminal law in Washington County and some in Multnomah County and a little bit in Clackamas County where I was. There are some idiosyncratic features of practicing in Marion County and I don't think that is any secret to anybody that does this.
- 41:43 Chair Ellis Do you get many prisoner cases?
- 41:44 E. Ecklund I have had a handful of prisoner cases, but, no, not a lot of them. I don't know why that is to tell you the truth. We have had some.
- 41:55 Chair Ellis You have a large Hispanic population.
- 41:59 E. Ecklund Definitely a lot of Hispanics. I would say probably 20 to 25 percent of our clients are Hispanic.
- 42:09 Chair Ellis What is your language facility?
- 42:13 E. Ecklund Mine is practically nonexistent. Tourist Spanglish. I feel like we have good access to good, local interpreters. In my mind the ideal would be to have a local firm that just handles the contract as significant as it is. I know that the consortium has a couple of Spanish speaking attorneys. We currently don't have any attorneys who are fluent in Spanish, but like Conor was saying and I don't know if this was probably all prompted at the same time, but with these things happening quickly with deportation, we do have an attorney as of the last three months or so who is sort of our in-house expert who is sort of the go to for immigration issues and talking with people about those things. I kind of dodged a bullet in the timing because I really have to agree with what he is saying. The immigration issue isn't something I'm probably as capable of speaking to as somebody who is carrying a 100 misdemeanor caseload or whatever, because then those fine distinctions of are you doing this versus are you – which way out of this case are you picking may have long term consequences for that person. Those consequences are there in our cases by carrying all Measure 11s. The case itself is going to

decide that person's immigration fate. They are either going to walk, or hopefully not have an issue, although they may get deported anyway I tell you.

43:58 Chair Ellis

What percentage of your Hispanic clients are undocumented?

44:03 E. Ecklund

Maybe 90 to 95%. When you if you mean non-English speaking, I would guess 90 to 95% of them. I represent very few people that have green cards. A few. That may be overstating it. The Spanish speakers the vast majority of them are undocumented. It is definitely a minority case that the person has some legal papers or anything else. Chances are if they speak English – obviously I represent a lot of kids in Woodburn that might be in their 20's and they're first generation here and their parents are only speaking Spanish but they are all speaking English. In terms of the timing, we just went to about six months in my office making a change where myself and one other attorney, Jessica Kampfe, are sort of the designated Measure 11 attorneys. That was a change that Tom had actually broached, at least with me, and I think he was sort of thinking about implementing a couple of years ago, and he even reminded me of this a couple of months ago when we had the conversation again. At first I had kind of blanched at it because I do like the variety, so to speak, of just all crimes running the gamut. It is a refreshing change to not be bogged down in one horrible child sex case after another, but there are logistical problems particular to Marion County that make that really, really difficult. I was trying Measure 11 cases within probably two years. We had a system in place with attorneys mentoring less experienced attorneys and we always second-chaired minor felony and then start taking those. Then second-chair in major felony and work our way up like that, but with Marion County you have got the courthouse downtown and then you have the jail with the courtrooms attached to the jail almost exactly five miles away. So in the middle of the day a lot of the pretrial things, arraignments, what we call Rule 7, which is just basically just your first opportunity to take a plea. They are all happening out there at the court annex and it is just a lot of back and forth and there is a lot of inefficiency that is just built into the system. There is frankly a lot of institutional resistance too – I mean I think it was a couple of years before we really found our comfort zone where people were like the public defender's office, you know the bench and everyone was like they are here and they aren't going anywhere and we are happy with them.

47:18 Chair Ellis

So the wounds of six or seven years ago when we actually caused Marion PD to get formed and to compete with MCAD. I think MCAD, at least to our observation, substantially improved their operations. We think it is a result of this. Do you feel like that is working out?

47:39 E. Ecklund

I definitely feel like it is working out. It is obviously hard for me to have an objective perspective about it, but I feel like the feedback from the bench is overwhelmingly positive.

47:54 Chair Ellis

You are no longer a pariah?

47:55 E. Ecklund

Yes. I think that is fair to say. I really think it has been a sea change. As far as the institutional resistance I don't know if it was hostility on anybody's part, but it is a court system that evolved around a consortium. It was set up for a consortium with the traveling back and forth with the annex. The other idiosyncrasy, and this is definitely a mixed bag, is that in Marion County you will have your arraignment on information and then you will show up to arraignment on indictment. Then your first opportunity to take a plea will be the Rule 7 hearing. That is typically the last hearing that is going to happen at the annex. If you plead not guilty at that point in time and reject the state's first offer you pull your judge at that time and you are assigned to a trial judge's docket up to the day of trial. I know anecdotally and from experience unlike any of my colleagues in Multnomah County or Washington County or anywhere else, I know who my trial judge is going to be weeks if not months ahead of time, which is obviously beneficial in a lot of ways for my clients. I can advise them as far as affidavits on a more particular basis than just this is a good judge or this is a bad judge. Is this a case of legal issues or is this a case that is going to definitely go to a jury trial?

49:33 Chair Ellis Do you affidavit judges very often?

49:37 E. Ecklund No. Not real often.

49:41 Chair Ellis Within your office is there a procedure or approval process for that or is that up to the individual lawyer?

49:45 E. Ecklund It is up to the lawyer. Like I said in the county when you get that assigned the one difficulty is you kind of have to talk about affidavits with your clients ahead of time, but at that point when you draw the judge is when you have to make your decision to affidavit. You have to make a decision well ahead of when you might have to in other counties, but you also have information about the forum that this case is going to take place in well ahead of time. The downside, of course, of knowing who your trial judge is so well in advance is that you are stuck on their calendar. Whatever it happens to be if it is an overloaded calendar they have their status on certain days. You are running against trials on certain days and things like that.

50:40 Chair Ellis I have a question that I wanted to ask the three of you and others feel free to ask particular questions, but this is your moment. We are here charged with trying to administer public defense statewide. What, if anything, can you tell us that would help us do our job better? What are the things that if you were sitting on this side of this particular arrangement of furniture would you wish we knew? That you wish we understood and did differently?

51:24 C. Husby I guess the main thing for me is I think the quality of public defense could be – I think it is good in Oregon, but I think it would be improved so much by allowing people to stay longer and that is primarily a financial issue. There are so many people who come into public defense and do it for two years and they are gone.

51:49 Chair Ellis And they are gone not because of burn out or frustration or that sort of thing but money.

51:53 C. Husby That is almost always why people leave. I think it is detrimental to the client. I think it prevents talented attorneys from staying in public defense. I think that is the biggest problem.

52:08 Chair Ellis So let me ask, you are the three of the largest organizations we have, or at least largest counties, are there many in each of your offices that are what I would call “experienced lawyers, career lawyers.” What is the percent between career lawyers in the group you are working with versus those that are short term and likely not to stay too long?

52:36 K. Stenard I think the members in the consortium are career lawyers and some of that is because they are able to supplement. They don’t just do juvenile work. A lot of them have a domestic relations practice. I have a couple of people who are on the federal panel for taking those cases. That creates some challenges because they have got to be in more than one place. We are a very mature group. I think I am the youngest member. They have been doing it a long time.

53:07 Chair Ellis How about you?

53:08 E. Ecklund Besides Mr. Sermak, we only have two lawyers in the office that have significantly more bar time under their belt than I do. We are relatively young, but then again we are a relatively young office.

53:29 Chair Ellis Have you seen people leave because they couldn't afford to stay?

53:34 E. Ecklund I would say yes. I have seen people leave and it is probably not ever just one thing. I can't frankly agree more with what Conor was saying about it before.

53:52 Chair Ellis MPD does have a lot of long term players. Do you have a sense what the ratio now is between what I will call the turn over group and the career group?

54:09 E. Ecklund It is a difference between counties. In Washington County it is a much younger group. In Multnomah County it is a little bit older group, but I also think within that there is also two groups. Maybe 10 or 15 older attorneys who have been there for a very long time. I think part of the reason they have been there for so long is they simply got in at a time when law school debt wasn't so crushing. Whereas the people who are being hired now those are the ones you see leaving after two years, three years, and one year.

54:47 Chair Ellis Is the issue the entry pay or that the scale just doesn't go up very far after you have entered?

54:49 E. Ecklund I think it is both.

54:55 K. Stenard I think it is too that people are more accepting of living with less money. It is one thing to think you are going to do it for awhile, but then you start thinking about having kids or buying a house and it becomes a little bit more daunting.

55:07 J. Stevens Conor, could I ask a question?

55:12 C. Husby Yes.

55:12 J. Stevens Is all your debt from law school or do have some from undergraduate as well?

55:14 C. Husby All from law school. I was lucky my dad paid for undergraduate and then I was on my own for law school.

55:23 E. Ecklund I wanted to touch on something in the conversation about the debt program that you brought up, Mr. Chair, and that you were asking Conor about the long term, the 10 year forgiveness, and I want to point out a couple of things about that. Apparently what the law says is that if you work in a public service job for 10 years your outstanding debt can be forgiven. You have to be making the minimal payments for those 10 years and that only qualifies for federal loan programs, for the Stafford type loans, which I went to Lewis & Clark and I think this is probably normal that that is less than half of my total obligation of federal loans are even eligible for that program. Because of the economic reality of coming out of school and working in a public defender's office, I was in deferment on those federal loans and they wouldn't offer me on the my private loans because there was basically no way to defer on the private. So I have been paying on the private in terms of that kind of forgiveness not doing me any good at all. While for three or four years of the five that I have been doing, I haven't even started tolling towards that 10 year. I am on income sensitive repayment on my federal loans which is not the full - you are supposed to be making the normal monthly payment.

56:57 Chair Ellis So I think I get what you are saying. The way this has worked for you is you have had to put what payments you are making towards the non-federal loans, and therefore you don't qualify for the forgiveness in the legislation that came out a couple of years ago because you are not making payment on your federal loan.

57:19 E. Ecklund That is right. I could start 10 years basically next year. I haven't even figured out what I am going to do when it comes to that point.

57:29 Chair Ellis Are you going to give Conor the information he needs to get whatever benefit he can?

57:38 E. Ecklund For sure.

57:36 K. Stenard Can I just answer your question to about what the Commission could do. The one thing I would encourage and I know you have done it sometimes is to come watch court when you

can. It has been really eye opening for me when I have gone on site reviews to see how things are done in different counties. I think you hear about it a lot and I know you have seen some of it but to the degree that you are not able to visualize sometimes what is happening, I think it is helpful.

58:04 Chair Ellis

Great.

58:04 C. Lazenby

I had a couple of questions along this line. On these loans the situation you are in if you were to go all the way through it sounds like there is no forgiveness for any of your debt. If you were to start tolling the 10 years next year, and let's say you go for 10 years, how much of your overall debt would ultimately be forgiven?

58:30 C. Husby

Well because it is predicated on me making those payments. You are starting off the part that is even eligible for forgiveness is maybe 40% of my total obligation. I would assume that if I am making the regular structured payments that I am supposed to make for those 10 years that would probably take care of half of that. Maybe what they are actually going to forgive in the long run I would think maybe 10 to 20%. Those are really, really not scientific numbers in any way. It is a small fracture of what I owe.

59:05 C. Lazenby

So to make the forgiveness less illusory, would you need a state law change or is it a federal law change?

59:12 C. Husby

My understanding is that program is federal. Obviously if we had a state law myself, and I'm sure all of my colleagues don't really care where the money is coming from, but somebody is interested in those loans because my service provider has changed about three times in the last two years.

59:35 C. Lazenby

Then one more question, Mr. Chair, we were talking earlier about interpreters and we sort of focused on Latinos, but in the Woodburn area there is a substantial number of Russians too. Are the interpreter services better for Russians? Is there sort of roughly even treatment among folks that have immigration or language problems, or are there disparities between outcomes and treatment of Latinos and outcomes and treatments for Russians?

1:00:03 E. Ecklund

My experience is the sample size is too small to be able to address as far as the outcomes.

1:00:10 C. Lazenby

We aren't scientists.

1:00:15 E. Ecklund

Having access to a Russian interpreter is more difficult because there is a plethora of Spanish interpreters. We have two capable staff members in our own office that speak Spanish. Scheduling with a Russian interpreter is a little bit more difficult, but we have Russian clients less frequently. I guess the one other thing that I wanted to say about that that I left out was one thing about Marion County is it is tough to get into the jail. It is one that you have to schedule to see clients a little time in advance. It is hard to be able to just pop in and see clients on a whim when you want to because it is kind of fractured. They send you to this pod or that pod or this pod, and then just when you add a Spanish speaker on top of that it just is sort of a wrinkle and one more complication in terms of having access to clients. Not finding the interpreter, but getting an interpreter and getting an appointment into jail is kind of another hurdle.

1:01:22 Chair Ellis

Any other questions? Thank you guys. You are doing good work.

Agenda Item No. 3

Budget Update

1:01:41 Chair Ellis

Item 3 on the agenda is budget update. Nancy and Kathryn.

1:02:24 N. Cozine Chair Ellis, members of the Commission, when we were last together in September, Kathryn and I were about to head over to the Emergency Board subcommittee to request that the legislature allocate the \$2 million dollars recommended by LFO. We went to that subcommittee hearing and on Friday we appeared before the full committee. The full committee unanimously supported LFO's recommendation and granted the \$2 million dollars to the PDSC. It was a very positive hearing on Friday. There was support expressed not only for the request but also concern expressed for the PDSC budget for the remainder of the biennium. We will be returning to the legislature in January, most likely, or February, excuse me ...

1:03:11 Chair Ellis When the new legislature is in session.

1:03:14 N. Cozine Yes. They will be rebalancing the 11-13, budget at that time and we will need to make our next request for funding for the current biennium. If you have any questions about that.

1:03:27 Chair Ellis Just a comment. I think you both have handled this extremely well. Thank you.

1:03:40 J. Stevens Can I ask a question? I don't think you were doing this for the previous biennium but Kathryn you have been around. Does it work better when the legislature is meeting every year, or is it more difficult or is there any difference?

1:03:53 K. Aylward I actually think it is better because when it was meeting every other year if there was an issue it would end up on an Emergency Board and it kind of got less attention and discussion and sometimes got deferred to the next Emergency Board and the next. I like it better.

1:04:09 J. Stevens Okay. Thank you.

1:04:19 Chair Ellis Next is the 13-15 budget narrative.

1:04:24 N. Cozine Yes. You have in your packets the excerpts from the budget narrative. Kathryn compiled this and I will let her speak to that.

1:04:34 K. Aylward You have no choice in how the budget binder is prepared. Obviously it is easier for LFO and the legislators if everybody's budget looks the same. It has the same forms and dividers, so that is why the pagination skips because at certain places we have to insert some preprinted pages and pages of numbers and I just didn't want to load you down with that. I just wanted you to focus on the narrative. I, of course, like the night before last skipping through it for one last read found a bunch of mistakes of my own. I will start with telling you those. On page – unless you guys want to start first?

1:05:17 Chair Ellis No.

1:05:17 K. Aylward On page 50, I made a mistake that I guarantee you I will make many more times again. I referred to the Public Defense Services Account. I have called it that for donkey's years, but it should – this one is the public defense services account but I referred to a subaccount, the middle paragraph on page 50. I will be changing that because now ACP is the Public Defense Services Account. It is no longer a subaccount of that.

1:05:58 Chair Ellis We all noticed that. We wondered if you had seen it.

1:06:01 K. Aylward I tell you the one I thought you might notice is on page 89, very first line of the page, again, Public Defense Services Account is wrong.

1:06:23 Chair Ellis Okay.

1:06:23 K. Aylward But there are so few people on the planet that care or would notice.

1:06:29 Chair Ellis I think there is one and we are listening to her.

1:06:32 K. Aylward So those were the two things. If you have any other comments about the budget narrative. I saw that one too but I think I decided to leave it that way because that is what it was when we should have drafted the narrative. I can change that if you would like.

1:06:58 P. Ozanne Judge Welch pointed something out again only one person on the planet, and I am not even sure there is one cares, but my title is wrong. I will give the – I am no longer working for Multnomah County.

1:07:12 K. Aylward That is kind of why I made sure I included this because I don't know whether

1:07:16 P. Ozanne I will tell you what it is later.

1:07:20 K. Aylward Okay. Chief cook and bottle washer. I just realized I am totally losing it. I should have brought that special piece of paper that you have to sign once it is approved. Every year I have to have an original ink signature. If it gets approved through this meeting, or whatever changes we have to do, then I will insert all the stuff and I will email you a complete final copy and if you could sign if you approve and send back then we are good to go.

1:07:53 Chair Ellis Will PDF work?

1:07:54 K. Aylward No. I have to have ink.

1:07:55 Chair Ellis You have to have original.

1:07:55 K. Aylward I have to have original. That is what LFO says.

1:07:58 Chair Ellis Ship it to me and I will see what I can do. What is our time?

1:08:03 K. Aylward A couple of weeks. LFO would like it sooner.

1:08:11 J. Potter Kathryn, on the 102 on page 89, Public Defense Provider Compensation package. You have alluded in the past that there is very little chance that there will be any additional funds coming into the Public Defense Services budget, in fact just getting the base budget will be a challenge in itself. Is there anything strategically that we should be doing nevertheless to make legislators aware of what I believe is a fairly acute need to start addressing this additional compensation package.

1:08:48 K. Aylward I personally found the last presentation interesting. I remember when I started in public defense maybe because I was younger; everybody seemed all kind of old and burnt out, whatever. I see young, enthusiastic, talented people and I am hearing these stories and saying they want to do this work. They are our future. That is the way you improve it is you get people who love doing it and we can't keep that. Stories like that put it in perspective. Every time a legislator reads this I really think they are saying more money for lawyers, unless they are lawyers themselves, but that is kind of what is going through their minds and I am thinking no. This is directly how you can fix it.

1:09:41 Chair Ellis You can tell from my tone of voice that I am very stressed about what I am observing. What Conor had to say was exactly what I understood the problem was. I am sitting here thinking is there a way to present this to the legislature that might free up some money to go to this group of talented young lawyers with a huge monkey on their back. I am not smart enough to know how to do this in a way that meets some compensation system, but I think I am smart enough to know that this is a really serious problem. I wish we could come up with more than just saying let's go, you know, the word everybody loves to use is parity. I have always kind

of shied away from it but some way that those with the big debt burden that are doing public service get some extra help.

- 1:10:52 K. Aylward I do think the Commission discussed a long time ago a possible policy option package that had to do with loan forgiveness. We didn't actually draw it up or cost it out, but we discussed it and I think we ended up saying let's just see how this John R. Justice, or whatever....
- 1:11:08 Chair Ellis I remember this. We kind of went along with the federal legislation that was hopefully going to break at least full-time defenders and I remember the battle we had was if you are not a public agency but you are still a full-time defender would you qualify? It did happen. I think we sent a lot of letters whether anybody read them or reacted to them, who knows, but that did happen. That is still a drop in the bucket.
- 1:11:39 K. Aylward I don't see any reason why the Commission couldn't decide – it is your responsibility to keep the program going and if you decide this is our future so we want to set up something where people apply and they don't have any fancy rings and they have got some debt with a comma or two commas in it. We look at that and we go, "Okay. Here is \$10,000. Here is \$20,000." You could set something up and do that. You could put strings on it. You could say, "But you have to keep doing those Measure 11 cases." I don't see any reason you couldn't do that.
- 1:12:18 P. Ozanne I think you would have to have a serious conversation with the legislature that would include the law schools. They are the ones that are generating these huge costs.
- 1:12:36 Hon. Elizabeth Welch What about some kind of tax break that would.... or an adjustment to that person's taxation of their income.
- 1:12:44 Chair Ellis Doesn't it come down it whether it is a tax expenditure or a cash expenditure; it is the same problem. Frankly, the legislative complication of drafting a tax exemption, I am not sure that I am anxious to get into that.
- 1:12:58 N. Cozine Chair Ellis, Judge Welch, there is some tax relief for interest paid on student loans. That does exist to some extent. The other thing that I wanted to mention is that I am actually on the committee that reviews the J. R. Justice applications for debt forgiveness from the federal government. I believe we had 12 applications this year all of which were granted. The committee that I sit on the applications that come to us are free of names. I cannot tell you who in our provider pool actually received these funds, but I know that some people are accessing them. What I might suggest is that it is an interesting topic. It is a really critical topic to the work that we do. I would like to actually put it on as a separate agenda item and provide to you more details about the different loan forgiveness options that are available to students and lawyers in Oregon. I think it might be helpful to actually have someone come from each of the law schools to talk to us about it, and figure out what resources are available to our provider community in order to navigate that. Because a lot of what I heard Conor saying is that this is difficult. You are doing ...
- 1:14:12 Chair Ellis His mind is focused on those clients. You can just read it. He doesn't like the finance side of life. I don't blame him.
- 1:14:22 J. Cozine Right. So in addition to trying to figure out how we can free up resources to allocate in that direction, I think it might also be helpful for us to think about what we can do to help our providers navigate this complicated area. I think there are different loan forgiveness programs and they have different criteria for each.
- 1:14:44 J. Stevens This is going to sound really stupid. Are you allowed to dress this up with anything but numbers and plain old boring sentences? Can you put into this narrative that five lawyers in

one office in Portland are going to have to get out of this business because we can't pay the debt?

- 1:15:07 K. Aylward There are actually sort of two components. This budget narrative goes in a binder and sits on a shelf and for most agencies is submitted by September 1. What really gets looked at is our Ways & Means presentation materials. So when we are invited to Ways & Means I think usually the Chief and Barnes and Nancy and I will come forward with a completely different set of materials which no doubt confuses every legislator who is now where am I looking. That is when we bring forward the stories. You can make it a little more gripping, yes.
- 1:15:47 C. Lazenby This packet is really designed for all agencies to have to do basically the same.
- 1:15:54 K. Aylward Absolutely everything, the headings, how you word them, where you put them and what it has to address.
- 1:16:05 J. Potter Maybe we should talk about the strategy for the Ways & Means presentation. Peter, while he was executive director, he brought in sheriffs and DA's. We had participations of the system other than the defense come in and explain the importance of funding the defense function. Maybe we should also consider having the Conor type person come in and give a short narrative. I thought he did a very persuasive job talking about the problem.
- 1:16:31 J. Stevens Especially when he is not all dressed up.
- 1:16:39 C. Lazenby When you said that there were only 12 applications for the debt forgiveness, my impression was that is a low number and you would expect that there would be more numbers if people were more aware that that option existed. Is that what you were saying?
- 1:16:52 N. Cozine I think it is possible. It may also be that the criteria are such that there aren't very many people who actually qualify. This particular loan forgiveness has a cap of, I believe, \$5,000 per year so it is not a huge amount of money and you have to be earning, you can't earn more than a certain amount and what is really difficult is that if you are a double income household the amount is increased somewhat but not much. If you have two lawyers with a huge amount of debt, you essentially get punished under the scheme. I am not certain whether there was a low number because of a lack of resources from the federal government because of the criteria. It could have been a combination of both.
- 1:17:50 J. Potter But even if there was a higher number in that case, there was about \$60,000 that we divided up between these 12 people. The numbers are so embarrassingly small in addition to being tough to qualify by the criteria they have set out.
- 1:18:09 Chair Ellis So you think our young lawyers around the state that might qualify they know the rules so they are not applying, or are they not applying because they don't know the rules?
- 1:18:22 N. Cozine I don't know. I am not sure.
- 1:18:24 K. Aylward I think a lot of it is the salary cap. It was surprisingly low to me that the criteria for being able to apply.
- 1:18:34 Chair Ellis So we punish people if they get married.
- 1:18:34 N. Cozine You punish people if they get married and you punish people if they earn more than about \$50,000 a year.
- 1:18:40 K. Aylward It was pretty close to that.
- 1:18:45 N. Cozine You can get to \$50,000 practicing public defense.

- 1:18:51 Chair Ellis There must be a way that we could put in a website and alert people to go look at what these rules are. I was very sympathetic to Conor. He doesn't want to spend his life trying to parse his way through federal regulations to get a little here or there. He has much more important things he is doing. Can we help him making sure at least people like him know?
- 1:19:21 K. Aylward If the Commission is talking about possible things that they could do, how I would do it if I were Queen, is I would avoid doing the work ourselves and just say to the public defender offices, "Here. Figure out some plan. It is an employment enticement and we will give you a line item in your budget. Here is \$60,000 and tell us you are going to find six people and give them \$10,000 each at the end of each year. Just give us the criteria and we will give it a thumbs up or a thumbs down and then here is the money."
- 1:19:51 Chair Ellis In many ways that is better. We shouldn't be line iteming what providers do, but the larger offices, and that is where the FTEs really are, somebody has got to focus on this. This thing is crazy what we have created.
- 1:20:11 N. Cozine Chair Ellis, I don't know if you and the Commission would be interested, it might be nice to put together a panel where we heard from a few more practitioners who are struggling with the loan issue and also from the law schools.
- 1:20:20 Chair Ellis I would welcome that. You look at where we are and you are trying to make a system that is healthy on an ongoing basis. This is about as raw a nerve as I know of. Okay. Anything else we need to do?
- 1:20:47 K. Aylward You need to vote or comment. If no corrections, you need to move.
- 1:20:54 Chair Ellis I can't sign that piece of paper you are going to send me if they don't.
- 1:20:59 N. Cozine I will mention since you are approving it is my one request on page 99. It is simply replacing under the Quality Assurance Complaint Processing it says, "PDSC's General Counsel coordinates the efforts of the Public Defense Advisory Group..." That should say, "...the efforts of the Peer Review Teams..."
- 1:21:21 Chair Ellis So take out PDAG and put Peer Review Team?
- 1:21:25 N. Cozine And we will need to describe them each separately.
- 1:21:29 K. Aylward There is only one group.
- 1:21:33 N. Cozine We will rework that section. I think it needs a little bit of clarifying.
- 1:21:35 Chair Ellis Subject to that reworking is there a motion to approve?
MOTION: John Potter moved to approve the budget; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**
- Agenda Item No. 4 PDSC Personnel Rules Regarding Reemployment**
- 1:21:56 Chair Ellis All right, easy subject. Personnel Rules.
- 1:22:03 N. Cozine Chair Ellis, members of the Commission, when we were meeting in September, I asked for your input regarding our employment rules regarding reemployment. There are a few things that I want to point out before we begin discussion of the language options. The first is that when we met in September, one request was already in the pipeline. I believe that request needs to proceed through under our current personnel rules. I wouldn't want a situation where we change the personnel rules in the midst of a request. My intent is to proceed on that

one under my authority, but it has been helpful to have your feedback as well. The second is Kathryn pointed out that this reemployment provision had been used not only for reemployment post-retirement, but for an employee who left and came back. It can be used more broadly than simply in the case of a retirement. So when we considered the language in #1 and #2, we should keep that in mind and we might actually want to have two separate provisions. One that is addressing reemployment generally and one that is addressing reemployment specifically after retirement.

- 1:23:16 Chair Ellis And how would they differ? I understand there are different circumstances that bring them here.
- 1:23:25 N. Cozine I would assume that the issue the Commission is concerned about the most is the reemployment following retirement because it is what brings up the concerns that get written about in the media or talked about in the media. I would envision that it simply remain as it is for the anything that is not a reemployment following retirement, so the current language, and then have a separate provision that is specifically addressing reemployment after retirement.
- 1:23:58 Chair Ellis I had a thought as I was reading this. Proposed Revision #1 is subject to our discretion on your recommendation. Proposed Revision #2, which has these criteria, leaves it just up to you. Right?
- 1:24:26 N. Cozine Right.
- 1:24:26 Chair Ellis Why couldn't we get the best of all worlds and use Proposed Revision #2, but where you get to the words "...subject to the discretion of..." insert the "PDSC upon recommendation of the Executive Director, but shall be..." Here was my thinking. I think there could be a lot of inter-personal challenge for you if it is left just to you. I think it might be a better process for you to decide who you want to recommend this for, if you ever do, meeting these criteria but let the buck stop with us. That is me being political, which is not my natural state, but I actually think if somebody wants to criticize a result that it would be unfair to have it just you. That is where I would like to see us go if people are inclined.
- 1:25:53 N. Cozine Chair Ellis, I am open to the Commission's wishes on this. I should explain the reason that I gave you #1 and #2 was that one was the language we discussed at the end of the last meeting. I went back through the minutes, of course, and looked at what everyone's comments were. A question was posed about whether or not a request for reemployment could be discussed in executive session. The answer from general counsel was that it could not. It didn't fall into any of the exceptions. Any discussion that we have regarding a request for reemployment will be part of our public meeting. I didn't know whether that would give anyone discomfort. I think it could give an employee discomfort and so I just wanted to raise that issue and put Proposed Revision #2, which would put it in a context where it tries to lay the concerns that I thought I heard Commission members express with the reemployment following retirement.
- 1:26:52 Chair Ellis I thought you did that and I like having those policy limits, but I would just like you to recommend and us to approve when this happens. I think it is a better process and if it is subject to open meeting it is subject to open meeting, but a lot of what is kind of driving the concern is a general public that feels this is double dipping and cronyism and all those bad things. I just think I would rather we took the responsibility on your recommendation rather than to leave it just to you. I think if somebody does start to criticize you should have the protection. That is what I think.
- 1:27:45 J. Potter I tend to agree that I like the notion that we are protecting the Executive Director position, but I am interested in further elaboration on your comment about would it be uncomfortable for employees. How would you see that happening? The employee wishes to retire but there is a reemployment opportunity here. You are recommending that that be taking place and now it is

in the public forum. You are bringing it to us. Are you thinking that you will need to name the name of the employee? Or that the employee might need to show up to talk to us?

- 1:28:26 N. Cozine I am thinking that the employee may wish to be heard on it.
- 1:28:31 Chair Ellis I think that is fine. It all goes to this documented business need criteria. We will have in front of us, because you will have prepared it, that documented business need. Odds are very high that if you recommend it we are probably very inclined to agree to it. I really feel that we ought to take the responsibility. My proposal would be Proposed Revision #3. You would take Proposed Revision #2 and after the words "...subject to the discretion of ..." you would insert the "The Public Defense Services Commission upon recommendation of the Executive Director, but shall be...."
- 1:29:33 J. Stevens Remove the last paragraph?
- 1:29:38 Chair Ellis Yes. The last paragraph would come out.
- 1:29:43 J. Potter And what about the paragraph above that?
- 1:29:49 Chair Ellis Why don't we discuss what we have got and then let's go to that paragraph. Are people okay with the
- 1:29:59 C. Lazenby I agree.
- 1:30:02 J. Potter I want to make sure that having heard that if you have further comment about any problems you might see if that were the case.
- 1:30:13 N. Cozine I have a comment on the paragraph that we are delaying comment on, but none other than the provision should probably be titled reemployment following retirement.
- 1:30:27 Chair Ellis I am with that. That is fine. So, John, on the paragraph above, which maybe I haven't focused enough on, what would you do there?
- 1:30:33 J. Potter I am suggesting that it be eliminated entirely. I think the bullet points above that say there is a documented business need and the reemployment period does not exceed six months. That is fine. The documented business need that seems to be detailed more in this paragraph. I don't think we need it detailed more. I think the Executive Director is going to provide us with that.
- 1:31:01 Chair Ellis I agree with you. I don't know how others feel. I think what was kind of happening was you were kind of tying your hands a little bit, so you could say that you were following a Commission policy but since we get to approve.
- 1:31:17 N. Cozine You can untie my hands.
- 1:31:24 Hon. Elizabeth Welch Can we go back to the six month restriction? Why is that necessary?
- 1:31:32 N. Cozine It is part of state law that it is six months within one calendar year so that could be clarified.
- 1:31:37 Hon. Elizabeth Welch That is a little bit different than what that says.
- 1:31:40 N. Cozine Maybe what we ought to say
- 1:31:50 J. Potter Six months in one calendar year.

1:31:53 N. Cozine We could comply with 1,039 hours.

1:31:57 J. Stevens So you could do six months from July to December and then six months beginning January.

1:32:05 N. Cozine Which complies with that requirement that it not be more than 1,039 hours, but maybe that is already in law and we should just eliminate that sentence completely.

1:32:15 Chair Ellis Which sentence are we talking about?

1:32:15 N. Cozine The second bullet.

1:32:22 Chair Ellis I thought there was real support for a three month because that is the period that the employee is caught between the boat and the dock. I thought the six months gives some discretion to do more than just cover the boat/dock problem. Since we are in a position to approve or disapprove then I don't think you need it.

1:32:49 C. Lazenby I think we are buying a fight that we don't really need to have by going to a three month period. My reaction to this in light of the conversation would be to just take out the six months and say that it doesn't conflict with state law and cite the statute that allows the 1,039 employment for this purpose. Otherwise after three months we decide in February it is okay to bring Bob back. Then in May we are going to have to make that decision whether to extend through September, whereas if we give permission for the person to be rehired there is a six month limitation established in law. You are right, Commissioner Stevens, we could have somebody June to December in one year and have them January to June again in the following year, but that would be subject to our approval each time wouldn't it under this rewrite?

1:33:53 J. Stevens I don't necessarily see that as a bad thing.

1:33:54 C. Lazenby No.

1:33:54 Chair Ellis I thought what we were doing here was signaling employees that may apply to retire, and want this treatment, that there is a real limit on what can be done.

1:34:07 J. Potter Why don't we just say at the very front where it says, "Reemployment Following Retirement." That is your title. Then just start the sentence "Pursuant to ORS (whatever it is) the former OPDS employee...." You are announcing that they are going to be doing it pursuant to whatever the rule or law is and everything else follows.

1:34:35 Chair Ellis I am still very sensitive to a member of the public or the dreaded media.

1:34:47 J. Stevens The dreaded media is really bad.

1:34:47 Chair Ellis I want them to understand we are very aware of the sensitivity.

1:34:52 J. Stevens I think with the bullet about documented business need, I think that and us approving gives us – you can look at it and say, "See, look, we have got all this. We really need Kathryn to come back for six months this year to help us get our ducks in order. She has been there so long only she has the memory."

1:35:20 Chair Ellis Okay. I think I understand where we are. I don't if the minutes have it that good. As I understand it we would start with Reemployment Following Retirement is the title. Then it would begin, "Pursuant to ORS (cite the statute) a former OPDS employee who wishes to retire may....." Then when you get down to subject to the discretion it will say, "...subject to the discretion of the Public Defense Services Commission upon recommendation of the Executive Director, but shall be authorized only when there is a documented business need for

the employment or reemployment is necessary to ensure an adequate transfer of knowledge.”
Everything else goes away. Have I done it correctly? Is there a motion?

MOTION: John Potter moved the approve; Hon. Elizabeth Welch seconded the motion.
Any more discussion?

1:36:26 N. Cozine Did we post it as an action item?

1:36:29 Chair Ellis All those in favor say aye. **VOTE 6-0.** Thanks. I think this has been a good process. We will see how implementation goes.

1:36:49 C. Lazenby Can I act in lieu of the vice-chair?

1:36:52 Chair Ellis Yes. We are going to take a recess now.

(Recess)

Agenda Item No. 5 PDSC policy regarding disclosure of billing records (ORS 135.055(9))

1:37:21 Chair Ellis PDSC policy regarding disclosure of billings records. Mr. Levy do you want to present?

1:37:26 P. Levy Thank you, Chair Ellis and Commissioners. I'm back here for the third time in a row to talk about this. I just wanted to make sure that everybody knows that this actually a two page proposed policy. The most and really only important part of this is on the second page and it is not numbered and it is the last item there. It is sub (5), but let me back up before we get to that and tell you what is not at issue here and why I am here. What is not at issue is the statutory obligation that our agency and the Commission operate under. That is that we maintain the confidentiality and shield from disclosure requests for non-routine expenses and our authorization of those expenses. The bills that are submitted pursuant to those expenses. We are required and we do maintain the confidentiality of those documents until the conclusion of the case.

1:38:53 Chair Ellis Case or trial?

1:38:54 P. Levy Until the conclusion of the case. Prior to the conclusion of the case we may disclose, and in fact do disclose, total expenses upon request. That is at the conclusion of the trial and the statute provides for that. That is an exception to the over-arching requirement that we not disclose billing information prior to the conclusion of the case.

1:39:29 Chair Ellis Let me just pause on that. This is the paragraph numbered one?

1:39:34 P. Levy I am actually referring to 135.055.

1:39:39 Chair Ellis But this parallels that?

1:39:41 P. Levy This is captured and actually recited in prefatory language in the proposed policy.

1:39:57 Chair Ellis What I am wondering is should we have paragraph numbered (1) At the conclusion of the trial may release the total amount of monies paid for representation. So that would aggregate attorney's fees and non-routine expenses.

1:40:15 P. Levy I am sorry when you say number one?

1:40:18 Chair Ellis The paragraph with the (1).

1:40:21 P. Levy Yes.

1:40:24 Chair Ellis So it aggregates both?

1:40:26 P. Levy That is the wording of the statute that is repeated here.

1:40:32 Chair Ellis Is there any flexibility in your mind under the statute to at least disaggregate attorney's fees and non-routine expenses?

1:40:42 P. Levy Yes. We have done that.

1:40:47 Chair Ellis I don't mean to interrupt. When we get there let's talk about that because the way it is written we don't do that and that would at least be helpful.

1:40:56 P. Levy I thought I would be helpful by saying what is not at issue because of the statute and then narrow it on why we are here. It is really a very narrow reason why we are here again. The statute says the following may not be disclosed to the district attorney prior to the conclusion of the case. The district attorney has been interpreted in a very helpful opinion from the attorney general to include the entire public. It is all of the things that I mentioned. Then the next section of the statute says notwithstanding the proceeding language. The total amount of monies determined to be necessary and reasonable for non-routine expenses may be disclosed to the district attorney at the conclusion of the trial in the circuit court. That is what repeated more or less in this paragraph (1). I don't see this language as barring us from disaggregation, so as we are honoring the spirit of the statute and what it is meant to accomplish, which is to protect against the disclosure of a particular expense, the justification for those expenses all of which are subject to disclosure at the conclusion of the case.

1:42:35 Chair Ellis You keep saying conclusion of the case. I keep seeing the words conclusion of the trial. The question I asked last time I still have in my mind. If we are talking a death penalty case that case may never conclude if you include PCR. It does trouble me, from a public right to know what happens to public money, that we could have a situation where an enterprising reporter take the DA out of it I understand that but a reporter wants to report on where public monies went and if we – in a DP case – and if we construe the statute and construe on our policy as saying "case" means anything relating to both trial and the PCR, it is literally forever. It will never get disclosed.

1:43:53 P. Levy I would be happy to answer that. I wanted to address it later but I will address it now. You didn't like the proposal that I had last month, which essentially made quite explicit the fact that a case may never end. It said essentially so long as the legality of the conviction of sentence is still being litigated the case is not concluded. We have got a different approach with what is before you today.

1:44:40 C. Lazenby The policy and the statute is dispositive because we use the word "trial" and use the word "case." Is the statute dispositive? Does it use the word "trial" or does it use the word "case"?

1:44:51 P. Levy It uses both. That is why we are here. I could just frame it again to remind everybody. The reason we are here is the statute says all of this stuff cannot be disclosed until the conclusion of the case, however, or notwithstanding that, at the conclusion of the trial the total amounts of monies can be disclosed. Conclusion of the case is not defined. The reason we are here is because the Commission's existing policy, which was written in 1992 and adopted wholesale when the Commission came into existence, pre-dated most of the relevant case law that has addressed what the conclusion of the case means. It is not defined by statute and it is not settled definitively in the case law, but what the case law suggests is that indeed a case has not concluded while it is pending on direct appeal at the time the state had argued. They thought conclusion of the case meant when trial was over. It is not concluded when the case is pending on direct appeal, and the language in that opinion, a Court of Appeals opinion, suggests that there may be reasons to believe that a case is not concluded even while post conviction proceedings are underway or possibly if the statute of limitation has not exhausted.

The reason we are here is because the Commission's existing policy is quite clear that the case concludes when the direct appeal is over. I suggested to the Commission that you have jumped ahead of the case law unnecessarily and that that definition conflicts with the position that we would like to be able to do, and indeed do take, that honors what the legislature has intended for our function to be, which is to receive confidential information, privileged information, and to protect that information and that we not disclose it until the case is concluded. What we have suggested that you do now with what is before you is not try to define when the case is concluded ourselves. Not to anticipate the case law but to say that we shall disclose the information as required by law. Now that could be seen as a copout of sorts, but what it allows us to do is litigate in a case by case fashion and as necessary, whether we should be required to disclose this information. This has come up once and it is pending and is coming up again. Whether this information should be disclosed when we are subpoenaed for it, as we have been in the past a number of times and we have a subpoena now for this information again. A number of things really have to be determined and sometimes ultimately by a court to really know if it should be released. Principally that is whether the petitioner in a post conviction relief case has waived the attorney/client privilege by making allegations in the petition about the conduct and competency of trial counsel.

1:49:10 Chair Ellis

Which is almost every case.

1:49:11 P. Levy

It is almost every case. But indeed the first time that I actually had to litigate this it was not the case. Even though the judge ruled – we were not trying to quash the subpoena. We were simply asking for the protection of the court and the direction of the court. The court said disclose, but afterwards when the attorney general realized that it was going to be reviewed on a mandamus petition, they realized that the petition had not actually raised claims in a way that did waive the attorney/client privilege and the AG's office said never mind. We are going to withdraw the subpoena for now. We do not want ourselves to be the ones to decide whether the petition has waived attorney/client. What I like about the proposed policy is that it includes this preface information that explains all of this. It explains that we ask for and require that lawyers give us highly sensitive, confidential information and that we promise that we will protect it. That the legislature intended, and the legislative history is clear on this that the attorney/client privilege applies to these communications. So if we are being asked to turn over the information, we want to do so when it is clearly required by law.

1:50:43 Chair Ellis

So let me ask the hypothetical that is in Janet's mind or Commissioner Stevens' mind. Just assume for the moment there is a very highly controversial DP case and it has been three trials or four and there have been enormous costs. Some reporter wants to write about that and there may be some suggestion either too much or too little was spent on non-routine expenses. So if that reporter comes to the scene after the first direct appeal and we are now in the post conviction stage, under your scheme is there any scenario under which that reporter's request for information would be allowed?

1:51:43 P. Levy

If I can dodge your question just for moment and then come back to it. We have had not an enterprising reporter but an enterprising former judge seek cost information in the *Guzek* case.

1:52:07 Chair Ellis

Funny you should mention that. I was trying to say hypothetically.

1:52:11 P. Levy

Well I thought I would put a finer point on it. We did provide information about the total amounts of money. That case, of course, is still pending on direct appeal. It is still pending on direct appeal and so clearly under existing case law we need to protect the particularities. The answer is we would resist that enterprising newspaper writer or enterprising member of the public or legislator or anybody else's inquiry because we have an obligation to do that. We are in the role of requiring confidential information. We are going to protect it and it means that unless we are compelled to turn over that information, we are not going to do it. It will be very frustrating and annoying and maybe even the source of adverse publicity for us, but it is the job that we are required to do. That does not mean that - there are good reasons

for doing so, by the way, and not just that it is the law and this has been put before you the last meeting at length. Not only are we requiring that we be told about the theories of the case and a great deal of confidential information that may not have been disclosed. We are being asked to authorize psychologists, psychiatrists, all sorts of experts whom the defense may utilize but then decide not to present at trial because the information was not helpful. It didn't come out the way they wanted it to and in the event of a retrial that information, if it were released, would irreparably harm the retrial of sentencing or the guilt phase. We know and you know from the last meeting where you heard that seven cases have had their sentences reversed on post conviction relief, that those retrials are a very real possibility and they will continue to be a very real possibility. The reporter is not without recourse. They can use the mechanism of the public records law. If we deny a request the matter to be litigated through the attorney general's office and then ultimately through the circuit court in Marion County.

- 1:55:20 Chair Ellis So hang on, this is almost funny. We are trying hard to protect this information. You get a formal request or whatever from the press.
- 1:55:31 P. Levy Oregon Public Records Law Request.
- 1:55:34 Chair Ellis We say, "Oh, no, this is confidential." Then our lawyer on that case is the attorney general's office.
- 1:55:40 P. Levy No. Other agencies have it even worse. Other agencies the AG advises the agency on how to comply with the law, but then, and we have me for better or for worse doing that, but then the AG's office is the arbiter of public records requests. So they decide whether an agency should be compelled to comply with a request or not.
- 1:56:20 Chair Ellis Including us?
- 1:56:18 P. Levy Including us. I have only had that experience once with the AG's office and we prevailed. We also prevailed when they tried to bill us for arbitrating or judging that. It will be very interesting if and when that occurs, but there is a mechanism and reporters are quite used to negotiating the labyrinth....
- 1:56:46 Chair Ellis What if we don't like what the AG does?
- 1:56:53 P. Ozanne Our mortgages and houses are exposed. That is what the AG says. If you don't follow our advice we won't indemnify you. I had that happen, so I know.
- 1:57:02 C. Lazenby There is a provision at that point because that is an agency. We could request that the attorney general appoint outside counsel.
- 1:57:15 P. Ozanne Good luck. I got refused every time on the first one.
- 1:57:16 C. Lazenby But you can get outside counsel to take it up to the Court of Appeals.
- 1:57:32 P. Levy We would seek to litigate it in circuit court.
- 1:57:40 C. Lazenby You are not special assistant attorney general are you?
- 1:57:42 P. Levy We don't require one. Our statute, Chapter 151, very helpfully says that the Commission can provide for its own representation.
- 1:57:58 C. Lazenby This would be different because the AG has a statutory rule for agencies that are in Marion County.
- 1:58:02 K. Aylward Executive Branch.

1:58:03 C. Lazenby Except for...

1:58:03 P. Levy She said Executive Branch. It is explicit in our statute. Chair Ellis, I understand that this would frustrate and we would be frustrating people who want to know, but we are also trying to protect the constitutional rights of criminal defendants.

1:58:32 Chair Ellis To me it is like the conundrum between free speech and due process. You often see the intersection of two important values. I think we are seeing them here because you have got an important value on public right to know about use of public money, and you have got an important value over here. Why should a public defense client have less protection over confidential information than a private client would? I do see that. I think these interests do conflict and I think there is a legitimate public right to know on where public money goes, so I am trying in my own mind to ...

1:59:19 P. Levy There is a legitimate need to know. The reason we are here is because this statute leaves us hanging about when that point comes that this information is no longer protected. Because the statute doesn't define it, what I am asking the Commission to do is not really inadvertently define it and jump ahead of the case law. You have imported a definition that preceded the case that says a case is certainly not concluded while it is pending on appeal. What I'm urging you – and I thought the Commission had an interest and was ready to adopt this proposal that is before you today. I had come to you last meeting with a proposal that tried to define when a case concluded. It was actually only after the materials were prepared and we were getting ready for the meeting that I dug deeper and realized that the only time the Commission has ever talked about this until the last three meetings was in 2006, when Ingrid Swenson as general counsel then, came before you with this proposed policy that is before you today. I have cleaned it up just a little bit, but in no substantive way at all, saying that we just want to have this before you today. Don't worry we will come back and ask that you adopt at a later meeting and you never returned to it. I like this a lot better than what I brought to you the last time. I think the paragraphs that explain why the policy is being adopted are good. It talks about the confidential information that we are required to receive and the attorney/client privilege. Rather than attempt to define when a case concludes, it says that we shall disclose when required by law.

2:01:42 Chair Ellis And that allows this funky process to unfold and some court may decide in this case I think it is one side or the other in the PCR process.

2:01:56 P. Levy In the process that we just went through where we litigated this and the court said, "No, I think you should turn it over." The PCR petitioner's lawyer, it was a death penalty case, asked the judge for time to prepare a mandamus and the judge was accommodating.

2:02:17 Chair Ellis Then the AG gets spooked.

2:02:18 P. Levy Then they backed out of it but that would have meant that it wasn't us deciding that the attorney/client privilege had been waived or what the statutory interpretation should be, it would be the Supreme Court. If it went no where beyond the circuit court, I think for the most part we would be satisfied with the circuit court. In a proceeding request we worked with petitioner's lawyer and the AG to have the subpoena withdrawn because it was all information that should have been – we provided to petitioner's lawyer exactly what the AG was wanting. They just wanted to get it from us rather than the petitioner's lawyer. We worked with all the parties. We compared page counts and satisfied everybody that they could get it from somebody else, not us, and we have got another one pending where we are going to work and see if we can settle it thereby making everybody happy. It is unhelpful to have a policy, an archaic policy that sort of sets in concrete something that is still fluent.

2:03:36 Chair Ellis I get that.

2:03:38 P. Levy I guess I have said that a number of times.

2:03:39 Chair Ellis How would you react to modifying paragraph number one to say, "...the total monies paid for attorney's fees and non-routine expenses..." Some way to disaggregate that information at least to that extent. I do have this sense that if you lump them together, which I think this language does, the non-routine expense component gets buried in the attorney's fee and tells them nothing.

2:04:17 K. Aylward Mr. Chair, in the past because you had non-attorneys like Lorrie and me reading that and we said, "monies" there is an "s" on there and the paragraph above says the costs of representation and non-routine expenses and then it says we can disclose the total amount of monies.

2:04:33 Chair Ellis So you think it is already ...

2:04:34 K. Aylward We have done it that way because we didn't want to put out there \$2 million dollars is what it cost, because the headline would read attorneys pockets \$2 million. We want to be able to say it was \$100,000 here for those poor attorneys. We have always split it up.

2:04:50 Chair Ellis I have always suspected you were a better lawyer than those with the degrees in this area. I can see you have read it. So long as this record is clear. We think disaggregation is already permitted under this language.

2:05:07 P. Levy Yes. As I said we have disaggregated it to that extent.

2:05:20 Chair Ellis Alright. I am exhausted on this subject. I am ready to vote yes. Does anybody have any questions?

2:05:25 C. Lazenby So this doesn't do anything to undermine the concern that the Chair had? I think the public has a right to see how much of their money was spent in defense, but private clients who have private lawyers shouldn't be compelled anymore than our clients are to disclose things that reveals their strategy or tactics, so nothing there is undermined, right, by what we are adding here. We will do whatever a legitimate court tells us to do.

2:06:00 Chair Ellis What we are getting away from is a rigid rule that we had decided a case concludes on direct appeal.

2:06:05 C. Lazenby But there is a question from Salem ...

2:06:10 P. Levy It may be that the case law ultimately says that when the direct appeal is over that is when the case is over.

2:06:18 Chair Ellis Steve Gorham.

2:06:23 S. Gorham Commission, Mr. Chair, I have one minor thing. No. (2) "It shall disclose...upon written request to the client..." Do you want to say "upon request it shall disclose." In other words someone has to ask for this rather than you just having the obligation to disclose it. I think it is a minor thing.

2:07:11 Chair Ellis I guess I don't get so excited on that but the very next clause I am not sure what that means. Where it says, "...except that OPDS shall not disclose information to the client that it is prohibited from disclosing under state or federal law." Why would the client ever be precluded from information?

2:07:32 P. Levy There is some information that may be subject to a trial court protective order.

2:07:47 Chair Ellis That would keep knowledge away from a client?

2:07:51 P. Levy Yes.

2:07:51 Chair Ellis What in the world would that be?

2:07:56 P. Levy Certainly by state statute the contact information of victims and witnesses is very clearly, under the discovery statutes, not to be disclosed to clients when they are represented by counsel. I am not sure how it would fall under this but defense attorneys receive some information in sex cases it is subject to a protective order.

2:08:34 Chair Ellis But this whole paragraph is only about money not about contact information or things like that.

2:08:45 P. Levy I am not sure. I would have to ask Ingrid exactly what she had in mind.

2:08:50 Hon. Elizabeth Welch I don't see what harm there is in that language.

2:08:55 C. Lazenby You would have to show that the information

2:09:00 Chair Ellis I am just a nerd. I kind of want to know what we are talking about.

2:09:08 S. Gorham Mr. Chair, the more important thing that I wanted to bring up was contractors. You still have contractors who have this information, certainly past information. Do you want to say anything in your policy about what a contractor should do and, frankly, I am talking about MCAD. So getting a non-detail from OPDS really doesn't say anything and the requests are going to go to MCAD who are contractors of this agency. In other words do you want to say anything in your policy about contractors should follow this policy or not.

2:10:14 Hon. Elizabeth Welch I think that is probably the most important issue that has been raised here. Is that covered?

2:10:22 P. Levy It is not and it is a challenge because the subpoenas asked for information in our possession. I am not going to remember the precise wording, but or in possession of our agents. It uses that word and then maybe another word. What we have tried very hard to do is in a different context is make it clear that our contractors are not our agents and our not our employees and not subject to our direct control.

2:11:13 Chair Ellis But they are subject to all the rules both of law and ethics that would require them to maintain confidential....

2:11:21 P. Levy They absolutely are.

2:11:24 Chair Ellis Unless they are attacked and defend themselves and then they do get to use it.

2:11:27 P. Levy MCAD was in the role that we are in, until we took it over from them, of reviewing and approving expenses. If they are not all destroyed or lost they have the type of records that we have now and are trying to protect from disclosure. I think they have their own obligations under the attorney/client privilege to protect those records. It is something that will be litigated. It is complicated because in the *Brumwell* case it may well be that it is the petitioner's lawyer who litigating against MCAD.

2:12:15 Chair Ellis I think that is more than we are ready to wade into.

2:12:19 S. Gorham I just wanted to bring it up. In fact in these cases MCAD is getting the same subpoenas you are.

2:12:33 Chair Ellis If we are ready why don't we pass this and MCAD can see what we did and follow or not.

MOTION: Hon. Elizabeth Welch moved to approve the proposed amended PDSC confidentiality policy; Chip Lazenby seconded the motion;

2:12:44 Chair Ellis Any further discussion? **VOTE 6-0.**
Paul, we are still on that roll.

Agenda Item No. 6 Request for Input Regarding PDSC Agenda for 2013

2:12:59 Chair Ellis Alright. PDSC Agenda for 2013. Peter doesn't care. What about the rest of us.

2:13:13 P. Ozanne I care.

2:13:18 Chair Ellis We have already added a topic. You will find the right meeting to do it, but the student debt topic.

2:13:30 N. Cozine Yes. May I ask a clarifying question?

2:13:31 Chair Ellis Yes.

2:13:31 N. Cozine Is the Commission interested in hearing from more new lawyers with student loans so that we can get a broader perspective? Or do you want to go straight law school representatives who can explain what the options for recent graduates.

2:13:54 J. Stevens I think there is an advantage to having more students. Then people from the law schools can hear straight from the horse's mouth about the problems they're facing.

2:14:04 Chair Ellis I would kind of leave it up to you. Put a program together that you think would be informative. I don't particularly want 10 people to tell us send me more money. I do want people focused on it is a problem and how can we address it.

2:14:24 Hon. Elizabeth Welch If there are more students there should be some kind of feature of the (inaudible). In other words a lot of this what you understand there is this much owed and this much earned. The details of that aren't so much important as what can anybody do about it.

2:14:54 C. Lazenby And obviously if there are any successful pilot programs or anything like that around the country.

2:15:08 Chair Ellis Any other suggestions on the draft meeting schedule? It looks good.

Agenda Item No. 7 OPDS Monthly Report

2:15:14 Chair Ellis Okay. The monthly report?

2:15:17 N. Cozine If I might before we move on, the thing that is notably absent from this proposed schedule are exact meeting dates. When we meet in December we will be in Linn County. I could put on proposed dates. I could make them the second or third Thursday which has been our pattern. We have fluctuated between those two but I wanted to get your thoughts on how you would like those structured. Second? Third?

2:15:52 Chair Ellis I think just so long as you get it out there well enough in advance that people can see if they have specific conflicts. What we have been doing has worked generally well.

2:16:05 N. Cozine Okay. My follow up question is should we set a January date now. Because if we meet in December it is a little close.

2:16:18 Chair Ellis Yes. People may need time.

2:16:23 J. Potter The third Thursday in January is the 17th.

2:16:28 N. Cozine I will open my calendar if I can. We are having internet trouble.

2:16:29 C. Lazenby The third Thursday is the 17th. Can I get back to you by email on the second or third Thursday? I also sit on The Spirit Mountain Community Fund Trust Board. I can't remember whether they meet on the second or the third Thursday. I know that I have had a conflict with this meeting. I need to confer with them.

2:16:56 Chair Ellis Perfect. I am sort of the same way. I can't remember. You will send an email and propose the 17th but if it is an issue we can play around with the date.

2:17:14 N. Cozine The 17th is legislative days and a Commission on Public Safety?

2:17:20 P. Levy I had it on my calendar. No, no, no, I'm sorry, no, it is a different safety.

2:17:29 Chair Ellis You work it out. If it seems to otherwise fit send an email. If it doesn't fit send us some options and we will all chime in. Monthly report.

2:17:46 N. Cozine We will start with the appellate division.

2:17:55 P. Gartlan This should take no longer than 30 or 40 minutes.

2:18:10 Chair Ellis Do you see that red light in front of you?

2:18:10 P. Gartlan I actually have four items. One is we are hiring right now. We are in the interview process. We had 141 applicants for the criminal deputy one position.

2:18:23 Chair Ellis For one position?

2:18:27 P. Gartlan Yes.

2:18:27 Chair Ellis That is mind-boggling.

2:18:34 P. Gartlan We are having interviews next week. Next, one of the charter members of the juvenile appellate section, Shannon Flowers, left the office. She went to a firm up in Portland. Again, a positive move for her. We are going to look to fill that position next year at some time.

2:19:02 J. Potter How many of those 141 were really qualified candidates?

2:19:12 P. Gartlan What does qualified mean? Are they competent to practice law?

2:19:22 J. Potter You went through a selection process.

2:19:27 J. Stevens How many made the cut?

2:19:28 P. Gartlan We are going to interview 11. Now everything is relative. I would say 10 or 15 years ago some of the people, a lot of the people who we are not going to interview we would have interviewed then.

2:19:47 J. Potter I am just interested in the quality pool that you are getting.

2:19:54 P. Gartlan We are very happy with the quality pool.

2:19:56 C. Lazenby Could you tell if maybe half of them on paper would make the cut.

2:20:02 P. Gartlan You kind of have to. The first cut is a hard cut. I can tell you we have had people number one. We had someone number one from an Ivy League school out on the first cut. That is exceptional. There are reasons for that, but I am just saying...

2:20:25 Chair Ellis Good luck on that. That is just an awesome statistic.

2:20:31 P. Gartlan Since the last meeting the Supreme Court allowed review in four new cases. Do you want to hear the substance of them?

2:20:46 Chair Ellis You don't have to make the whole argument.

2:20:52 P. Gartlan The first one is a confrontation clause question under both state and federal constitutions. That is whether or not the proof of service, and this, I think, was a FAPA, Family Abuse Prevention Act, so if somebody is served with a restraining order of some kind and whether or not a criminal defendant has the right to confront in court the person who has said, "Yes I did serve this upon defendant." It is a confrontation clause. It is really interesting. By the way that is the person who is going to have her first Supreme Court argument. She joined us a little over two years ago. Second case is really interesting. It is a Portland ordinance that says, a lot of exceptions, but essentially it says you cannot walk around Portland carrying a loaded firearm. The issue there is does that Portland ordinance violate either Article I, section 27 of the Oregon Constitution or the Second Amendment to the U.S. Constitution.

2:22:07 Chair Ellis Did we represent the NRA?

2:22:11 P. Gartlan Yes. We are getting the NRA. Colt is coming in.

2:22:17 C. Lazenby That could solve his subpoena problem pretty quickly. Just kidding for the record.

2:22:24 P. Gartlan The attorney on that is Neil Byl. This will be his third Supreme Court case. The next case there is an Article I, section 11 of the Oregon Constitution has a provision that says somebody should be tried in the county in which the offense occurred. That has been treated as kind of an element that the jury has to find beyond a reasonable doubt. This is a state's petition and the state is asking the Supreme Court to revisit that and to find well maybe that is not really an element that a jury has to find, it is a jurisdictional requirement that the trial court determines. Finally the last one is complicated. By the way, Morgen Daniels is on that case and this will be her first Supreme Court case. The last one is Marc Brown's case. The Supreme Court allowed review in his petition several months ago. He filed his brief on the merits and the state responded and now the court has decided it also wants to hear the state's petition. The state had also petitioned on this case and I promise you if I try to tell you about it your eyes will glaze over. I will try to keep it to like 30 seconds, but it's whether or not when the Court of Appeals finds that the trial court lacked authority to have a restitution hearing. There is a criminal trial and somebody is convicted and then there is a restitution hearing. If the Court of Appeals determines that there was no authority for the trial court to have that restitution hearing, can it remand for the trial court to resentence, so in other words to try and increase the sentence. So if there is no restitution then can the trial court impose a longer term? A fine or a longer term of sentence. It is really more about appellate law and what is the Court of

Appeals authority with respect to remanding and that turns on what did the trial court have authority to do at a restitution hearing. Underneath it is really interesting because it implicates *State v. Partain*, which came out a couple of years ago, which the Supreme Court said that if an appellate court reverses a sentence, at the resentencing the trial court has authority to increase the sentence. That went against like 40 years of Oregon common law. This very technical case implicates a whole lot of questions with respect to trial court sentencing authority. Those are the four cases that the Supreme Court allowed review on.

2:25:52 P. Ozanne

Nice job.

2:25:54 P. Gartlan

Thank you. Yesterday there was a management conversation that ended this afternoon. But yesterday afternoon we had lots of appellate attorneys here from the appellate division sitting at tables with the contractor providers and the analysts from CBS. This is pursuant to that attorney regional contact program that we instituted awhile ago trying to get appellate attorneys matched up with different service areas. Finally, Tom and I, Tom is not here anymore, but we are about to embark upon that exchange program that I talked to you about.

2:26:40 Chair Ellis

His eyes glazed over and he left.

2:26:43 P. Gartlan

He is under the table taking a nap. We are going to ask the attorney from Marion County, who doesn't know this yet, but we are going to ask him to bring some memo or memos and we will edit those. We will give him a hard edit on those and hopefully that attorney will argue a case in the Court of Appeals probably in November or December of this year. If we have an attorney who left a case from that attorney's caseload. That is about it.

2:27:22 Chair Ellis

Okay. Thank you. Anything else?

2:27:27 P. Levy

I have three quick matters and one clarification because it came up. MPD does provide immigration advice for the entire state. They call it the Padilla Project. It is fairly well known now around the state and it is being used – Alex Bassos, the training director told me they get about eight requests now a week and they are looking to expand their capacity. As a consequence of that we are now receiving very few requests to hire immigration lawyers on a case by case basis. We refer people to the immigration program.

2:28:13 Chair Ellis

How does this work financially? Are they just sort of absorbing it under the present arrangement?

2:28:18 K. Aylward

If I had internet access I could tell, but it is not immediately in my brain except that they are being compensated. It may not be visible.

2:28:30 Chair Ellis

To me this is why our system is a good system when you have that kind specialized area but in our state we have quite a number of population where this is very real and I am glad to hear it.

2:28:46 P. Levy

I think it is working well. That is what I have heard from people who have used the service from MPD. Quickly on the update, we are in the process of doing a peer review of Clatsop County providers. We had a site visit last month. This was our first peer review with a modified confidentiality protocol where we are not promising confidentiality. We will provide it if requested. As a consequence of this the reports will not be subject to disclosure under the Public Record's Law and as you saw from the proposed agenda in June, we will be reporting to you about the process. I can report that the peer members, all of whom have been on other site visits, didn't notice any....

2:29:45 Chair Ellis

Chilling effect.

2:29:48 P. Levy Thank you. It was a good visit and we got lots of information. I am drafting the report for the team now. We are planning our next peer review to look at the criminal providers in Marion County. It is time that we look with this process at the public defender and also really look at MCAD to see what the reality of their situation is now. It has been a long time since the Commission has looked at them. I provided training for all staff on the state statute that prohibits public employees during work hours to promote candidates and ballot measures. I only raise this here to remind the Commission that it applies to Commission members, and as I told the staff at training, it applies when you are behind the black curtain there.

2:31:04 J. Stevens Well, good, because that is what I have been doing for two months now.

2:31:06 P. Levy And the statute is quite clear that public employees when they are on break time and when they are not on the job and free to engage in whatever political activities, even when they are on the job they can wear buttons and bumper stickers and the like. The Secretary of State for years has had a very long memo explaining the law that wasn't particularly helpful. They have revised that and adopted it as an administrative rule and it begins by saying just violation of this OAR will have the same effect of violating the statute for which there is a \$250 fine. If you are interested you can look at that, but I think it is not a problem so long as back there you don't say vote for or against this candidate or this measure. This law does not affect legislation. We are free to lobby and express our opinions on legislation and so are you. Finally, really to report about Kathryn and Nancy more than myself, although I played a minor role in this, you may know that last month the Court of Appeals decided a case *State v. Fuller*, that said that in the case before them a person who had been charged with misdemeanor offenses of theft and that at arraignment, pursuant to statute, the district attorney elected to proceed as violations that nonetheless in those cases on those charges that defendant was entitled to trial by jury and proof beyond a reasonable doubt. It wasn't addressed. It wasn't raised, but it flows naturally that the defendant is also entitled to appointed counsel. Kathryn and Nancy have been applauded for immediately getting involved with Multnomah County and coming to the county and helping them work through the issues and how to deal with this. How it will be played out in the long term is not clear yet. In response to either frequent requests about our position on this or misrepresentation of our positions on this, we have issued a position that recognizes our obligation to provide counsel where it is constitutionally required. We could not say, and we cannot say, that in all misdemeanors that are reduced to violations there should be appointed counsel because the approach of the Court of Appeals in *Fuller*, which followed an earlier landmark case *Brown*, was that it is a case by case determination. So with the charges that were at issue in that case, theft, the court said it retained enough indicia of a criminal charge to require the full protections of a criminal prosecution. That is probably not the case for all misdemeanors. We have told the court where you, judge, decide that it is under the *Fuller* analysis a case that carries the indicia of a criminal prosecution and appoint counsel and we will pay for counsel.

2:34:47 N. Cozine And to set your minds at ease in Multnomah County we were actually able to funnel a majority of the cases into community court where we have it funded on an FTE model and there was capacity. For the time being it seems to be functioning all right despite the increase in the number of cases that could wind up being processed as misdemeanor cases. I also wanted to let the Commission know that we had our juvenile training academy Monday and Tuesday of this week. I think we had a record turnout. It was quite well attended and I believe well received. We will see when the evaluations come back. It was a pleasure to be there and Shannon Storey from our office had a huge hand in creating the theme and in getting speakers and the overall structure of the program. I think it went really well. We had the management conference on Thursday and Friday. As you heard I think that went well as well. It was lots of thanks to John for OCDLA's part in both conferences. We, John and I and Shelley are heading to Linn County next week where we will begin the process of service delivery review interviews for our December meeting in Linn County, Albany.

Agenda Item No. 8 Thank you to Peter Ozanne

2:36:08 Chair Ellis So, are we up to Item 8 on the agenda? So I would like to reminisce a little bit. The Commission got formed back in 2000 or 2001. Our very first task was to find the right person to be the first Executive Director. We had some great applicants. You probably don't know this but there were some really good, qualified people. Peter was a consensus choice because he brought a range of qualities. He was experienced himself as a defender. He was experienced within the state for a long, long time. He knew a remarkable range of people in all aspects of system, and he was very persuasive that he had a vision how he thought this might go, so we selected Peter. He did some wonderful things as executive director. I remember the retreat down in Clackamas County where we went through a lot of this. I remember all those early meetings and he really set in place several processes that we are still doing. The whole concept of the Commission getting out of its cocoon in Salem and going out into the communities and meeting with people all around the state and then doing these plans to see if we had the right structure in place. Then what Paul was just talking about with the whole concept of a Quality Assurance Task Force and it was done in the way of peer support more than peer criticism. Teams would go to all of these offices and spend two or three days and work with the provider. The whole thing was in the sense of collegial support as opposed to the police are coming and looking for you. Peter had a number of personnel decisions to make and I think everyone, both the hires and the de-hires, were thoughtfully done and correctly done. Then you had this whole issue and we started with the appellate group and then we go to the CBS trial group and how do you make this into a single kind of unified agency. Peter did a great job on that. We were down at the Gaines Street office, which he also got us into, which worked out as an integrating force so that today it isn't pockets of public defense with nobody talking to each other. Today it is a much more interactive kind of system. One of the memorable moments for me was Peter and his truck. We had this kind of mutual understanding that neither would leave until the other left, which meant we would both be here forever. Then he decided he wanted to go down and defend Joe Arpaio so sprung this and there was a day when the legislative session was just ending.

2:40:11 K. Aylward September 22, 2006.

2:40:14 Chair Ellis That would be the day. I watched this truck. It was such a symbol of what was happening and it was Peter heading south and we were not to see him again. I remember Ingrid, who by that time had been selected as his successor, and we looked at each other and we said, "Well, there he goes." But he is phoenix like and a few years later ...

2:40:44 P. Ozanne His wings crushed.

2:40:47 Chair Ellis I have never totally understood what happened down there but he decided to return to Oregon. I think this was my thought that, you know, he knows a lot we ought to continue to exploit Peter. So we got him on the Commission and that probably had its own range of awkwardness because you had been on the ED role, but Ingrid was supportive of this and it worked out and Nancy didn't have a voice in this anyway so it all worked out. So here we are I think it's 10 years, longer, it is 11 years since you started. I just want to personally say that I think you have been a wonderful contributor to the system in this state. Both in your role as ED you related to the Commission in an extremely positive way. You built a great foundation that we are all standing on those shoulders, and your role as a Commissioner you had that knowledge so you have kind of been able to move through the last three or four years. I thank you and I think the Commission joins in that. You have been a great participant. We do have this modest plaque which states, "Presented to Peter Ozanne in recognition of your contributions as a member of the Public Defense Services Commission." That is only 2008-2012. I think didn't we give you something when you last left?

2:42:33 P. Ozanne A wave as I drove away in the truck.

2:42:32 Chair Ellis Peter, thank you very much.

- 2:42:43 P. Ozanne I would like to say just a couple of things. First of all I want each on the Commission to know how fond I am of you and how much I enjoy our friendship and the time together and the support during the time as executive director. I think each of you out there know how fond I am of you and how much I appreciate the time we had together both as a Commissioner and when I was your colleague. Somebody recently passed on some wisdom to me that I really try to remember which is when you are looking back on your life consider everything that was done was luck and good fortune. When you look forward in your life to what you are going to do that you are totally responsible for everything you do and you are accountable for everything you do. That is kind of the dilemma. We know we are all free agents that do control our fate. I like to think when I look back it has been pretty much luck and good fortune. I think of my friendship with John. We have been good friends for a long time and it was probably around 2004, I was tired of contemplating my navel. I was out of work thinking about the next thing to do – or 2002, I guess it was. John and I were out fishing and John said, “You know. I think there might be a position you might be interested in.” So I had the good fortune to have a great friend and then Barnes and all of you who were on the Commission when I interviewed. I had the good fortune of having people and working closely with Barnes and we just seemed to have a value fit. I don’t remember Barnes about any question of value that you and I ever disagreed about. We might have disagreed about strategy or tactics, but in terms of principles....
- 2:44:38 Chair Ellis We are so closely bonded that we had the same urologist for our prostate. I wasn’t sure how to work that in.
- 2:44:57 P. Ozanne I am grateful for that too. I think then taking the position and I have talked to both Pete and Kathryn about this and others too who I identified. I did have one thing that I will take credit for and it is the judgment to see good people and people like Pete and Kathryn. I could see right away that they were leaders and needed to step up and that was all there was to it. From there they really took off. The other good fortune was after BRAC there was only one way to go but up. I had the good fortune of being in a place with lots of supportive people where the direction was you couldn’t go down anymore. It has been a great ride and I do think of it with lots of good fortune and lots of luck and lots of appreciation to all of you.
- 2:45:57 Chair Ellis Great. Anybody else want to pile on here?
- 2:46:03 J. Potter One of the problems that I think we face maybe in all of the aspects with all of the people we deal with, we take it for granted that we work with such great people. We forget that they really are all excellent. Peter truly is exceptional. But we take for granted that of course he is going to be a good Commissioner. Of course he is going to be a good executive director. We expect that. I have to sort of pinch myself periodically and say we really shouldn’t be taking this for granted. We do have special people here. I include everybody in the room in that category. Peter is an amazing trooper and a great friend.
- 2:46:53 Chair Ellis Does he tell the truth when fishing.
- 2:46:55 J. Potter As much as I do.
- 2:46:57 Chair Ellis Thank you. Any other business anybody wants to bring forward? If not, I would entertain a motion to adjourn. We have been in touch with the new Chief and I think there is – he is not ready to announce but I think he is getting close. I am guardedly optimistic that by the next meeting the chair will not be empty. I think that is about as much as I dare say. So get in your truck and drive off once again. Was there a motion to adjourn?
MOTION: Peter Ozanne moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

Attachment 2

**Public Defense Services Commission
Service Delivery Plan for Linn County
Preliminary Report
(December 14, 2012)**

Introduction

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

The service delivery planning process is a multi-step endeavor, which begins with an investigation of the jurisdiction selected by the PDSC. The investigation is completed by the Office of Public Defense Services (OPDS). The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report regarding the initial findings within a particular area.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve another important function. They provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district is the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for a particular area.

This report includes the results of OPDS's preliminary investigation into the

conditions of the public defense system in Linn County.

PDSC's service delivery planning process

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

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

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

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

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

Background and context to the service delivery planning process

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

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

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

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

The Public Defense Advisory Group is also responsible for planning and implementing "peer reviews," an evaluation or assessment process for all public defense contractors. This process is aimed at improving the internal operations and management practices of offices that provide public defense, and to improving the quality of the legal services they provide. Since 2004 site teams of volunteer public defense managers and attorneys have visited contractors in Benton, Clackamas, Columbia, Crook, Deschutes, Douglas, Jackson, Jefferson, Klamath, Lake, Lane, Lincoln, Linn, Multnomah, Umatilla, Washington, Yamhill, and Clatsop counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys.

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

Another area of practice in which significant concerns about quality of representation have been raised by the Oregon State Bar and others is post conviction relief cases. In March 2008 PDSC heard from judges, the Department of Justice and a number of attorneys whose practice includes post conviction relief about the need for improvement in the quality of representation being provided by public defense attorneys. A work group was convened by the bar at the request of the PDSC to create performance standards for attorneys in these cases. Those standards have now been approved by the bar's Board of Governors and adopted by the PDSC as the standards to be observed by court-appointed attorneys. The work group also made additional recommendations to the PDSC for improving services in this area of practice. Those recommendations were presented to the PDSC at its March 2009 meeting. The PDSC reviewed a service delivery plan for post conviction relief cases at the April 16, 2009, and June 18, 2009, PDSC meetings.

In 2007, PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was approved by the Commission in June of 2007. In 2012, the PDSC again began a review of death penalty providers, beginning with five providers. The process developed during that review will be applied to the remaining death penalty providers as part of the evaluation of the qualifications of each individual seeking a death penalty contract for the 2014 contracting cycle.

"Structure" versus "performance" in the delivery of public defense services

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

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g.,

chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

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

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

Organizations currently operating within the structure of Oregon's public defense delivery systems

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

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

Spangenberg and Beeman, "Indigent Defense Systems in the United States," 58 Law and Contemporary Problems 31-49 (1995).

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

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

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

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

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in ten counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the

attributes one normally thinks of as a government-run “public defender office,” most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

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

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

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

2. Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to

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

³ *Id.*

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

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms.

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

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of

attorneys in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

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

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

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

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

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense of aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can

ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

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

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

PDSC’s Preliminary Investigation in Linn County

In November 2012 Public Defense Services Commissioner, John Potter, OPDS Executive Director, Nancy Cozine, and OPDS Analyst, Shelley Winn, visited Linn County and met with the following stakeholders:

- Presiding Judge Daniel R. Murphy, Judge Carol R. Bispham, Judge James C. Egan, Judge Thomas A. McHill, and Judge DeAnn L. Novotny, and court staff
- Representative Andy Olson
- Senator Betsy Close
- District Attorney Jason Carlile
- Sheriff Tim Mueller, and his deputies and staff
- Ric Bergey, Director, Adult Parole and Probation, & probation staff
- Lisa Robinson, Supervisor, Probation Services, Juvenile Department
- Marco Benavides, DHS District Manager, and John Meade DHS/Child Welfare Program Manager
- Lene Garret, Executive Director, CASA
- Roger Reid, Administrator, Linn County Legal Defense Corporation, and all members of the consortium
- Melissa Riddell, Administrator, Linn County Juvenile Defense Corporation, and all members of the consortium

In addition, Nancy Cozine later met in person with Ryan Phillips and Kristen Williams, Assistant Attorneys General, Oregon Department of Justice, Child

Advocacy Section (assigned to Linn County), and with Erin White, with the Citizen Review Board.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district turns out to be the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for a particular area and OPDS is grateful to the stakeholders in Linn County for their contributions to this report.

OPDS's Initial Findings in Linn County

The Circuit Court

There are five judges in Linn County: Presiding Judge Daniel R. Murphy, Judge Carol R. Bispham, Judge James C. Egan, Judge Thomas A. McHill, and Judge DeAnn L. Novotny. The court had a pro tem judge, but the position was cut during the February 2012 budget reductions.

Linn County Circuit Court uses a centralized docketing system, but each judge has some time in the day to schedule specific matters on their own dockets. The judges hear a mix of cases, though some dockets are assigned to specific judges. Judge Egan hears delinquency hearings, and Judges Murphy and Novotny hear juvenile dependency hearings. All of the judges hear delinquency detention hearings and dependency shelter hearings. Other dockets rotate between the judges. Linn County Circuit Court employs a "one family, one judge" rule, assigning family members to the same judge whenever possible.

There is a criminal drug court in Linn County. Judge McCormick (now retired) was the judge when it started, Judge Murphy presided over the drug court when Judge McCormick left; Judge McHill is the current drug court judge. The drug court has a combined population of "traditional" participants, who have simple possession of a controlled substance (PCS) charges, and "Measure 57" property offenders, who have much more extensive criminal histories. Measure 57 participants are sent to prison if they are not successful in drug court. All parties report that the mix of these two populations has made it more challenging to get people interested in participating in drug court, especially those with PCS charges. The participant population has therefore shifted, with the majority of participants facing Measure 57 sentences. Potential Measure 57 participants are initially identified by the District Attorney's Office. The probation officer, treatment representative, and defense attorney discuss the candidate and then vote on whether to accept the candidate. Warrants are issued within 15 minutes of a missed treatment appointment. The court employs swift and certain sanctions, utilizing many non-jail sanctions. Alternative sanctions include work crew, community service, journals (homework), support groups, day reporting center, drug tests, and job searches. Participants are offered assistance with housing, dental care, mental health counseling, treatment, food, clothes, GED,

and rent subsidies. The drug court team would like to start including a medication component, but they need additional funding. The drug court team had a retreat in October, and will need to address alternative funding options for the next biennium.

Linn County has three additional treatment or accountability courts. The Juvenile Accountability Court (JAC Court) is designed for high risk kids. It is considered a last step before commitment to OYA. This program has improved over the years, and is seen as a success. There is also a Family Treatment Court (FTC) which meets every Friday. This is for the parents of children who have been removed by DHS for abuse or neglect allegations. All defense attorneys appear for these FTC appearances. The FTC has no funding and relies on existing funding for treatment through DHS. Another key element of the FTC is the outreach workers, who are paid for by Linn County Drug and Alcohol and DHS. The FTC has been in existence since 2008 and has demonstrated remarkable success. The recidivism rate for those completing the program is less than ten percent. Finally, there is a domestic violence court, which has had declining participation. This is more properly an accountability court and not a treatment court. It offers batterer intervention services but there is no probation officer involvement in the court, and very few victim services. It is also reported that because there isn't a competitive market for batterer's intervention services, there is no alternative if the provider isn't a good fit, which makes the treatment court less appealing for defendants.

System partners report that the trial rate seems low in Linn County. The 2011 statewide "cases tried analysis" reveals a felony case trial rate of 2.8 for Linn County, compared to 4.4 statewide. Linn County's misdemeanor trial rate of 3.5 is closer to the statewide rate of 3.8. Those interviewed speculated that the lower trial rate is a result of the court's policy against generous day of trial plea offers. The district attorney's office makes its best plea offer at the start of the case, and the offers get progressively worse unless new information is discovered. Parties also report that cases are dismissed at the pretrial phase, rather than on the day of trial, which also encourages settlement before the day of trial.

Linn County Cases Tried Analysis

TYPE OF CASE	JUL 01 TO DEC 31, 2011						JAN 01 TO DEC 31, 2011					
	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age
Felony	519	17	3.3	5	12	232.1	1,053	30	2.8	13	17	225.5
Misdemeanor	513	16	3.1	9	7	136.8	1,136	40	3.5	16	24	184.7
Violation	2,437	219	9.0	219	0	134.0	4,986	404	8.1	404	0	118.8
Subtotal	3,469	252	7.3	233	19	140.8	7,175	474	6.6	433	41	131.1

Statewide Cases Tried Analysis

TYPE OF CASE	JUL 01 TO DEC 31, 2011						JAN 01 TO DEC 31, 2011					
	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age	Total Cases Term.	Total Trials	%Term by Trial	Court Trials	Jury Trials	Ave Age
Felony	14,617	652	4.5	232	420	210.3	29,967	1,320	4.4	467	853	207.6
Misdemeanor	30,505	1,137	3.7	510	627	156.9	61,956	2,352	3.8	1,069	1,283	179.1
Violation	111,211	5,183	4.7	5,181	2	100.6	217,690	10,160	4.7	10,154	6	170.7
Subtotal	156,333	6,972	4.5	5,923	1,049	120.0	309,613	13,832	4.5	11,690	2,142	175.6

Linn County Circuit Court will be transitioning to the new Tyler Odyssey eCourt system in December of this year, days before the Commission's meeting in Albany. The new system will allow for electronic transfer of court documents, and system partners will be able to view case files electronically. New physical court files will not be created once the Odyssey program is installed; old files are already being scanned so that they can be stored in the new system. The court will be sharing Tyler Odyssey demonstration videos with court staff and system partners in preparation for the conversion.

County Challenges

Most individuals interviewed indicated that there are not enough treatment resources in the county. Like other counties, the statewide economic circumstances have impacted Linn County's ability to establish and maintain a more expansive list of treatment program options. There is some lack of faith in the drug and alcohol assessments, and some preference for private providers, many of whom are not available to those who qualify for court appointed counsel. There are, however, more resources available to those who are participating in treatment courts, and the probation office is able to allocate some of its resources to support treatment programs. There are no residential treatment beds in Linn County.

The Sheriff's office was also affected by the economic downturn and reduced its staff through 13 layoffs in February 2012, resulting in a 25% reduction in available jail beds. Defense providers indicate that though jail staff works very hard to make clients available, it is difficult to see clients due to space constraints at the jail. There are three non-contact visit booths, but the conversations are not private, and the rooms are often in use by DHS caseworkers, attorneys, and others. Telephone contact is easier, but in person visits are often necessary. Contact visits must be reserved in advance, and are strongly discouraged, as inmates must have a full body search before and after the visit.

Availability of qualified interpreters is another challenge. One person interviewed indicated that there is a large Hispanic population in Linn County, and speculated that this population might be overrepresented in Linn County's criminal justice system. No statistics were found regarding the percent of cases in Linn County in which the defendant is Hispanic. According to the U.S. Census Bureau's "State and County QuickFacts",⁴ approximately eight percent of the population in Linn County is of Hispanic or Latino origin. When interpreters aren't available, the court must use interpreters over the telephone, which can be very difficult.

⁴ <http://quickfacts.census.gov/qfd/states/41/41043.html>

Collaborative Efforts in Criminal and Juvenile Justice

There is a Local Public Safety Coordinating Counsel, coordinated by Presiding Judge Murphy; it meets a few times each year. One County Commissioner, Will Tucker, is reported to observe court on a regular basis. Though Linn County does not have a parole and probation office that is county funded (it receives funding directly from the Department of Corrections), the LPSCC is still seen as a forum for addressing system resource issues, such as jail transports and visits, use of jail beds for inmates in state custody, and court docket issues.

Judges host regular meetings with system partners. Judge Murphy meets with the defense bar once each month, and also meets regularly with Melissa Riddell, the contract administrator for the juvenile consortium group. He facilitates two dependency work group meetings. Judge Egan facilitates a delinquency meeting approximately once each month and asks his judicial assistant to attend the meetings, which is reported as being very helpful. Judge Bispham hosts quarterly Domestic Violence Court meetings.

One notable comment made by almost everyone interviewed was that the court staff in Linn County is remarkably helpful, and that their efforts make a big difference in keeping the system working smoothly.

The Linn County justice system has a collegial prosecution and defense bar, members of which are able to socialize comfortably outside of the work environment. Both prosecutors and defense attorneys are reported as getting along well with each other and the court, and they regularly participate in community and Linn-Benton Bar Association activities together.

Procedure in Criminal Cases

Arraignments are held at the same time each week. Litigants who qualify for court appointed counsel are assigned an attorney, but attorneys are not present at arraignment unless privately retained. Defendants are told to contact their attorney. The court tries to provide defendants who have a pending case and are being arraigned on new charges with the same attorney on both cases. Attorneys usually receive notice of the appointment within a day or two of arraignment.

As mentioned earlier, the court employs what they call “The No-Negotiation” rule, which discourages settlement after the pretrial conference. The pretrial conference is scheduled approximately 60 days after arraignment. Cases can be settled after the pretrial conference with a plea agreement that is better than the original plea offer only if new information justifies the change in position.

Linn County District Attorney Jason Carlile is retiring at the end of the year. Douglas Marteeny will start as the newly elected District Attorney in January 2013. Those who work with the District Attorney's (DA's) office expect it to be a smooth transition, as Mr. Marteeny has worked closely with District Attorney Carlile for many years and they have similar philosophies. The DA's Office uses a vertical prosecution model, meaning each deputy district attorney is able to decide what cases to charge, what charges to include, and the deputy district attorney keeps those cases throughout the life of the case. There are three small teams with a senior district attorney supervising each team. This model allows the deputy and senior district attorneys to make reasonable offers at the outset of each case, and helps parties resolve cases at the earliest opportunity. There is some specialization in the office, with a domestic violation deputy DA, and a few drug deputies. The District Attorney's office does not allow DA diversions or agree to deferred sentences.

The District Attorney reports that domestic violence charges are the most common charges issued, and sex offenses are the second most common. Domestic violence cases are one exception to the rule against day of trial settlement – they often settle on the day of trial, and usually settle within 28 days. There was concern expressed about the failure to appear rate being high, especially in Domestic Violence court. Possession of methamphetamine is also common in Linn County. DUIL charges rarely go to trial because the BAC levels tend to be very high.

The District Attorney's office is in the process of moving to an electronic discovery system. The process is expected to be completed by the time of the Commission's visit in December. Discovery will be available to defense attorneys through a website where they will be able to "harvest" the materials. The District Attorney's office says they will keep discovery charges the same at the beginning, but will reconsider later.

Procedure in Juvenile Cases

Dependency Cases

As in all other case types, attorneys are not present at shelter hearings unless privately retained or the attorney is already representing the client on a prior petition. The court assigns the attorney based upon a list provided to the court. During the shelter hearing, the court requests that the clerk have the parents sworn under oath, advises that they should not speak about the incidents that brought their child or children into care, and then asks for their positions regarding placement of the child or children. The parents are also asked about Indian heritage. A settlement conference is typically scheduled two to four weeks after the shelter hearing, though at the time of the preliminary visit they were being set approximately six to seven weeks after the initial appearance.

The attorney usually receives notice of the appointment within a day or two after the shelter hearing. Consortium members adjust assignments as needed to address conflict issues. Attorneys rarely receive discovery before the attorney's first meeting with the client, and sometimes not until a day or two before the settlement conference. In most cases, children are in substitute care during this time. The Department of Human Services (DHS) indicates that they are unable to provide discovery earlier due to work load issues, and this has reportedly been a problem for many years. DHS is moving to an electronic discovery model in December and is hopeful that this will improve their ability to share discovery at an earlier date.

Linn County has an active CASA Program, with 85 volunteer CASAs. All CASA staff members have prior CASA experience. The program is widely viewed as having made significant improvements during the last two years under the leadership of Lene Garrett.

The county does rely on Citizen Review Board (CRB) hearings, and juvenile consortium attorneys regularly attend, though there are scheduling conflicts for the attorneys. Attorneys also attend family decision meetings (FDMs) unless they already have a court appearance. Attorneys routinely ask that FDMs be rescheduled when this happens, so that they can be with their client during the meeting.

DHS reports that the number of cases in which the court takes jurisdiction is actually lower in Linn County than in other jurisdictions. Linn County DHS has five mental health workers on staff, as well as a domestic violence coordinator, and has offered wrap around services for three to four years. System partners seem to agree that the county would benefit from an increased focus on preventing removal, as once a child is removed, it can be very difficult to get the child (or children) returned home. Getting parents into substance abuse treatment is difficult. It is offered at the shelter hearing, but if it doesn't happen right away, it often doesn't happen until late in the case. Participation in family court does help parents gain access to services.

Parties report that parents and children need more visitation, and that there is very limited visitation early in the case. As in other counties, transportation resources are a barrier. Attorneys are requesting alternative visitation utilizing non-DHS transportation and supervision. DHS has visitation guidelines that require more visit hours for children under the age of five, and less for those over the age of five, but recent budget cuts have curtailed the agency's visitation resources, and hampered its ability to meet their own requirements.

There is also a need for improved transition services. Families have little support when children return home, and there are limited supportive services for parents in recovery during the time children are returned to their parent's care.

The county is also reportedly seeing an increase in “crossover kids” – kids who are in the dependency system and end up in the delinquency system. The CASA program is seeing this so frequently that they are now asking the juvenile department to help train CASAs. Some speculate that this is due to a lack of quality, appropriate foster care placements, a lack of training and supportive services for foster care providers, and a lack of services for children in the dependency system.

Delinquency Cases

Judge Egan has been the juvenile delinquency judge for eighteen months, but will soon be leaving for a position on the Oregon Court of Appeals. As in adult criminal cases, attorneys are not present at the first appearance. The Juvenile Department discusses the right to counsel with kids before court starts, and then advises the court if the child wishes to have an attorney appointed. Judge Egan makes a statement at start of court about the right to counsel, and tells kids to request that an attorney be appointed if they wish to be represented. Generally, attorneys are appointed in felony cases, but in probation violation proceedings attorneys are appointed only if there is a likelihood of an out of home placement or commitment to the Oregon Youth Authority (OYA).

Torri Lynn is the Director of the Linn County Juvenile Department, which has nine juvenile court counselors (JCCs) on staff. Two counselors are assigned to work with kids with sex abuse adjudications, as there are a high number of referrals for sex offenses; the youngest child referred was 11 years old. Treatment resources are also limited in this area. Unless kids are on the Oregon Health Plan, there is no outpatient sex offender treatment available in Linn County. The Juvenile Department must refer kids to outpatient in Benton County, and it can be very difficult for families to get their kids to treatment without impacting employment or other responsibilities. The Juvenile Department has a good working relationship with defense providers and others in the delinquency system, views its role as helping youth and families achieve positive change, and uses a risk-based model of service to focus available resources on those youth who are most likely to recidivate. The Juvenile Department also operates a twenty bed juvenile detention facility.

The court does allow alternative dispositions, and the Juvenile Department is often able to support motions for alternative disposition. Attorneys are litigating motions when the juvenile department is not in support. The Juvenile Department indicates that Linn County is leading the state in competency evaluations. When a child is unable to aid and assist, the case is sometimes dismissed, and other times there is a state evaluation and a special placement. The Juvenile Department is concerned about the possibility of dismissal followed by future criminal conduct, so prefers to find a way to offer services if possible.

The District Attorney's office does provide a deputy for juvenile delinquency proceedings. This assignment rotates on a regular basis. Parties report that it is helpful to have consistency in representation from the DA's office, as the learning curve is steep and frequent changes make it difficult to achieve consistent resolutions.

Kids appearing before the court are not shackled unless there is a documented reason to do so. Very few juveniles are held in adult facilities, but that trend was reported as changing recently, with one sixteen year old developmentally disabled girl reportedly being held in an adult facility.

Civil Commitment Cases

There are very few civil commitment cases in Linn County. People who are undergoing a civil commitment proceeding are housed at the Good Samaritan facility in Corvallis.

Public Defense Providers in Linn County

PDSC contracts with two providers for non-death penalty cases in Linn County: the Linn County Legal Defense Corporation (LCLDC), and the Linn County Juvenile Defense Corporation. PDSC does not have a provider in Linn County to provide representation in capital cases.

LCLDC has ten members. The contract administrator, Roger Reid, does not accept appointments, but remains available to the court and others when issues need to be addressed. The consortium began establishing a board in 2011, but is still in the process of adding members, and continues to work out other details. Mr. Reid indicates that board insurance has been a barrier, and that the consortium will request additional funds to cover this expense during the next contract cycle. Tim Felling, one of the consortium members, has been drafting a best practices manual and a client feedback form. Consortium members have a "split the check" model; they strongly prefer this, as each member can count on a consistent monthly income. LCLDC added a new member this year, and assigned mentors (see Attachment A) from the consortium to help with training. The consortium hopes to increase its focus on succession planning, and to address concerns regarding a lack of diversity within its consortium as part of that process.

The Linn County Juvenile Defense Corporation has six members. Melissa Riddell is the contract administrator. Ms. Riddell began as contract administrator in 2011, taking the reins from Jody Meeker, who had been the administrator for the previous eleven years. Reports from system partners indicate that the transition has gone smoothly, and that the consortium is functioning well.

Linn County Juvenile Defense Corporation does have a Board of Directors with two outside board members, one of whom is a municipal court judge. The board meets annually, at a minimum, but more often when necessary. The board is reported to be very engaged and supportive. Ms. Riddell meets with consortium board members, consortium attorneys, and the Presiding Judge, on a regular basis, and fully addresses any complaints raised regarding the representation provided by consortium members.

The Consortium sends all clients (kids age 12 and up) an evaluation form with a self-addressed, stamped envelope, when the case closes. The responses are sent to Ms. Riddell, then scanned and sent to the attorney. The return rate is 10-20%. Consortium members meet at least quarterly, but were meeting monthly during the transition from the previous to current contract administrator. The Consortium does offer training to its members. They recently provided a two day training for all members, and they provide new members with training, four to five months of observation, and informal feedback from other consortium members. All members are expected to meet OPDS CLE requirements. The group plans to continue development and documentation of the training and mentoring process. The Linn County Juvenile Defense Corporation Board of Directors, By-Laws, Independent Contractor Agreement, Client Evaluation Form, and Complaint Form, are included as Attachment B.

Comments from Linn County Stakeholders Regarding Providers

Criminal Cases

Overall, LCLDC is described as providing competent representation. Attorneys are reported as regularly calling and visiting in-custody clients on weekends and in the evenings, communicating with each other and the Presiding Judge regarding case distribution so that assignments can be adjusted if necessary, behaving in a professional manner and avoiding interpersonal conflicts that would interfere with resolving cases, and requesting and receiving authorization for investigation and other professional services. LCLDC attorneys are considered trustworthy by the court and their adversaries.

Some providers are described as doing a “very good job,” but there are inconsistencies. Though there is no systematic way of measuring quality of services, there are attorneys who tend to meet and consult with clients for the first time in the courtroom or courthouse hallways on the day of the settlement conference. Others in the system express some concern about this. They recognize that there are times when it is difficult for attorneys to contact clients, but their observation is that there are certain attorneys who are more proactive, and work harder to meet their clients in advance of court. Those attorneys tend to be prepared for court on the day of the settlement conference, have excellent

client management skills, and their clients rarely request a new attorney. There are also attorneys who need to improve their client communication skills. Many clients are observed as having limited verbal skills, and their attorneys forget to modify the language they are using so that clients can understand.

LCLDC attorneys are described as being available for court hearings, though it is more difficult when providers have a significant number of privately retained cases.

Representation of Parents

The Linn County Juvenile Defense Corporation attorneys are described as being very competent, having made significant improvements in the last few years. Some of the members are described as providing representation that is superior to what is found in many other Oregon counties. Attorneys in the consortium are described as being proactive, advocating well, and cooperating with other system partners to avoid unnecessary delays. For example, when the CRB is scheduling a hearing, the attorneys are regularly contacting the CRB when an interpreter is required. This is something done by DHS in other counties, but has become routine for Linn County attorneys because they want to avoid having the reviews rescheduled. Though a few attorneys are described as not being the strongest advocates for their clients, the majority of consortium members are described as being among the best at representing children and parents.

The consortium is still adjusting to the membership and contract administration changes, but the changes are viewed very positively. The attorneys are described by everyone as being very committed, rarely taking vacation, and constantly striving to make improvements. Attorneys are also described as being more settlement oriented than in the past, but this is not viewed as a negative – just something to monitor. Others describe parents' attorneys as zealous advocates who sometimes let their advocacy get in the way of DHS or CASA access to parents or parents' treatment records. All parties note an appreciation for discussion around these topics, with mutual respect for the roles that each other play in the dependency system.

While The Linn County Juvenile Defense Corporation attorneys are described as being very committed and rarely taking vacation, they are also described as having limited availability. The court and others report that it is difficult to work around attorney schedule conflicts, which makes it difficult to schedule court hearings, FDMs, CRBs, and meetings with DHS and CASA. Some participants in the system feel that the scheduling conflicts can extend the length of time a child spends in care simply because critical meetings happen later than they should due to attorneys' unavailability. Consortium members agree that scheduling is difficult, but note that this is also a result of adjusting to the changes within the consortium, scheduling around court closures (holidays and

furlough days), limited docket time for juvenile matters, and natural challenges associated with scheduling when there are multiple parties in a case.

Representation of Children

The Linn County Juvenile Defense Corporation is also providing competent representation for child clients. There were concerns about specific attorneys not visiting child clients, but those concerns have been and are being addressed by the contract administrator. The board was made aware of the concerns, and was supportive of the contract administrator's efforts to rectify the situation. Some parties suspect that there are still attorneys who are not seeing their child clients, but they seem to have confidence that the issue is being addressed within the consortium. Linn County Juvenile Defense Corporation attorneys were specifically commended by some as taking strong positions when representing children, and being leaders in the case planning.

Delinquency Cases

Linn County Juvenile Defense Corporation attorneys are reported to be very strong advocates for their juvenile delinquency clients, providing zealous representation, with significant improvement over the last 5 years. The attorneys have very good working relationships with the court and others in the delinquency system. They meet with clients, and work well with them in all case types. Attorneys regularly request alternative dispositions in sex abuse and other case types, and also provide favorable mitigation information.

OPDS's recommendations for further inquiry at the PDSC Meeting on December 14, 2012

Based on the information provided to OPDS during meetings and telephone conversations with justice system stakeholders, OPDS recommends that the Commission consider the following in developing a service delivery plan for Linn County.

Structure

The current structure, with one consortium providing representation in criminal cases, and another providing representation in juvenile cases, appears to be working satisfactorily. The Commission may wish to hear more from LCLDC regarding its board, and succession planning. Although the Linn County Juvenile Defense Corporation is reported to be doing very good work, there may be a need for additional funding to allow them to hire more attorneys so that attorneys have more time to attend shelter hearings, detention hearings, CRB reviews, and meetings.

Criminal Representation

LCLDC attorneys are reported to be providing competent representation, with some inconsistency in the quality of representation. Concerns expressed related to a perceived high failure to appear rate, particularly in domestic violence cases, a low trial rate in felony cases, lack of client contact prior to the pretrial conference, a lack of training with regard to the use of “plain language,” and a lack of availability among attorneys with a high volume of privately retained work. Some of these factors may be resolved, at least partially, by having attorneys available at arraignments, where they can make initial contact and schedule a time to meet with the client. The lack of a strong board and formalized structure could make it more difficult for the consortium to maintain quality representation as time passes and current consortium members retire.

Juvenile Representation

As noted above, on the whole, the Linn County Juvenile Defense Corporation provides excellent representation. The consortium would benefit from adding an attorney or two if that is what is necessary to provide representation at shelter and detention hearings. The consortium also noted interest in having a social worker as part of the consortium. While the stresses of high caseloads are understood, the consortium should be raising these issues with PDSC to secure the funding necessary to provide representation at all critical meetings and court hearings, including shelter hearings.

Attorney Advocacy at Initial Court Appearance

There are many standards of representation available to guide practitioners regarding the timing of appointment of counsel. Compliance with these standards requires that the attorney be present at initial court appearances.⁵

The Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers*, includes Best Practice IV, which addresses case assignment, says: *Providers should establish, in collaboration with the courts and others, a system for receiving court appointments and assigning counsel that assures high quality representation from a client's first appearance in court to the final disposition of the judicial proceeding.*

The Oregon State Bar's Specific Standards for Representation in Criminal and Juvenile Delinquency Cases includes Standard 2.6 - Initial Court Appearances: *A attorney should make a statement on the record or request that the statement be*

⁵ The best practices and standard outlined here are Oregon-specific. Similar standards have also been adopted by the American Bar Association and other entities.

contained in the order to preserve all of the client's constitutional and statutory rights at initial court appearances.

Implementation

An attorney should:

1. Promptly advise the client of, and take action to preserve, all constitutional and statutory rights of the client, including the right to remain silent, to file motions challenging the charging instrument, and to enter a plea of not guilty or deny the allegations contained in a delinquency petition and to request a jury trial, when failure to do so may result in the client being precluded from later obtaining such rights.
2. Request a timely preliminary hearing as provided by law or the rules of the court, unless there is a sound tactical reason not to do so.
3. If a preliminary hearing is held, review the allegations, marshal the evidence, and prepare to challenge the state's evidence and arguments.
4. Review probable cause documents and any probable cause arguments, and, if no probable cause is established, move for release of the client or dismissal of the charges if appropriate.
5. Ensure that bail has been set, seek reductions in bail if appropriate, and seek alternative release options.

The Oregon State Bar's Specific Standards of Representation in Juvenile Dependency Cases are similarly instructive. Standard 3.5 contains the obligations of a attorney regarding shelter hearings and pretrial placements: *When a child has been removed from the parent's home and placed in shelter care, a attorney should advocate for the placement order and other temporary orders the client desires, unless the client is a child incapable of considered judgment, in which case a attorney should advocate for the placement order and other temporary orders that are in the best interests of the child.*

Implementation

1. An attorney should be familiar with statutory and case law that requires DHS-CW to make reasonable efforts or active efforts to prevent removal of a child.
2. An attorney should be familiar with the types of placements available to children and placement issues, including:
 - a. the impact of removal and placement on the child;
 - b. the necessity of placement;
 - c. specially certified placements for the client;
 - d. relative placement;
 - e. the importance of placing siblings together when appropriate;
 - f. alternatives to placement;
 - g. the appropriateness of the placement;
 - h. the efforts that can be made to ensure a smooth transition to a new placement;
 - i. the effect of the placement on visitation;
 - j. the effect of the placement on service needs of the child or family;

- k. the transracial, transcultural, and language aspects of the placement; and
 - l. placement preferences under the Indian Child Welfare Act.
3. At the shelter care hearing, a attorney should:
- a. obtain copies of all relevant documents;
 - b. take time to talk to the client, caution the client about self incrimination, and ask for a recess or continuance if necessary;
 - c. if appropriate, assert client's Fifth Amendment and other constitutional rights; and
 - d. assist the client in exercising his or her right to an evidentiary hearing to demonstrate to the court that the child can be returned home without further danger of suffering physical injury or emotional harm, endangering or harming others, or not remaining within the reach of the court process before adjudication;
 - e. when appropriate, present facts and arguments regarding:
 - (1) jurisdictional sufficiency of the petition;
 - (2) appropriateness of venue;
 - (3) adequacy of notice provided to parties, and tribes if applicable, particularly if they are not present;
 - (4) the necessity of shelter care;
 - (5) why continuation of the child in the home would or would not be contrary to the child's welfare or why it is or is not in the best interests and for the welfare of the child that the child be removed from home or continued in care;
 - (6) whether reasonable or active efforts were made to prevent removal;
 - (7) whether reasonable and available services can prevent or eliminate the need to separate the family;
 - (8) whether the placement proposed by DHS-CW is the least disruptive and most family-like setting that meets the needs of the child;
 - (9) the possibility of placement with appropriate noncustodial parents and relatives;
 - (10) a plan for release of the child prior to the jurisdictional hearing;
 - (11) if the child remains in shelter care, arrangements for visits and alternatives to shelter care to be explored such as relative placement, intensive in-home services, and mediation; and
 - (12) applicability of the Indian Child Welfare Act and appropriate parties and tribes to receive notice.
 - f. propose return to parents or placement that is the least restrictive with regard to the client.
4. If a child is returned to parents or placed in shelter care or other state placement, a attorney for the child should ensure that the child's needs for safety and right to receive treatment are met by the child's caretakers or agencies responsible for the child's care. A attorney should inform the court,

- DHS-CW, and the caretakers for the child about any medical, psychiatric, or security needs of the client, if directed by the client.
5. An attorney should request any temporary orders that the client directs or, if representing a child not capable of considered judgment, that are in the best interests of the child, including:
 - a. temporary restraining orders, including orders expelling an allegedly abusive parent from the home;
 - b. orders governing future conduct of the parties, i.e., remaining clean and sober while the child is present, etc.;
 - c. orders for any services agreed-on before adjudication;
 - d. visitation orders that are reasonable and flexible and take into consideration the parties' work and counseling schedules and available transportation and that specify the terms and conditions of visitation;
 - e. orders for the parent or parents to pay child support if appropriate;
 - f. orders for DHS-CW to investigate relatives and friends of the family as potential placements, or to place sibling groups together; and
 - g. orders for the agency to provide appropriate treatment for the child.
 6. An attorney should consult with the client about transfer of the case to tribal court and take appropriate action as directed by the client.
 7. An attorney should inform the client of the possibility of a review of the referee's or court's order at the shelter care hearing and the possibility of pursuing a writ of habeas corpus.
 8. If the court sets conditions of the child's placement, a attorney should explain to the client and any third party the conditions and potential consequences of violating those conditions. A attorney should seek review of shelter care decisions as appropriate and advise clients or any third parties of changes in conditions for pretrial placement that would be likely to get the court to agree with the client's plan.
 9. An attorney should ask the court to inquire of parties concerning the paternity of the child and the applicability of the Indian

A Service Delivery Plan for Linn County

[This portion of the report will be completed after the PDSC has developed its service delivery plan for Linn County.]

Attachment A

LINN COUNTY MENTOR PROGRAM

The Oregon Public Defense Commission has identified as an area of concern the retention of young talented attorneys in the face of the financial realities faced by young attorneys practicing public defense. To date the Oregon legislature has not provided a compensation package to public defense attorneys on parity with attorneys working in district attorneys' offices, let alone those working in private practice.

I.

The Consortium's training and mentoring program (Program) adopts the Oregon State Bar mentoring materials and adapts them to address the unique aspects of practicing public defense in the Consortium as an independent contractor. The goals of this program are to attract and retain young talented attorneys, and help them develop into highly skilled public defense attorneys.

II. Mentor-Attorneys

The administrator designates two mentors (Mentor-Attorneys) to guide and train the new attorney (New Attorney). Each Mentor-Attorney brings a unique perspective to the practice of law. Considerations in the selection of Mentor-Attorneys include skill level, experience, interest in the mentoring process, and passion for defending clients. One of the Mentor-Attorneys is selected as the primary mentor, and takes part in the Oregon State Bar mentorship program with the New-Attorney. The primary mentor is responsible for designating particular cases for the New-Attorney to handle and monitoring the new attorneys work on each case. Both Mentor-Attorneys introduce the New-Attorney to the community, educate the new attorney on local court rules and practices, are available to the new attorney on a daily basis to address questions, and provide overall guidance and training in the practice of public defense.

Each mentor attorney will also co-counsel cases that go to trial with the new attorney, and be present at all of the new attorney's appearances in court, until such time as the new attorney is certified to proceed on his own. On a weekly basis the primary mentor and the new attorney will review each of the new attorney's cases and the progress being made on them. The two mentor attorneys will have performance review and evaluation with the new attorney monthly.

III. New-Attorney

The New-Attorney will attend in-custody and in-office client interviews, with each mentor. The New-Attorney will seek out help and advice from the Mentor-Attorneys. The New-Attorney will become familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases, the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Oregon Criminal Code; the Uniform Trial Court Rules; and the current version of Oregon State Bar, Criminal Law.

The New-Attorney will seek to satisfy any requirements set forth in the current version of, Oregon Public Defense Commission Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense (Qualification Standards), for the level of certification that he or she is seeking.

In addition, the new attorney will be co-counsel on at least one trial for the level of certification that he or she is seeking with each of the eight members of the Consortium. This requirement will give the new attorney to exposure to the full breadth of experience and styles that exist in the consortium.

IV. Completion of Program

The Program will end upon certification to practice at the Major Felony Cases in Trial Courts level set forth in the Qualification Standards, and completion of the Oregon State Bar New-Lawyer Mentoring Program.

Upon completion of the Program, the Mentor-Attorneys will perform a final review of the New-Attorney's skill as well as continuing areas of needed development.

Attachment B

BY-LAWS OF THE LINN COUNTY JUVENILE DEFENSE CORPORATION
AS AMENDED APRIL 29, 2010

ARTICLE ONE

OFFICES

The principal office of the corporation shall be located at 250 Broadalbin St. SW., Albany, County of Linn, State of Oregon. The corporation may have such other offices, either within or without the State of Oregon, as the board of directors may determine from time to time.

ARTICLE TWO

MEMBERS

Section 1. General Powers. The affairs of the corporation shall be managed by the members subject to the duties and responsibilities of the board of directors as specifically set forth herein.

Section 2. Classes of Members. In order to qualify for membership in the corporation, a person must be an attorney duly licensed and qualified to practice law within the state of Oregon. Further, only persons contracting with the corporation to provide attorney services shall be Contractors and remain eligible for membership.

Section 3. Election of Members. Any person interested in becoming a member of the corporation shall submit a cover letter and resume as an application, to the administrator of the corporation. When there is an opening in the membership, each application shall be considered by the members at its regularly scheduled meeting, or at any special meeting of the members. When an application is selected and approved by the members, the application shall be submitted to the board of directors for ratification at any regularly scheduled meeting or special meeting, and shall be approved or disapproved. Approval requires a 75% majority of the board of directors.

Section 4. Voting Rights. Each member in good standing shall be entitled to one vote on each matter submitted to a vote of the members. There shall be no cumulative voting.

Section 5. Termination of Membership. The board of directors may suspend or expel a member for cause, after consultation with the membership and appropriate hearing, by affirmative vote of 75% of all members of the board.

Section 6. Resignation. Any member may resign by filing a written resignation with the administrator, but the resignation shall not relieve the member of contractual agreements as stated in the members' Independent Contractor Agreements.

Section 7. Membership in this corporation is not transferable or assignable.

ARTICLE THREE

MEETINGS OF MEMBERS

Section 1. Annual Meeting. An annual meeting of the members shall be held in Albany on the first Monday in the month of March in the first year of each contract period beginning with the year 2007, at 6 o'clock p.m. or at such other time as Board of Directors shall set, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting is a legal holiday in the State of Oregon, such meeting shall be held on the next succeeding business day. If the election of directors is not held on the day designated herein for any annual meeting, or at any adjournment thereof, the board of directors shall cause the election to be held at a special meeting of the members as soon thereafter as is convenient.

Section 2. Regularly Scheduled Meetings. Members will meet quarterly and more often as needed to discuss corporation business and any issues that arise that affect the membership.

Section 3. Special Meetings. Special meetings of the members may be called by the president, board of directors, or not less than half the members having voting rights, at Albany, Oregon, the specific address to be designated by the board of directors. If no designation is made, the place of meeting shall be the principal office of the corporation in the State of Oregon, but if all members shall meet at any time and place, either within or without the State of Oregon, and consent to the holding of a meeting, such meeting shall be valid without call or notice and at such meeting any corporate action may be taken.

Section 4. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of members shall be delivered either personally, by mail or by e-mail to each member entitled to vote at such meeting, not less than 2 days or more than 30 days before the date of such meeting, or at the direction of the board of directors, or the persons calling the meeting. In case of a special meeting or when required by statute or by these by-laws, the purpose or purposes for which the meeting is called shall be stated in the notice.

Section 5. Informal Action by Members. Any action required by law to be taken at a meeting of the members, or any action that may be taken at a meeting of members, may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all the members entitled to vote with respect to the matter thereof.

Section 6. Quorum. Members holding a majority of the votes that may be cast at any meeting shall constitute a quorum at such meeting.

ARTICLE FOUR

BOARD OF DIRECTORS

Section 1. General Powers. The board of directors shall oversee and advise the members of the corporation and have the powers specifically set forth in these by-laws.

Section 2. Number, Tenure, and Qualifications. There shall be five (5) members of the board of directors, two (2) of which shall be members of the corporation. Directors shall be elected at the annual meeting of members, and the term of office of each director shall be for the contract period or until and the election and qualification of the successors.

Section 3. Regular Meetings. A regular meeting of the board of directors shall be held annually. The board of directors may provide, by resolution, the time and place for holding additional regular meetings without other notice than such resolution. Additional regular meetings shall be held a minimum as needed at a time and place designated by the board of directors.

Section 4. Special Meetings. Special meetings of the board of directors may be called by or at the request of the president, the administrator, or any two directors, and shall be held at the principal office of the corporation or at such other place as the directors may determine.

Section 5. Notice. Notice of any special meeting of the board of directors shall be given at least three (3) days previously thereto by written notice delivered personally, sent by mail, fax or e-mail to each director at the address shown by the records of the corporation. The attendance of a director at any meeting shall constitute a waiver of notice of such meeting, except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. The business to be transacted at any special meeting should be generally described in the notice of meeting.

Section 6. Quorum. A majority of the board of directors shall constitute a quorum for the transaction of the business at any meeting of the board.

Section 7. Board Decisions. The act of a majority of the directors present at a meeting at which a quorum is present shall be the act of the board of directors, unless the act of a greater number is required by law or by these bylaws.

Section 8. Vacancies. Any vacancy occurring in the board of directors and any directorship to be filled by reason of an increase in the number of directors, shall be filled by the members. A director appointed to fill a vacancy shall serve for the unexpired term

of his predecessor in office. Each such appointment by the members shall be subject to the approval or disapproval of the board of directors at the next regular meeting.

Section 9. Compensation. Directors as such shall not receive any stated salaries for their services. Nothing herein contained shall be construed to preclude any director from serving the corporation in any contractual capacity and receiving compensation for their contractual services.

ARTICLE FIVE

OFFICERS

Section 1. Officers. The officers of the corporation shall be the President/Administrator, a Vice-President and Secretary who shall be members of the corporation.

Section 2. Election and Term of Office. The officers of the corporation shall be elected annually prior to the end of contract term by the members and approved by the board of directors at their regular annual meeting. If the election of officers is not held at such meeting, such election shall be held as soon thereafter as is convenient. Each officer shall hold office until his successor has been duly elected and qualifies.

Section 3. Removal. Any officer elected or appointed by members may be removed by the board of directors whenever in its judgment the best interests of the corporation would be served thereby, but such removal shall be without prejudice to the contract rights, if any, of the office removed.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or otherwise, may be filled by the board of directors for the unexpired portion of the term.

Section 5. Powers and Duties. The several officers have such powers and shall perform such duties as may from time to time be specified in resolutions or other directives of the board of directors. The President and Vice President shall execute all contracts of the corporation, except the Administrator may execute contracts upon resolution of the board of directors.

ARTICLE SIX

ADMINISTRATOR

The President of the corporation shall be the Administrator. The Administrator shall have responsibility for the day to day management of the corporate business, including specifically all work required in administering the corporation's contract with the Office of Public Defense Services, State of Oregon. The administrator may call meetings of the Directors' necessary to the reasonable conduct of corporate business, or the contract. The Board of Directors shall provide general policy guidance, approval and

supervision for the administrator. The term and contract fee of the administrator shall be governed by the members' Independent Contractor Agreement.

ARTICLE SEVEN

CHECKS AND DEPOSITS

Section 1. Checks, Drafts, or Orders. All checks, drafts or orders for the payment of money, notes or other evidence of indebtedness issued in the name of the corporation shall be signed by the Administrator/President or Vice President, or by special resolution at a special meeting of the board of directors, by a director that is a member of the corporation.

Section 2. Deposits. All funds to the corporation shall be deposited from time to time to the credit of the corporation in a savings or general bank account.

ARTICLE EIGHT

BOOKS AND RECORDS

The corporation shall keep correct and complete books and records of account and shall also keep minutes of the proceedings of its members, board of directors, committees having and exercising any of the authority of the board of directors, and membership committee, and shall keep at the principal office a record giving the names and addresses of the members entitled to vote. The secretary shall be responsible for keeping minutes of proceedings. All books and records of the corporation may be inspected by any member, or his agent or attorney, for any proper purpose at any reasonable time.

ARTICLE NINE

FISCAL YEAR

Section 1. Fiscal Year. The fiscal year of the corporation shall begin on the first day of January of each year and end at midnight on the 31st day of December of each year.

Section 2. Indemnification. The corporation will indemnify its directors, officers, and the administrator and save them harmless from liabilities and costs and expenses reasonably incurred in the defense of any suit, or in the settlement thereof, resulting from any act or omission of such person in the discharge of his duties. Indemnification shall be to the maximum extent permitted by Oregon law, provided, however, that in no event shall such person be indemnified for any act constituting a willful wrong, undertaken in bad faith, or undertaken with dishonest purposes or intent.

ARTICLE TEN

WAIVER OF NOTICE

Whenever any notice is required to be given under the provisions of Oregon law, the articles of incorporation or the by-laws of the corporation, a waiver thereof in writing signed by the person or persons entitled to such notice whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Attendance in action also constitutes waiver of notice.

ARTICLE ELEVEN

AMENDMENT OF BYLAWS

These bylaws may be altered, amended or repealed, and new by-laws may be adopted by a majority of members present at any regular meeting, or at any special meeting, if notice of intention to alter, amend or repeal, or adopt new by-laws at such meeting shall have been given in proper form, subject to approval and ratification by the board of directors.

CERTIFICATE

I, Melissa Riddell, the Vice-President of Linn County Juvenile Defense Corporation, an Oregon corporation, hereby certify:

The foregoing by-laws, comprising 6 pages were adopted as the by-laws of the corporation on April 29, 2010.

Dated: _____

Vice-President

INDEPENDENT CONTRACTOR AGREEMENT

THIS AGREEMENT is made this 24th day of August, 2012, by and between LINN COUNTY JUVENILE DEFENSE CORPORATION. Hereinafter called "LCJDC" and ANDREA BOUCHER, JANET BOYTANO, DEREK D. HEWS, BRENDAN KANE, MELISSA A. RIDDELL, AND D. MACK WALLS, hereinafter called "Contractors" which Agreement is for the purposed of providing indigent juvenile legal services subject to the Office of Public Defense Services, hereinafter called "OPDS", review and approval, and subject to the Public Defense Legal Services Contract for Linn County for the contract period January 1, 2012, through December 31, 2013. This agreement replaces and rescinds any Independent Contractor Agreement between LCJDC and Contractors.

WHEREAS, it is the parties' desire to enter into this Contract or relationship as independent contractors and not as that of employer-employee, agency or partnership; and

WHEREAS, LCJDC has entered into a Public Defense Legal Services Contract with OPDS for the provision of indigent legal services in Linn County; and

WHEREAS, the relationship of the Contractors is with LCJDC and not with OPDS;

THEREFORE, in consideration of mutual promises, the parties agree as follows:

- 1) The relationship between LCJDC and Contractors is that of an independent Contractor and does not constitute the formation of a partnership, employer-employee nor agency relationship.
- 2) The Contractors covenant and agree that they will abide by all terms and conditions of the Public Defense Services Contract between LCJDC and OPDS.

- 3) That the relationship of the Contractors to OPDS is separate and complete, and this Contract is only between LCJDC and the Contractors.
- 4) The Contractors will provide indigent juvenile legal services as outlined in the Public Defense Services Contract, for a sum which has been previously agreed to, less costs of administration paid to the Administrator and President of LCJDC, MELISSA A. RIDDELL, in the amount of \$1200.00 per month, and less costs of possible check fees, preparation of income tax returns and tax forms for LCJDC, and any other administrative expenses, shall be divided pursuant to paragraph 7 herein. Said sum will be paid to the Contractors at the end of each month during which they have provided legal services to LCJDC. The Contractors will be responsible for paying any and all state and/or federal taxes, and all other taxes and fees required by the state and/or federal government on all sums they receive for the performance of legal services for LCJDC.
- 5) The Contractors agree that they are responsible for obtaining and maintaining all professional occupational licenses, Professional Liability Insurance and General Liability Insurance as required by state or local law or OPDS. The Contractors also agree that 15 hours of CLE out of the 45 hours of CLE required by Oregon State Bar shall be on juvenile issues commensurate with the Contractor's level of experience.
- 6) The Contractors covenant that they will assume financial responsibility for defective workmanship or services and breach of contract as evidenced by professional liability insurance coverage.

- 7) The Contractors agree that at least every six months the Administrator will provide the Contractors with a summary of the value for each Contractor for the period and the percentage each Contractor's total is of the total value for all Contractor's for that period. Any Contractor can request a summary prior to the end of a six month period and the summary will be prepared by the Administrator and provided to all Contractors. The Contractors also agree that if any of the Contractors' value is substantially higher or lower than the other Contractor's values that any contractor can request that a plan be developed to even out all of the Contractor's values.
- 8) The Contractors agree that any overage received under LCJDC's Public Defense Services Contract with OPDS will be divided based on the percentage each contractor's value for work performed for the contract period is of the total value for all Contractors work performed for the contract period. The Contractors agree that if there is a shortage at the end of the Contract period that each Contractor will pay one-sixth of the shortage from their own funds or enter into an agreement with OPDS to provide legal services to make-up for their one-sixth share of the shortage.
- 9) The Contractors agree that if any Contractor dies, is disbarred or suspended from the practice of law or voluntarily or involuntarily terminates their position as a Contractor during the contract period, that the remaining Contractors will divide both the current caseload that was previously performed by the Contractor and the Contractor payment for that Contractor until a new Contractor is hired to replace the prior Contractor. The Contractors further agree that if a Contractor

dies, voluntarily terminates their position as a contractor due to a documented illness that would prevent Contractor from performing legal services pursuant to this Contract, or is suspended from the practice of law, he or she, or his or her estate, shall receive a proportionate share of the overage, if any, at the end of the contract period based on the length of time the Contractor provided legal services during the contract period, subject to paragraph 7 above. The Contractors also agree that if any Contractor is disbarred from the practice of law or voluntarily terminates their position for a reason other than illness as set forth above, or is involuntarily terminated as a Contractor, that Contractor will not receive any share of the overage, if any, at the end of the contract period.

- 10) If a Contractor is disbarred or suspended from the practice of law or is voluntarily or involuntarily terminated as a Contractor and there is a shortage at the end of the contract period, that Contractor shall pay a proportionate share of the shortage to LCJDC based on the length of time that Contractor provided legal services during the contract period. Their share of the shortage shall be paid within 90 days of the date that Contractor receives notice of the shortage.
- 11) The division of the monthly payments LCJDC receives from OPDS shall be as follows, subject to the provisions above:
 - a) One-sixth to Andrea Boucher;
 - b) One-sixth to Janet Boytano;
 - c) One-sixth to Derek D. Hews;
 - d) One-sixth to Brendan Kane;
 - e) One-sixth to Melissa A. Riddell; and

f) One-sixth to D. Mack Walls.

12) Andrea Boucher shall serve as vice-president of LCJDC.

13) This Agreement may be terminated pursuant to the terms of LCJDC's contract with OPDS and pursuant to LCJDC's By-Laws.

14) This agreement shall be effective August 24, 2012 and shall be valid until a new independent contractor agreement is executed between the Contractors and LCJDC.

ANDREA BOUCHER

DATE

JANET BOYTANO

DATE

DEREK D. HEWS

DATE

BRENDAN KANE

DATE

MELISSA A. RIDDELL

DATE

D. MACK WALLS

DATE

LINN COUNTY JUVENILE DEFENSE CORPORATION

By: _____
PRESIDENT

DATE

Client Evaluation Form

For Attorney Melissa A. Riddell

Please fill out this form regarding your attorney's performance and return it in the enclosed stamped envelope to Linn County Juvenile Defense Corporation,
PO Box 1316 Albany, OR 97321.

Yes, No, Sometimes, or N/A

My attorney listened to me. _____

My attorney explained the law to me. _____

My attorney did what she promised. _____

My telephone calls were returned. _____

My attorney was willing to work on what I wanted. _____

My attorney stood up for me in court. _____

My attorney provided me with useful advice. _____

I was treated politely by my attorney's staff. _____

Would you recommend this attorney to others? _____

Additional comments: _____

Your name (if you wish).

We appreciate your feedback. It will allow us to better represent our clients in the future.
Thank you for your time.

LINN COUNTY JUVENILE DEFENSE ATTORNEY
COMPLAINT FORM

Attorney have complaint with: _____

Is this complaint related to a specific case: ___Yes ___No

If marked yes, please list Case Name and Case #: _____

Which party does attorney represent:

___Youth ___Child ___Mother ___Father ___Guardian

List the name of the person the attorney represents: _____

Action(s) complaining about: _____

(Attach extra sheet if need more space)

Date action(s) occurred: _____

Did you personally witness the attorney's action(s): ___Yes ___No

If you did **not** personally witness attorney's action(s), how did
you learn of attorney's action(s): _____

Did anyone else witness the attorney's action(s): ___Yes ___No

If marked yes, please list the names and telephone numbers of witnesses. If any
of the witnesses have an attorney, please list their attorney's name and telephone
number: _____

Your Name: _____ Date: _____

Your Address: _____ Phone #: _____

Please mail this Complaint form to the Linn County Juvenile Defense Corporation,
Attn. Melissa Riddell, P.O. Box 1316, Albany, OR 97321 or Fax to 541-791-9560

LINN COUNTY JUVENILE DEFENSE ATTORNEY
COMPLAINT FORM

Attorney have complaint with: _____

Is this complaint related to a specific case: _____Yes _____No

If marked yes, please list Case Name and Case #: _____

Which party does attorney represent:

_____Youth _____Child _____Mother _____Father _____Guardian

List the name of the person the attorney represents: _____

Action(s) complaining about: _____

(Attach extra sheet if need more space)

Date action(s) occurred: _____

Did you personally witness the attorney's action(s): _____Yes _____No

If you did **not** personally witness attorney's action(s), how did
you learn of attorney's action(s): _____

Did anyone else witness the attorney's action(s): _____Yes _____No

If marked yes, please list the names and telephone numbers of witnesses. If any
of the witnesses have an attorney, please list their attorney's name and telephone
number: _____

Your Name: _____ Date: _____

Your Address: _____ Phone #: _____

Please mail this Complaint form to the Linn County Juvenile Defense Corporation,
Attn. Mack Walls, P.O. Box 66, Albany, OR 97321 or Fax to 541) 928-0388

Attachment 3

PDSC

2013 Draft Meeting Dates*

January 23 (Wednesday)

March 14

April 11

June 13

July 18

September 12

October 18 (Friday)

December 12

*All proposed meeting dates are on a Thursday unless specifically noted.

Attachment 4

ORBITS Budget Narrative

Public Defense Services Account

100 Juvenile Dependency Representation

Package Description

Purpose:

The purpose of this policy package is to provide funding to reduce trial-level juvenile dependency caseloads in order to address chronic and serious quality of representation issues. This package would allow the agency to improve the quality of legal services in juvenile dependency and termination of parental rights cases.

Over the last six years, the agency has evaluated and sought to improve the work of its juvenile contractors through a number of approaches including comprehensive performance reviews; promotion of best practices; provision of education and training opportunities; investigation and resolution of complaints from judges, attorneys and clients; the creation of a juvenile law resource center; and the creation of a juvenile appellate section within the Appellate Division. Despite these efforts, a statewide survey and the agency's site visit evaluations and structural reviews disclose continuing deficiencies in the quality of representation being provided statewide.

How Achieved:

The agency estimates that workloads exceed acceptable levels by approximately 20%. The agency is taking a multi-biennial approach by requesting incremental improvements over three biennia. This policy package would permit the agency to reduce current caseload levels in juvenile dependency and termination of parental rights cases by approximately 7%. The agency has followed with interest an ongoing effort in Washington State to address similar issues. Significant caseload reduction was a key component of a highly successful parent representation pilot project in that state. What began as a pilot project in three counties has now been extended to twenty-five counties.

If this policy package were funded, the agency would ensure that reduced caseloads actually resulted in improved representation by making such reductions conditional upon agreement to implement established best practices, participation in mandatory training sessions, and rigorous evaluation.

ORBITS Budget Narrative

Staffing Impact: No impact on staffing.

Revenue Source: \$3,818,237 from general funds.

ORBITS Budget Narrative

Appellate Division

101 Employee Commensurate Compensation

Package Description

Purpose:

This package will enable the Appellate Division of PDSC to provide quality legal representation through recruitment and retention of expert attorney staff who will be capable of providing quality and cost-efficient appellate representation. The package provides one third of the funding needed to establish attorney salary schedules comparable to attorney salary schedules at the Department of Justice, a goal that is consistent with legislative directive: "The Public Defense Services Commission shall * * * [a]dopt a compensation plan, classification system and personnel plan for the office of public defense services that are commensurate with other state agencies." ORS 151.216(1)(e).

How Achieved:

In developing the requested salary structure, the agency used the Department of Justice's Appellate Division as the comparable agency. Agency and Department of Justice attorneys appear on the exact same cases from opposing sides. The following chart compares agency attorney salary ranges with the ranges of comparable positions in the comparison agency. (Steps are current as of the April 2012 PICS freeze used for budget preparation.)

	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Percentage increase required to match top step
Asst Atty General	5288	5551	5825	6120	6428	6737	7060			
Deputy Defender 1	4789	5037	5288	5550	5825	6120				15%
Sr Asst Atty General	7435	7808	8205	8616	9042	9493	9967	10465		
Deputy Defender 2	5550	5825	6120	6424	6743	7080	7433	7804	8195	28%
Attorney-in-Charge	7332	7699	8089	8490	8906	9351	9813	10308		
Sr Deputy Defender	6120	6424	6743	7080	7433	7804	8195	8605	9036	14%

ORBITS Budget Narrative

Historically, the agency hires recent law school graduates into the entry-level Deputy I attorney position and devotes significant management-level resources to training during an attorney's first six months of employment. The training investment shows returns for the agency after twelve months, when the typical entry-level attorney becomes increasingly self-sufficient and productive. After two to three years, the Deputy I attorney has demonstrated sufficient competency to warrant consideration for the Deputy II position. After two to three years in the Deputy II position (or five years with the agency), the attorney is an experienced, competent, and valued contributor to the agency. Unfortunately, this time period coincides with the greatest salary disparity between the agency and the Attorney General's office, the attorney is experienced and attractive to other firms, and the time loss and fatigue associated with a two-hour daily commute from Portland or Eugene leads many attorneys to consider and seek employment elsewhere. Since 2003, twenty six attorneys have left the agency, many at the the four-to six-year mark.

The policy package helps address the glaring compensation inequity between state employees on opposite sides of the same cases, would mitigate the brain drain that occurs around the five-year employment mark, and enables management to direct training resources into case production. The policy package would enable the agency to recruit and retain attorneys who are committed to and capable of achieving the agency's goal of providing quality, cost efficient legal representation.

Staffing Impact: No impact on staffing.

Revenue Source: This package would require an additional \$279,155 from general funds.

ORBITS Budget Narrative

Professional Services Account

102 Public Defense Provider Compensation

Package Description

Purpose: To provide funding necessary to:

- attract and retain qualified attorneys in nonprofit, public defender organizations, primarily in Multnomah, Lane, Jackson, Deschutes, and Washington Counties;
- increase the hourly rates paid to attorneys who provide legal representation in public defense cases on an hourly rate basis (versus a flat, average cost per type of case basis under contract) — hourly-rate compensated cases represent a small portion of the public defense caseload; and
- increase the hourly rates paid to investigators who accept work on public defense cases.

How Achieved:

Adjustment Toward Public Defender Contractor Parity

The first component of this policy package would allow some adjustments to be made in response to the difficulty nonprofit, public defender organizations are having attracting and retaining qualified attorneys. Eleven of the current public defense contracts are with nonprofit public defender offices. Full-time attorneys and staff employed with these organizations are restricted to performing state-paid, public defense work only. In other words, the nonprofit contractors differ from their private law firm and consortium public defense contractor counterparts in that private, retained work is not available to the nonprofits to supplement their state-funded contracts.

One measure of their ability to attract and retain attorneys is whether the salaries of such attorneys are competitive within their local communities with attorneys engaged in comparable types of legal practice. A comparison of public defender attorney salaries and prosecution salaries in the same counties (based on the Oregon District Attorneys Association 2012 salary survey) showed that, based upon average salaries, public defender salaries for eight of eleven nonprofits were less than those for prosecuting attorneys. The differences between public defender attorney salaries and their prosecution counterparts ranged from \$7,838 to \$41,186 per attorney

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per year. The projected full biennium cost of increasing public defender attorney average salaries to the level of prosecution average salaries in their respective counties totals \$6,989,187 based upon 2012 salary levels. Neither benefits nor non-attorney staff salaries were compared in the 2012 study.

Benefits (such as PERS) that generally are available for government-employed attorneys (versus independent contractors, such as public defenders) make it more difficult for public defender offices to attract new hires. Retirement benefits available to public defender attorneys range from 6% to 10% employer contribution programs. Two of the 6% programs have been in effect for less than fifteen years. Prior to their establishment, there was no provision for retirement.

Approval of the amount requested would allow for some adjustments and improvements in salary for public defender offices in those counties where there is significant disparity with prosecutor salary levels. It is clear, however, that the amount does not represent the total cost of establishing salary and benefit parity for public defenders and their staff. The requested funding would be allocated to public defenders based upon greatest salary needs. For example, no improvements in the current public defenders' benefit program, such as retirement programs, are contemplated within the requested funding. Rather, the amount is viewed as a first step in establishing greater consistency in salary levels between public defender and district attorney staff. Reaching full parity in terms of both salary and benefit levels is a longer-range effort.

But public defense offices don't compete only with prosecutor's offices for qualified attorneys. It is also important to note that both prosecutor and public defender salaries lag significantly behind the average salaries of attorneys engaged in other types of practice. The Oregon State Bar's 2012 Economic Survey report noted that average full-time public defense attorneys' and prosecutors' salaries (\$68,246 for public defenders, and \$93,979 for public prosecutors) were well below any area of private practice. (Business and corporate litigation lawyers reported an average salary of \$192,715. Family law practitioners received an average salary of \$99,637 and private criminal defense lawyers received an average of \$134,779.)

Hourly Rate Increase for Hourly Paid Public Defense Attorneys

The current guideline rates (\$45 per hour for non-death penalty cases and \$60 per hour for death penalty cases) have increased by only \$5 per hour since June 1991. The requested funding would allow an increase in the current rates to \$53 per hour for non-death penalty cases and \$72 per hour for death penalty cases for the 2013-15 biennium.

The 2007 legislature provided funding for the 2007-09 biennium that permitted PDSC to increase the guideline rates for hourly-rate paid counsel statewide for the first time since 1991. Prior to 2007 public defense funding was inadequate, despite inflationary adjustments, to permit the agency to increase the rates, due to the fact that actual public defense caseloads generally exceeded the

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projected caseloads on which appropriations were based. Other demands on the Professional Services Account, such as continuing expenditures on death penalty cases filed in previous biennia, also contributed to the need to adopt a conservative approach toward administering public defense funding and prevented the Commission from increasing rates. A limited number of exceptions to the guideline hourly rates had been made in years just prior to 2007 on an individual case-by-case basis or for certain types of cases, such as post-conviction relief cases. For a number of years, there has been a shortage of attorneys who are qualified and willing to accept appointment to post-conviction relief cases.

The small increases in hourly rates that were implemented in August 2007 did not result in rates that bear any relation to rates regularly charged for their services by attorneys who handle criminal and family cases for retained clients. The Oregon State Bar's 2012 Economic Survey reports statewide average and median criminal defense hourly rates at \$214 and \$200 per hour. Family law attorneys statewide charge \$214 (average) and \$200 (median). Family law practice is similar to the work performed by public defense attorneys in juvenile dependency and termination of parental rights cases. To the extent attorneys who perform public defense representation at \$45 and \$60 per hour responded to the Bar's survey, those hourly rates would have helped contribute to the lower overall rates.

Just as with automobile mechanics or plumbers who are paid on an hourly basis, hourly rates paid to attorneys, whether in the public or private sector, are meant to include overhead costs such as staff salaries, taxes and benefits, rent and other office costs, and necessary capital. Overhead expenses frequently are estimated by attorneys to be 50% of the hourly rate. Assuming 50% overhead expenses and an average of 1,800 billable hours in one year, an hourly-rate paid public defense attorney working full time at \$45 per hour would receive \$81,000 per year, with half of that amount (\$40,500) paying for overhead and half being available as attorney salary.

The Consumer Price Index increased 69% between 1991 and 2012. Adjusted for inflation, the 1991 rates of \$40 and \$55 per hour should be \$67.66 and \$93.03 per hour in 2012.

Hourly Rate Increase for Hourly Paid Investigators Who Provide Public Defense Services

The amount requested for the 2013-15 biennium is the amount needed to allow increases in the rates paid investigators from \$28 to \$30 per hour in non-death penalty cases and from \$39 to \$41 per hour in death penalty cases.

Until 2007, with the exception of some investigation services in death penalty cases beginning in 1996, the public defense guideline rate for investigation services had been \$25 per hour since at least 1988. It appears that in most and perhaps all counties,

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the rate had been \$25 per hour since the state's assumption of responsibility from the counties for public defense in 1983. For death penalty cases, the hourly rate had been \$25 per hour until mid-1996 when that rate was increased to \$34 per hour for the most experienced investigators. In 2007 the Legislature provided sufficient funding to permit the agency to raise the rate in non-death penalty cases from \$25 to \$28 per hour and from \$34 to \$39 in death penalty cases.

Despite the increases that took effect in August 2007, investigator rates remain inadequate. The Public Defense Study Commission, established to study the public defense system during the 1999-01 interim, received testimony from investigators and non-investigators that the number and the quality of investigators who accept public defense work has diminished overall. This is due in significant part to the lack of increases in the hourly rates paid to these investigators and the hourly rates available in other public and private sectors for the same pool of investigators.

The table below summarizes the three components of this package.

1.	Funding to increase full-time public defender salaries to corresponding deputy district attorney salaries.	\$2,329,729
2.	Funding to provide an increase in the hourly rate paid to attorneys (\$53/hour non-capital; \$72/hour capital).	\$1,799,868
3.	Funding to provide an increase in the hourly rate paid to investigators (\$28/hour non-capital; \$39/hour capital).	\$732,814
Package total		\$4,862,411

Staffing Impact: No impact on staffing.

Revenue Source: \$4,862,411 general funds.