

Members

Per A. Ramfjord, Chair
Hon. Elizabeth Welch, Vice-Chair
Thomas M. Christ
Michael De Muniz
Lisa Ludwig
Mark Hardin
Kristen Bell



Ex-Officio Member

Chief Justice Martha Walters

Executive Director

Lane Borg

PUBLIC DEFENSE SERVICES COMMISSION

Thursday November 14, 2019
10:00am – 4:30pm
Oregon Capitol Building
900 Court Street NE Room HR50
Salem, OR 97301

MEETING AGENDA

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| 1. Action Item: Approval of minutes – PDSC meeting held on October 25, 2019. (<i>Attachment 1</i>) | Chair Ramfjord |
| 2. Action Item: Approval of Attorney Qualification Standards for Court-Appointed Counsel (<i>Attachment 2</i>) | E. Deitrick |
| 3. Action Item: Approval of Public Defense Complaint Policy (<i>Attachment 3</i>) | E. Deitrick/E. Herb/W. Perez |
| 4. Exec Session – Review of OPDS Contracts* | PDSC |
| 5. Action Item: Approval of OPDS Contracts (<i>Attachment 4</i>) | PDSC |
| 6. OPDS Monthly Report | All |
| 7. Public Comment** | All |
| 8. PDSC Training – Oregon Government Ethics Commission (<i>Attachment 5</i>) | Monica Walker/E. Deitrick |

***The Executive Session will be held at approximately 11:00 AM. Pursuant to ORS 192.660(2)(b), the Commission will review OPDS contracts.**

****Public comment requires sign in**

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 Brooke Sturtevant at (503) 378-3349.

*Next meeting: **Thursday, December 19, 2019, 10am-2pm in Salem.** Meeting dates, times, and locations are subject to change; future meetings dates are posted at:*

<https://www.oregon.gov/opds/commission/Pages/meetings.aspx>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Friday, October 25, 2019

9:45am

Hallmark Resort, Newport, Oregon

MEMBERS PRESENT: Per Ramfjord (Chair)
Elizabeth Welch (Vice Chair)
Tom Christ
Lisa Ludwig
Mark Hardin

STAFF PRESENT: Lane Borg
Eric Deitrick
Shelley Dillon
Nikita Gillis
Amy Jackson
Ernest Lannet
Caroline Meyer
Heather Pate
Whitney Perez
Erica Herb
Stephanie Petersen
Shannon Storey
Billy Strehlow
Brooke Sturtevant
Marc Brown
Kali Montague

The October 25, 2019 PDSC meeting was held in conjunction with the OCDLA Public Defense Management Conference in Newport, Oregon.

The meeting was called to order at 9:45 AM.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on August 19, 2019

Commission members unanimously approved minutes from the August 19, 2019 PDSC meeting.

Agenda Item No. 2 2020 PDSC Meeting Schedule

Commission members unanimously approved the 2020 PDSC meeting schedule.

PDSC Chair Per Ramfjord welcomed attorneys Mark Hardin and Lisa Ludwig, two of three new PDSC Commissioners. Both Mr. Hardin and Ms. Ludwig further introduced themselves. Chair

Ramfjord also noted that the third new Commissioner, U of O Law Professor Kristen Bell, was not able to attend this meeting but will be joining soon.

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

Eric Deitrick, OPDS General Counsel presented the Approval of Attorney Qualification Standards for Court-Appointed Counsel as a result of Senate Bill 1008, which manages the intersection of adult and youth clients, noting that a new standard of attorney is needed for 15-17 year olds and other youth charged with murder. Mr. Deitrick credited Liz Wakefield, formerly with OPDS, for her work on the document.

Mr. Deitrick added that with the upcoming implementation of the PCRCP in Multnomah County, he'd received several inquiries from dependency attorneys in that area, so it was pertinent to get the standards updated. Commissioner Mark Hardin suggested that OPDS look at dependency standards as a whole; Mr. Deitrick concurred and noted that the agency will be revisiting all standards.

Ginger Fitch, juvenile dependency attorney, discussed her perspective for the need for comprehensive and systematic changes to the dependency portion of the standards since the work, and those doing the work, has changed significantly in the last 20 years. She also suggested that the agency and PDSC provide more communication and opportunities for feedback.

Luke Miller, juvenile dependency attorney, discussed that the proposed change to the standards would be very helpful to him in his practice, and will allow for him to become TPR qualified.

Alyssa Reno, a juvenile practitioner in Linn County, discussed that she would like for juvenile practitioners to weigh in on the proposed changes prior to PDSC voting on them. She echoed Luke Miller's comments regarding the helpfulness of the proposed changes.

Commissioner Tom Christ requested that input from the practitioners be submitted to the PDSC in writing, to allow for comprehensive review prior to the next PDSC meeting.

It was also mentioned that training for juvenile dependency work will need further development.

Although this agenda item was scheduled as an Action Item for the Commission, it was determined that because of the addition of new commissioners, and to allow for input from juvenile practitioners, it would be delayed for voting until the PDSC meeting on November 14, 2019.

Agenda Item No. 4 Approval of Public Defense Complaint Policy

Chair Ramfjord noted that due to the addition of new Commissioners, formal voting for the Public Defense Complaint Policy would take place at the next PDSC meeting on November 14, 2019.

Eric Deitrick, OPDS General Counsel, Erica Herb, OPDS Deputy General Counsel, and Whitney Perez, OPDS Deputy General Counsel gave an overview of the updated complaint policy.

Ms. Perez explained that the policy was updated to provide clearer guidance to OPDS staff on responding to complaints in addition to providing transparency to the provider community on the complaint process. The new policy requests that all complaints be provided in writing, and that OPDS staff focus on responding to complaints that affect the quality of service clients are entitled to.

General Counsel Staff noted that OPDS receives an average of three dozen complaints per year, most of which are from clients, or family members on behalf of clients, and most are in regards to communication.

Commissioner Christ expressed his concern surrounding informing judges or attorneys of complaints filed against them if they have no discernible merit. Ms. Perez responded that because most of the complaints received by the agency are regarding attorney/client communication, notifying the attorney of the complaint may be a way to improve communication.

Commissioner Christ asked if the PDSC has any role in responding to complaints. General Counsel Staff noted that per Chapter 151, the role of the PDSC is more supervisory in nature, and that responding to complaints is beyond their responsibility – appealing to the Executive Director is the next outlined step in the policy. They added that further discussion on the matter is welcome. Commissioner Christ noted that attorneys have a right of appeal if there is action proposed against them due to complaints, and suggested that OPDS give it further consideration.

General Counsel further commented on the effects of the proposed changes to ineffective assistance of counsel – that the language in the proposed policy was pulled from PCR quality standards, but otherwise it is not related. Also noted was that OPDS does not publish or notify other parties of complaint or disciplinary records, so they shouldn't have impact on PCR. Complaint or disciplinary records are included when necessary for public records requests.

Steve Gorham, Salem-based attorney, suggested that OPDS and PDSC develop a formal appeal process for complaints. Commissioner Christ noted that it will be further considered.

Agenda Item No. 5 Best Practices for Public Defense Models

OPDS General Counsel Eric Deitrick presented the American Legislative Exchange Council resolution for supporting public defense models around the country. Mr. Deitrick noted that the language in the resolution is similar to what was in HB 3145, and confirms that the direction, in which the agency and public defense for the state is headed, is viable and important.

Agenda Item No. 6 Funding for the Multnomah County Courthouse

OPDS Executive Director Lane Borg provided an update regarding the funding for the Multnomah County Courthouse. Director Borg noted that the funding for equipment, furniture, and one full time staff person, had been requested via Policy Option Package to the legislature in the 2019 session, and it was not granted due to lack of confirmation about completion of the building. OPDS has determined needs to furnish and staff the OPDS suite in the courthouse, and will continue to work with LFO on funding. Director Borg reminded the audience that there will be offices available in the OPDS suite for contractors to utilize on an as needed basis for meetings with clients, etc. It is anticipated that the courthouse will open sometime in summer 2020.

Agenda Item No. 7 PCRP for Multnomah County

Director Borg discussed the \$3.5 million appropriation given to OPDS in the 2019 legislative session for the expansion of the PCRP to Multnomah County, and provided some background about the need for PCRP in Oregon's largest county.

Director Borg stated that it is the goal of the agency to have PCRP implemented in Multnomah County by July 1, 2020, which would require approximately ten additional attorneys/caseloads. Opportunities for funding beyond the SPA through Title IV-E reimbursement is being looked into with an intergovernmental agreement with DHS.

Director Borg discussed his concern that implementing PCRP in Multnomah County, and not Washington and Clackamas counties at this time could be devastating to juvenile courts in those two counties. Director Borg is discussing his concerns with the Governor's office, with hope that it will allow for further funding for implementation there as well.

Ginger Fitch addressed the Commission with her requests from the August 2019 PDSC meeting. She discussed the passion that juvenile dependency and juvenile delinquency practitioners have for this area of law, in addition to the uncertainty that some of the same practitioners have regarding the management of their contracts, funding, and OPDS leadership. She noted concern regarding the salary range being offered in the recruitment for the OPDS PCRP Manager. Ms. Fitch also discussed a desire to have PDSC meetings held at different times and locations, and a request for better communication from OPDS. She also expressed her support for PCRP in Multnomah County and for the entire state.

Agenda Item No. 8 OPDS Monthly Report

Chief Defender Ernest Lannet reported on the Criminal Appellate Section. He informed the Commission that Deputy Defender Irene Taylor would be retiring in November after 30 years of service with the agency. The section is accepting applications to fill that opening. He reported that, since he last updated the Commission on the section's Oregon Supreme Court practice, the court issued a decision in *State v. Harrison*, litigated by Sarah Laidlaw, in which the court clarified the standard for determining whether a firearm is "concealed" in a vehicle. Although our client did not prevail on the court's application of the rule, the rule settled on by the court

was very close to the one proposed in our briefing. And just the day before the commission meeting, the court issued two decisions in parole cases, litigated by Deputy Defenders Anna Belais and Stephanie Hortsch, and Chief Deputy Marc Brown, in which our clients challenged a special condition of post-prison supervision that prohibited them from entering or engaging in any intimate relationship or intimate encounter without first obtaining written permission from their probation officer. Not only did the court agree that was not within the Board's statutory authority, the court's decisions were significant in two other respects. First, the court clarified that the rules of issue exhaustion are relaxed in non-adversarial parole proceedings when our clients often are making arguments to the board without the benefit of counsel. Second, the court refused the state's motion to dismiss review as moot (our client in one case had been released from supervision), because the issue concerned an action that the board could take in future cases, but the court might not be able to reach the issue before it goes moot in those future cases. Finally, he reported that the section is working with the Department of Justice and the appellate courts to find efficient means to resolve cases if the United States Supreme Court issues a decision in early 2020 that Oregon's allowance for non-unanimous jury verdicts is unconstitutional in *Ramos v. Louisiana*.

Shannon Storey, OPDS Juvenile Appellate Section (JAS) Chief Defender, gave a brief overview of her section for the benefit of the new commissioners. She discussed the two Supreme Court opinions issued in JAS cases in 2019, both of which were wins with widespread application clarifying points of law for the bench and bar. One clarified that proof that a parent is unfit, does not give rise to presumption that termination of the parent's parental rights is in the child's best interest. In the second, the Supreme Court held that a general guardianship, which sometimes previously used to be referred to as durable guardianship, may continue only so long as the adjudicated jurisdictional basis continue to warrant dependency jurisdiction. The court of appeals has issued 35 published opinions in juvenile dependency and termination of parental rights cases this year to date, 27 of which involved OPDS attorneys. Ms. Storey added that Tiffany Keast, JAS attorney, presented at the Juvenile Law Training Academy, and Shannon Flowers, JAS attorney, is working with juvenile courts to develop uniform policies around the filing of successive petitions.

Agenda Item No. 9 Public Comment

Chair Ramfjord opened the public comment section of the meeting. A transcript of the discussions are included below.

J. Comstock: Hello, my name's James Comstock. I'm a private investigator from Portland. My colleague Steve Wilson and I addressed the commission at the August meeting, and we greatly appreciate the opportunity we got to talk then. Our understanding from that meeting was that the committee had asked OPDS to share their budgetary numbers that would reflect three different proposals for investigator compensation increase. And our understanding now is that due to workload, OPDS was not able to produce those numbers for this meeting. We understand that investigation compensation was not placed on the agenda because of a lack of those numbers. So, I just came to respectfully request that the commission place the investigator compensation matter on the agenda for the November meeting,

and the budgetary numbers be shared with us at least a week prior to the November meeting.

C. Ramfjord: Thank you. We will do our best. I know this issue has been taken up with... We have had one case going on. And that issue is being addressed, so we'll do our best. All right?

J. Comstock: Thank you.

C. Ramfjord: Mr. Gassner.

T. Gassner: Good morning ladies and gentlemen of the board, Tim Gassner. I'm a criminal defense and juvenile attorney. I've been practicing indigent defense in Jefferson County for the last 15 years. I'll let my colleagues introduce themselves, who are also part of our consortium.

P. Sumner: Good morning, my name is Paul Sumner. I've practiced indigent defense since 1976. I am currently in Madras Indigent Defense consortium.

D. Glenn: And my name is David Glenn. I've been a member of MIDC since its inception. I've been a practicing attorney for 46 years. 44 years in Madras. I was shocked by the potential decision not to continue our contract.

T. Gassner: And ladies and gentlemen of the board, we're asking for this conversation to be conducted today in executive session. There is very sensitive information part of that conversation, including information related to an open criminal investigation that could be compromised, as well as other sensitive information related to the location.

C. Ramfjord: Well, on that question I would have to defer to our General Counsel on whether this is a session we can take up in the executive session or not because I'm not fully mindful of the statutory provisions on that. So, I would ask him to comment on that.

E. Deitrick: Could we revisit this in about 10 minutes?

C. Ramfjord: Sure, that'd be fine. Okay. If we're going to be able to do that, what I would prefer to do is that he takes this issue up. If we are to do it in executive session, then you can come back up and potentially do that, and we'll just move on with the rest of the agenda for right now, if that's okay.

T. Gassner: I understand. Thank you.

C. Ramfjord: Ginger Finch. I know you've come up a couple times here, do you have anything further? (G. Fitch: no) Okay. Alright. Olcott Thompson. And I apologize if I've mispronounced names. I don't have my glasses on.

O. Thompson: You got my name right. Chair Ramfjord, members of the commission. I'm Olcott Thompson. I am a private attorney in Salem. One of the founding members of the Marion County Association of Defenders. The Consortium. I've been a long time contractor with PDSC and before. As a consortium member, I contract through the consortium doing indigent defense cases. I also have done, and I'm currently doing, I guess if you will, direct contract with OPDS. I've been an MCAD board member, and I'm here sort of as an MCAD board member. Been there for years. I've been involved with the contracting process with OPDS and PDSC meetings for 15 to 20 years. Unfortunately, the agency and its predecessor have a long history of offering different rates for the same work. And having contracts that ultimately the providers couldn't compare and figure out whether the rates were the same or different. The Commission and the agency worked very hard, finally, to make that so it didn't exist anymore. We have two-year contracts that begin and end at the same time. That didn't always exist, within counties, certainly. And I'm not criticizing different rates for different areas at all. Everybody was paid at the same rate; we could figure that out. It was obvious. I think all this got solved, if you will, before anybody except maybe Vice Chair Welch was a member of the Commission. It got solved. But now, and I recognize we're in a unique period of time with this six-month extension, we're going the other way. The contracts are for X number of dollars for Y number of cases. There's no way for me or anybody to compare whether anybody in the same county, the same area, are being paid the same rate, the same amount of money, for the same work. Additionally, from comments heard earlier this morning, it sounds like there are different contracts out there. Different provisions in the contracts. So the contracts aren't necessarily the same. And again, I recognize this is a unique period of time with this extension, but I urge the commission to do what it can to direct OPDS to not go in this direction. Return to a process where everybody gets to know what everybody else is being paid, and make the rates, at least within areas, comparable or the same. Just because one agency or one entity has more political power and better bargainers than another one shouldn't change the rates.

C. Ramfjord: Understood. And we'll look into that. I think that the goal here, certainly the long term goal is, I was talking about a little bit earlier this morning, if we're going to have FTE contracts and hourly contracts, the goal is for those contracts to be the same within the regions where they are. There may be some differences associated with differences in different counties for different practice. The cases may not be the same in different counties because of local practice and things like that. Otherwise, our goal is to achieve the same level of transparency that we've tried to achieve in the past. And on the six-month contract, I personally don't know the details of that. I don't know if Director Borg can elaborate on that, but I don't think there's been any intent to move away from a model of being the same. Do you have any comment?

L. Borg: Sure. That is my fault. I guess the two comments that I would make on that is that one, and I've been on the contractor side and now I'm on this side. I really... The

level of constructive opaqueness that we had in the past gave you a feeling of parity that I don't think exists in reality, frankly. You think everybody's getting paid the same. I can see now; it varies greatly around the state. And even sometimes within counties. Of course, it is our intention that we have a fairly, and equitably, and transparently funded system. But what we do after July 1st, 2020 is different than what we're doing in this bridging thing. And I really had thought, and I will admit, incorrectly so, that this would not be a difficult thing to get a bridge to give us some space to talk about these things, get input. And so, it was really trying to get six months. And we started talking about this in June, when it would have been a full year if people said, "Yep, let's do that." A full year is to say, let's give ourselves some breathing room so we can start to talk about what that looks like so that it's transparent, it's equitable, and it's understandable in terms of what the work is that we're getting.

O. Thompson: Oh, I agree that what looked like parity may not have been. But at least we knew that it wasn't. And right now, and again...[Crosstalk 01:09:49] on the six months...yeah. Don't go that direction. Go the way you were going. Thank you.

C. Ramfjord: Thank you.

E. Deitrick: Chairman?

C. Ramfjord: Yes?

E. Deitrick: Come up?

C. Ramfjord: Yes, go ahead.

E. Deitrick: Chair Ramfjord, Vice Chair Welch, members of the commission, Eric Deitrick. In looking at public meeting law, ORS 192.660, there's two problems with going into executive session today. One is it requires special notice to be given to the public at least 24 hours in advance to alert the public of an interest in the manner, as well as the media. But I don't want to inform the commission there's a procedural bar. The advocates have some authority to how this is covered by the exclusive list of topics that's subject to executive session. I can't identify how it fits into one of the legislatively authorized reasons to have an executive session rather than just have the discussion in full public, which the public meetings laws support, unless there's a specific exception.

C. Ramfjord: Okay. I, actually having practiced in that area, feared that would be at least to some extent that would be the case. So, I would say if you have comments that you wanted to make, I would make them with the idea that this is still a public meeting, and we'll just do the best we can do with the comments that are being made.

- VC Welch: Question. Is there a process to allow this law firm to consult with the commission? Is there a way to do that that is not public?
- E. Deitrick: Vice Chair Welch, I don't believe so. The Commission has the authority to review and approve contracts presented by the agency to the Commission. That's the role of the commission, and there's not an appellate process for review.
- C. Ramfjord: All right, thank you. Go ahead, Mr. Gassner, come up now.
- T. Gassner: Thank you once again. Tim Gassner, on behalf of the Madras Indigent Defense Consortium. We're requesting that the commission stay a decision on not renewing our contract until there's been a full opportunity for us to have a hearing. We need to submit a public records request to the Office of Public Defense Services for the communications regarding the decision not to grant the MIDC a six-month extension. And there has been some very serious allegations that have leveled against the MIDC which we would want the opportunity to investigate. And we're asking for authority from the board for that full investigation to take place so that we can get to the bottom of these accusations that are being represented as the basis for not granting us a six-month extension.
- C. Ramfjord: Okay. First of all, I appreciate the prior communications that you sent our way. And they didn't go unnoticed. And I have, or we have, spent some time talking to staff about that. And I do want to give Mr. Deitrick the opportunity to come up and talk a little bit about it in a public fashion. The basis for the action... It's an action, I suppose, in the sense of not renewing your existing contract. So why don't we let Mr. Deitrick come up and then he'll talk. And we'll further discussion, and we'll move from there. Okay?
- T. Gassner: I'm not comfortable with proceeding.
- (Unknown): Do you want to address the due process issues with that?
- P. Sumner: I'm concerned. Contracts with the state carry with them a due process warrant. When there is a memorandum or other communication that is the basis of terminating a contract, we have a due process right, contractors have a due process right, to correct misinformation. We can easily testify about what happened and didn't happen. But we have a right to put on a full record so you as the commissioners would be able to see whether our treatment is just and is the product of due process. So, it's for that reason that we're looking at doing more than...
- C. Ramfjord: I understand where you're coming from, but there are a couple of considerations that come into play here. One is, with respect to the new commissioners too, but I want to have a brief explanation of what the background of this situation is from Mr. Deitrick so that we have that before us. And then we'll proceed from there to determine what additional steps we want to take.

- T. Gassner: If Mr. Deitrick intends to go through his memorandum, then we are objecting to that. We think we need a full...
- C. Ramfjord: Okay, well...
- T. Gassner: Because it's defamatory. It's easily proven wrong. And we wanted a hearing to be able to show that.
- C. Ramfjord: Understood. Did you have a comment to that?
- T. Christ: Due process requires notice and a right to be heard. It does not require a hearing...pre-termination of governmental benefits. So, you received notice of the decision from the agency. And you have a right to be heard today. Or if you would like, you could submit written materials. But is there something that you believe, some law that gives you a right to some sort of evidentiary hearing in advance of the agency making a decision?
- P. Sumner: I believe that there is. I believe that public contracts are well... It's well established in the law that they carry with it due process considerations. And that wouldn't be fair, right, or legal for someone to say, "We're going to deprive you of this public contract" for reasons that are wrong, that are not true.
- C. Ramfjord: Is it the case that you're actually being deprived of an existing contract? Was your contract being terminated, or was it a question of whether or not the contract was being renewed?
- P. Sumner: It's a case that it's being terminated, actually, Mr. Chair.
- C. Ramfjord: Let's hear from Mr. Detrick and we'll go from there.
- E. Deitrick: Chair Ramfjord, Vice Chair Welch, members of the commission, Eric Deitrick. I would agree with Mr. Sumner that if we're terminating the contract there would be some procedure at play. To be clear, the agency is not terminating the contract. The contract will be fully satisfied by the end of the year. The agency made a decision to go with one contractor in the 22nd Judicial District. We think that one contractor can provide the capacity we need to provide adequate counsel in the 22nd Judicial District. Their members have offices in both Madras and Prineville. And so, I would just leave it at that. I don't want to go into the reasons. I submitted the memo to you explaining the agency's decision making. But the bottom line is, we're not terminating their contract. These contracts are not guaranteed in perpetuity. And we're satisfying our end of the contract with the group.
- C. Ramfjord: Okay.

- T. Christ: Even if you were terminating the contract instead of just not renewing it, is there anything... Same question put to them. Is there anything that you're aware of in the law, maybe some statute or maybe another rules or procedure that requires more than just notice of the decision and an opportunity to comment? Is there something that requires an evidentiary hearing?
- E. Deitrick: Commissioner Christ, no. I think the remedies for the parties would be a breach of contract lawsuit, litigation, things like that. I don't think this body would be in a position of conducting hearings.
- C. Ramfjord: Okay. Mr. Gassner. I would say at this point in time, if there are additional facts that you want to put on the record, we're happy to hear those. But I do feel that we as a commission are somewhat obliged to abide by decisions of the staff on issues like this. Our role is one in which we do review and approve the issuance of contracts. But I have caution about turning this commission into a group that would be reviewing individual contract decisions across the board. I think that would be stepping on the toes of the staff, and I have some concerns about that. I do think that part of our role is overseeing the actual work done by the Executive Director, and to the extent the Executive Director is responsible for decisions that we deem to be inappropriate. It is part of our role to communicate that back. But I don't think we have a role in second guessing decisions at that level. That said, to the extent that there are issues that you think we should be mindful of that affect our oversight role, we're happy to take that information right now. Either here, or if you would prefer to submit that to us in additional writing, that's fine. If you would prefer to file a public records act request for the memo that you've identified, that's fine. If it's not exempt, you can get it. If there are other steps you want to take, that's fine. But I don't think that at the moment here we are prepared to have a hearing of the kind that you described. If other members of the commission want to comment on that, or want to provide any further information, I'm happy to let them do that.
- T Christ: Well, ORS 151.216 Paragraph D says that we review and approve any public defense services contracts negotiated by the director before it becomes effective. We received the contract. We approved it. I understand it runs to the end of the year. I'm not sure there's anything for us to do, if we're not given authority to review decisions not to renew a contract. We review decisions by statutes that have been approved. But I agree with the Chair that the contract runs to the end of the year. Any comments that you want to make today or later in writing and submit to us about the process, I am happy to receive those and review them. There's still time left in the year before the contract runs out. Then we could consider what action to take then. But I don't see that we're in a position today to making any decisions about the staff's recommendation not to renew this one.
- T. Gassner: May I comment?
- T. Christ: Yes, please.

- T. Gassner: Our situation is this. There's been a memo that has false, defamatory information that is the basis for us not being treated, MIDC not being treated, as other indigent defense providers. And we think that this commission should care about decisions being made by false, even malicious statements. A decision is made to treat us differently. That's not just, because it's based on false statements.
- T. Christ: If there are particular statements that you think were false, let us know what they are. We're kind of operating in a bit of a vacuum on this. I understand in part, in large part actually, is that this decision is based on the fact that there being two providers in the county that doesn't need two providers. But if there are other things that you wanted to comment on, like I say, we're happy to listen to those. I mean, I don't know that any statements are false or defamatory, first of all. That's your characterization of them. But even if statements that you believe are false or defamatory, you can let us know why they are false or defamatory.
- T. Gassner: We would like the opportunity to have a hearing so that we could prove what we're saying. I can tell you various things in the report that are false, but you would want proof, wouldn't you?
- P. Sumner: Chair Ramfjord, I'd like to add that, I can appreciate the commission is operating in somewhat of a vacuum here, but so are we. One of the problems of this situation, and one of the issues that speaks to the fundamental fairness of the situation, was the lack of transparency with OPDS. We received a telephone call on October 9th, sometime between 1:00 and 2:00 in the afternoon from Amy Jackson and Eric Deitrick informing us that the prior email sent by Lane Borg on April 29th notifying contractors that a six month extension was not going to apply to us, and that we were not going to get a six month extension. And there was some discussion there during that telephone call, but no explanation. The next day, I received an email from Eric Deitrick on October 10 telling me, in writing, that we were not getting the six-month extension. Again, with no explanation for the basis of that decision. On Tuesday of this week, I received a telephone call from a reporter with the Bend Bulletin, which is the newspaper of general circulation in Central Oregon, asking me questions about the fact that we were not getting a six-month extension. And he appeared to know more than I did about the justification of why from OPDS. And so, I asked him where he was coming by this information, and he emailed to me the internal memo from Eric Deitrick the same day. Dated the same day, October 22nd. How it found its way into the hands of the reporter from the Bulletin even before it was sent to us, is a substantial issue here. But the point is that fundamental fairness requires us the opportunity to learn the basis of the decision not to renew this contract after the MIDC had been operating since 1987. And then to address those issues. And we're not prepared to go before the board here today in public session to address these issues that we learned of in a memorandum that I got from a reporter on Tuesday night.

C. Ramfjord: Well, what I would say about this is a couple things. One is, I don't really believe there is a right that you have to have the contract extended. That is something that the agency can do.

P. Sumner: I'm not saying that it's a right. I'm saying there's a right for us to know why and for us to address the justification [Crosstalk 01:26:44].

C. Ramfjord: Secondly, as I've said earlier, I think is really a matter that is appropriately dealt with at the staff level. Our role is one of oversight. It's not one of having hearings on these types of issues. Thirdly, if you have a copy of the memorandum, and you think there are specific things that are inaccurate about it, I think it is appropriate to communicate that to the staff. And if we have further discussions with the staff about that, we do. But I just don't see that we're really in a position to grant you that redress that you're seeking. And that's not to say that I don't feel some degree of sympathy for the situation you're in. It's just that I don't think that we're in the position to grant you an evidentiary hearing for the kind of relief that you're looking for here. Our role is more limited than that. It's not acting like a supervising court, or court of appeals for decisions of the staff and the agency. So, that's the problem that I have here. I don't know if there's other people who would want to comment.

T. Christ: If you have legal arguments that the process being followed by OPDS doesn't comply with the law, whether it be statutory or constitutional, it seems to me appropriate to provide your arguments about that in writing. And staff can... It's either that, or then in a larger stance the commission has a broader interest in what the procedures are - general procedures of OPDS is, as opposed to being involved in a specific situation like this. Yeah, I agree with that. I assume that we can put this matter on an agenda for the next meeting. And before that, you can submit a written response to the memo which I understand we now have, taking issue with whatever factual assertions are in there. And you can also raise whatever objections you have to the process. And we can consider that at our next meeting. I don't see that there is any procedure in the law for giving you an evidentiary hearing with witnesses, a tribunal-like proceeding, before we make a decision not to renew contract. But, if you think there is a lot of that, in fact, you can include that in your written submission as well, and we could take it up at the next meeting. In the meantime, I don't see any grounds now, and I wouldn't support the suspension, if that's the proper terminology, the suspension of the decision not to renew the contract.

C. Ramfjord: All right, anything further?

T. Gassner: May I just clarify? If you know for a fact, I'm saying hypothetically, if you know for a fact that our treatment, which was different than other indigent defense providers, is different because of something that's false, that doesn't matter to the commission. Is that right?

- T. Christ: That's not at all what I'm saying. That's not at all. All of those things would be of concern to at least this commissioner. But I just suggested that you put something in writing and we will consider it in due course at our next meeting. But you standing here and asserting that this was done improperly, unfairly...
- T Gassner: I get it.
- T. Christ: Assertions do not...We have about three inches between the back of the legs and the stage. But you're standing here and making those assertions is...
- T. Gassner: I'm sitting here, but yes, I am.
- T. Christ: Sitting there. Figuratively.
- T. Gassner: I understand. I just ask the hypothetical. And what you've told me is to submit in writing. Does that mean that there's some assertions about what the clerk said? Should we be giving you affidavits rather than hearing from those clerks.
- T. Christ: I think that you should submit whatever you feel it is appropriate to submit. And again, whether we take it up at the next meeting or not is going to depend on what is submitted. But I think that anything you submit will be considered. That's true. But I think you have to put it all into context of what our roll here is. And our role is not really that of second guessing the agency, unless we think that something... We can provide feedback or whatever, but our role is not to make those decisions.
- T. Gassner: You don't supervise staff?
- C. Ramfjord: We don't supervise staff. In fact, the only person that we are given supervisory authority over is the Executive Director. We provide his review; we don't supervise staff.
- P. Sumner: Chair, I heard you say a moment ago that you don't see any reason to suspend a decision here about which contracts are granted a six-month extension and which ones are not. And we're telling you that we believe this decision that is being made affects us, it affects the citizenry of Jefferson County, and that is based on erroneous information. And you're telling us that you're going to go ahead and approve this decision anyway?
- C. Ramfjord: We're not approving any decision. We're not taking action on this decision today. You're asking us to suspend it. The recommendation is to not renew the contract. There's nothing before us right now. What would a suspension look like to you? What would a suspension be?
- T. Gassner: It's my understanding that the commission was going to approve today all the contract extensions for six months that were being offered to various providers around the state, excepting us as one of them.

C. Ramfjord: That's not on the agenda. That's not on the agenda at all.

T. Gassner: Okay. Well, then I was misinformed. I was misinformed by an employee of the OPDS.

C. Ramfjord: All I can say is the meeting agenda is publicly available. The meeting agenda is what it is, and that's what's on the agenda. So.

T. Gassner: All right. Thank you.

C. Ramfjord: Thank you.

T. Christ: I want to be clear about this. In one commissioner's mind, it's important who we contract with. It's important what decisions are made who we contract with. The decision not to renew your contract was made... There's some serious accusations in there. If you think they're doubtful or dubious, that's important to me, and I want to hear all about that. This isn't the time and place to do that. I've suggested to you that you submit something in writing. Back it up however you can. And if you can prove that those accusations are untrue, that may be cause for some future action by the commission, but it's not something we'd take up now.

T. Gassner: Well, thank you. And that's really what we want. We wanted a forum to be able to get the truth out, and we appreciate what you're saying.

T. Christ: Thank you.

C. Ramfjord: There's one additional person who wanted to comment. Weber appears to be the last name. I can't read the first name, unfortunately.

Mr. Weber: I'm good. I don't want to follow that.

C. Ramfjord: Okay, all right. Is there anybody else who wants to provide a comment on any issues today? Okay, all right. Do I have a motion to adjourn?

M. Hardin: I, [Inaudible 01:35:32] again, the intent of the meeting and in talking to various people individually, there's concern. At a lot of people raised concerns about [Inaudible 01:35:48] and a system for providing comments and suggestions to both OPDS and the Commission. And I wonder if it would be appropriate for the OPDS staff to articulate a plan for obtaining and responding to input, and to let the Commission consider it. Was I clear, what I just said?

C. Ramfjord: No.

M. Hardin: Do you mean the input for the agency to consider and what the policy and process would be on that, or a policy and process for the commission to receive input? I'm

not sure who's receiving the input. What is OPDS's plan in terms of receiving input from practitioners and others during the course of implementation?

C. Ramfjord: So, you mean on the conversation that we've been having relative to have these new factors for hourly, FTE, that type of... Yes.

M. Hardin: If the commission were to, excuse me, OPDS can come back and say how are we planning to receive input for the remainder of this implementation process?

L. Borg: So, it is... I don't anticipate that it would be efficient to write a policy and bring it back in for review and implement a process to get input. I think we have to get input. We need these contract proposal requests going out in January, which means we've got about 60 days to complete that process. And so I think we're going to have to... I mean, I was hoping to have begun that process here in a more formal sense. That didn't happen. But we will, either through the PDAG process, which is not exclusive invitation, it has been open forum, as those of you that have attended have participated in. Or to do outreach into the communities. We just need to get that done in terms of getting that input. I would say that I don't mean this glibly. I have never found this community lacking in its ability to file complaints with us. They know how to send complaints in. I get them regularly. So, I think we're getting that. But I think that what we need to do, and that's why I tried to address that yesterday afternoon in those specific ideas, what are the answers to questions we need to build an FTE? What are the answers of questions we need to build an hourly rate process? And we will be doing that as quickly as possible in terms of... So, again, I'm not trying to be glib or perhaps not answer your question. I just don't think we can write a policy; we have to do it. And it's going to have to be organic and do that, because we need this information in the next 30 days to process it, respond to it, putting something out, and then have something by the first of the year that contractors can start putting their proposals together.

M. Hardin: Yeah. I wasn't thinking of the process, specifically, for reviewing contracts. I was thinking more generally. As the unfolding of the new system occurs, how does OPDS plan to get input in some sort of a systematic way? Whatever OPDS has to say about that doesn't need to provide details that aren't capable of resolution now. In other words, you don't have to lay out all the details, we're fine where it's too early. But are there things you can tell us about how you plan to obtain public input as this whole process continues?

L. Borg: I'm not understanding the question.

M. Hardin: Okay, let me be really blunt here. We have this process. I'm hearing all kinds of people say that we're not having an opportunity to provide input. We're not getting advanced notice. We don't know what's going on. So, my question is, can OPDS provide some additional clarification of how they plan to get input as this process continues so that there will be an orderly predictable way of people of

providing comment and suggestions? That's all I'm asking. So the people in this room will know, if we have, first of all, to the extent it's known, what we're planning to do, and what we have to say about it?

C. Ramfjord: Well, let me just comment about that. As a commission member, I tried to communicate some of those issues early today, in the earlier session. I also think we do have two meetings between now and January. One, I am hopeful that we are going to be having further discussion on these issues at those two meetings. And that will be a mechanism for that as well. We are gathering data along the way, and we're using that data to build out these models. And as we have additional information, we're going to communicate that in the upcoming meetings. I think that, traditionally, this system in which people give comments has been a good forum. But obviously people are entitled to make comments otherwise. Directly to the commission, or directly to the staff. And they should do that as they deem appropriate. But I do think that, on this particular issue, we are under a relatively tight time schedule. So, the best that we can do is try to discuss it at the meetings as we're going on, and to take input as we receive it. And today, I got good comments back from people, including comments about additional information. Like, can you [Inaudible 01:42:28] additional information from Marion County from some time ago? I've immediately passed that on to staff already. We'll take what information we can get, and we'll use it. But I think that we have to essentially operate under our existing model in this short-term period. I don't know if you had anything further to add.

T. Christ: No, there wasn't.

C. Ramfjord: Does that help?

G. Fitch: Not at all. Well, the meetings are on court days, in the middle of when attorneys need to be in court. Attorneys had to pay to come to the rest of the CLE before your meeting started today.

C. Ramfjord: Well, if there's a general sense among the practitioners that we'd better to have meetings from 6:00 to 8:00 PM, or 6:00 to 8:30 PM in Salem, I would be welcome to hearing about that, if that's what you think is the best approach. I don't think that that's something that's just beyond the realm of possibility. I don't know what the overall sense, or sentiment is with people on that. So, if that's something that's very important to you though, I've heard it somewhat today. I hadn't heard it before today. But if that's something that's really important... I don't know what the legal issues are for us in dealing with that, in terms of paid staff or overtime, or things like that. I can understand though it's a concern. But I think that in the short term here, right now, I recognize that this time period has been a really frustrating time period for everybody concerned. Because there's been so much uncertainty. But, I will reiterate that what we're trying to do here is get to a better position for you all. We're trying to get as much data as we can get. We're trying to get to better contracts that will have lower caseloads, that will have higher

hourly rates, and that will put you all in a better position to do your work effectively. To recruit and retain other people to help you do your work effectively. That's the overall goal here. So that's what we're working for. But we will take input from whatever, in whatever you can.

T. Christ: I welcome input from everyone on any and all issues. And I'll repeat what I said earlier. It will be better received if you could submit it in writing ahead of time. And I assume the staff should make a more concerted effort to get the agenda out ahead of time so you have notice of what's coming before us that you can submit something. I've been a pro tem judge long enough to know that if you sit there at the hearing, somebody walks up and wants to give their whole brief right there orally, it is hard to receive it. And if they stand there and say, "Here's my brief now, judge" on the day of the hearing, nobody's going to read it; you want us to study it ahead of time, and think about it and be prepared to respond to your concerns and questions, it's better if it comes in writing ahead of time. And a lot of you have done that in the last year or so. And sent letters to the commission, directly or through the staff, and it is really helpful to receive it that way. But, that's not to completely diminish live testimony, that's really useful too. But really, sitting up here and listening to a parade of people talk about different things without advanced notice is really hard to take it all in. And certainly, it's difficult on the fly what sort of decision should fall from that. If you want us to do something, give us advanced notice, your argument for us, and tell us clearly what it is you want to do. Just like you would do in court. File a motion, the judge gets to read it ahead of time. "Here's what I want. Here's the reasons why I want it." And the judge can think about it in advance of the meeting. So I would encourage everybody to do that. And I hope the staff could arrange them so it would be easier for them to figure out what the issues are, and what's going to come before us in the meeting.

R. Harris: Thank you, Mr. Chair and commission. Would you reopen public comment for two minutes?

C. Ramfjord: Sure.

R. Harris: Thank you. So, I'm Robb Harris. I am the executive director of the Washington County Consortium. I wasn't really going to say anything, but then Commissioner Hardin asked a really relevant question that some of us have had over the last couple of years. 10 years, probably. And also, Lane made a really decisive comment, too. He was the head of the largest public law firm organized as a non-profit in the state. And yet his information was siloed. Some went to the county; some went to a law firm that's a non-profit. And as he moved into the position, he became more un-siloed and he saw a lot of this information. I'm siloed in Washington County. I'm siloed to a law firm that's not a non-profit. I do both retained and public defense at our law firm. And so, we all have the siloed information. And I think that it's real important that if there's going to be substantial systemic change, I think we all know this, that we have to have 99.8%

of us all pulling in the same direction. In order to do that, you have to un-silo. And you have to be able to come to the same table and listen and discuss other options besides the preferred option, that people have to understand that we have to make decisions for the greater good. Not because we may not have an ideal of the best idea to implement. And, I think that we need to recognize that and move in that direction. And there has been some movement in the direction. There have been some good steps taken. We need to do better, as a community. And I'm also the Vice Chair, or whatever you call it, of the Oregon Defense Consortium Association, which was formed about a year ago. We advocate for members during this time of change, making sure that the people who've put in decades of their life building a practice, and done the work and done the training, and done what they need to do, and continue to do that upon a reasonable financial basis. Or at least have an option to move into a state employee job if that's direction it goes. Many people will want to do that. There are a lot of really good things about that. If you have both the Koch Brothers and Brenden Center agreeing that that's what we should maybe be doing, who's to argue, I guess. But it's not going to happen in six months. It's not going to happen in two years. It's not going to happen in five years. And people who spent a generation, or two generations, building a practice have a right, in this case, to have some certainty and ability to segue into something else that doesn't harm them. And I think they'll recognize that too. So, I wanted to make a commitment to the commission that ODCA, and I personally am committed to contributing my time and effort into making this work, and to moving to a more viable system that's attractive to new people coming in. That gives us the foundational training. These are all extremely important things that the state could start off with, and I think that that's something that's now been talked about some time or another. And I recognize that. And I think most people do recognize that. But they want some consideration. They want to be at the table. They want to be able to have input and say, "Look, this is how this is going to affect me. This is how it's going to affect my secretary." There's one good point that someone made that was from my county. He was paid family leave. On an FTE basis, how do you deal with that? Well, I think you just keep paying him the FTE model, and he passes it through. And you reduce the caseload. That's what family leave is. The big corporation. That's what it is. And that's a detail that maybe people wouldn't get into unless that guy was at the table here. At a table, to be able to discuss that. I don't think... I think speed harms the process, by lack of contribution from all the stakeholders, put us where we are today. And, let's forget that. Let's move forward. Let's try and get something in place that has informed, committed stakeholders that can contribute to this process. The quality of an organization is quite often determined by its mid-level managers, the people who do the work on the ground. I think there's been probably a lack of outreach to the lawyers, law firms, administrators in the counties that can contribute to this process. And I think that has to stop. And I think we have to make people... I don't care if my [Inaudible 01:51:46] process. But someone like me, and my counterpart in another county, that's fine. Let's get them at the table. And let's make them part of the process. If we do that, I believe we will have a better system in more reasonable transition to what I think

a lot of people want. There's a lot of people in the private world that don't want that. I get that. But I think probably that's the direction we're moving in, over a period of time. One thing that has served me, and I have no opinion about contract termination or not renewing, or stuff, because I don't know anything about that. I do know that they shouldn't have heard about it from a newspaper person. I do know...

C. Ramfjord: I hear you on those issues. And I think that, I know that myself and the other commissioner really trying to work hard to improve communication [Inaudible 01:52:39], and to solicit input. And to make sure we get the relevant input. And I want to make sure that that happens. I think that the situation with the termination of the one contract, there is a different... It's not even a termination, but the situation with that one contractor is not characteristic of the way we're going about this re-contracting process. And we want input. I do want to get input from everyone at the commission. I think that if you have questions, if you have input, anything that you think should be considered in this process, we want to hear. We definitely want to hear it. I don't think we... And I'll talk a little bit more with people about whether or not there's any way to formalize that process a little bit more. But I take that the idea here is to get input. We know that you're the ones that do the work. You're the ones that know how it works. And I was happy to get that same question this morning about family leave, too. I think that's a relevant consideration. So that was a good thought. We're trying to think of all that stuff, but that kind of input is welcomed and appreciated. So, appreciate that.

MOTION: A motion was made to adjourn the meeting; the motion was seconded; VOTE: 5-0

Meeting Adjourned.

Attachment 2



Oregon

Office of Public Defense Services

198 Commercial St. SE, Suite #205

Salem, Oregon 97301

Telephone (503) 378-3349

Fax (503) 378-4462

www.oregon.gov/opds

To: Members, Public Defense Services Commission
Lane Borg, Executive Director

From: Eric Deitrick, General Counsel

Re: PDSC Attorney Qualification Standards

Date: October 15, 2019

Background: The PDSC has adopted qualification standards regarding eligibility to provide legal services in court appointed cases. Those standards rely primarily on experience, although some case types have requisites regarding training and/or professional recommendations.

In 2019, Oregon enacted SB 1008, which significantly impacts the intersection of juveniles and major felony charges. Currently, when a 15, 16, or 17 year old engages in behavior consistent with ORS 137.707, the state may file criminal charges directly in adult court. On January 1, 2020, those charges must now be filed in juvenile court and the state will have the burden of proof regarding the waiver of the case into adult court. For these cases, court-appointed counsel would need to be well-versed in both juvenile delinquency and adult criminal defense to provide their client with adequate counsel.

Additionally, the qualification standards to provide legal services in Termination of Parental Rights (“TPR”) cases need modification. At some point, the standards had been modified to only allow representation if (1) the person has had juvenile dependency qualifications for at least six months and (2) the person is also qualified to handle major felony cases in adult or juvenile courts. This has presented qualification challenges, as many juvenile practitioners handle solely dependency cases. This is particularly true for attorneys in PCRCP counties, which will be expanding into Multnomah County effective July 1, 2020.

Agency Recommendation: OPDS proposes two modifications to the existing qualification standards.

First, it sets the requisite for handling “waiver” cases as having major felony experience in both juvenile delinquency and adult criminal courts. In addition, it requires the attorney to meet one of five factors. If the attorney does not meet those standards, there is an additional, and more subjective, approach that includes letters of recommendation.

Second, it adds additional ways an attorney can become qualified to handle TPR cases. An attorney can qualify if they have six months of dependency experience and have co-counseled a TPR case. Additionally, as with “waiver” cases, there is a subjective approach that relies upon letters of recommendation.

Proposed Motion: I move to adopt the suggested modifications to the PDSC’s qualification standards regarding eligibility to provide legal services in court appointed cases.

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

Revised December 15, 2016

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EXHIBIT A: PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION

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

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

STANDARD I: OBJECTIVE

The objective of these standards is to ensure the provision of competent legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

STANDARD II: ATTORNEY CASELOADS

Attorneys appointed to represent financially eligible persons at state expense must provide competent representation to each client. Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations.

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

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

1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
2. Agree to adhere to Standard II;
3. Either:
 - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the minimum qualifications specified in Standard IV, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent representation; or
 - C. Work under the supervision of an attorney who does have the requisite qualifications and who describes to the satisfaction of the Office of Public Defense Services how they will provide oversight of attorney performance in order to ensure competent representation.

3. Have adequate support staff and regularly monitored email and telephone systems to ensure reasonable and timely personal contact between attorney and client, and between the attorney and others involved with the attorney's public defense work;
4. Have an office or other regularly available and accessible private meeting space other than at a courthouse suitable for confidential client conferences; and
5. Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at www.osbar.org.

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

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

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or attorney in private practice in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
 - b. Has observed five complete trials of criminal cases that were tried to a jury;
 - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
 - d. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case; or
 - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials;

2. **Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts**

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury; and
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards.

3. **Major Felony Cases in Trial Courts**

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2; and
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases.

4. **Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
 - a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has met the qualifications in Standard IV, section 3 for at least three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence; and
 - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury.

- B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, and c.

5. **Capital Murder Cases in Trial Courts**

- A. *Lead Counsel.* The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
- a. Has reviewed and agrees to fulfill the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;
 - b. Meets the qualifications specified in Standard IV, section 4.A;
 - c. Has represented clients in major felony cases for at least five years;
 - d. Has acted as lead counsel or co-counsel in at least one murder case that was tried to a jury;
 - e. Has attended within the last two years at least 24 hours of specialized training on in the management, preparation, and presentation of capital cases through an established training program awarding CLE credits;
 - f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) A commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) Substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
 - (3) Skill in the management and conduct of complex negotiations and litigation;
 - (4) Skill in legal research, analysis, and the drafting of litigation documents;
 - (5) Skill in oral advocacy;
 - (6) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (7) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - (8) Skill in the investigation, preparation, and presentation of mitigating evidence;

- (9) Skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing statements; and
- g. On request, can demonstrate all of the above by:
 - (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
 - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, and g.
- C. *Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney will provide competent representation in capital cases. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. *Case/load.* An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

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

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2;

- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and developmentally disabled; and,
- E. Satisfies one of the following:
 - a. Has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
 - b. Has observed five civil commitment hearings that have been submitted to a judge for determination.

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

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, are as follows:

- A. Juvenile Delinquency Cases in Trial Courts including status offense cases and waiver proceedings
 - a. Misdemeanor, misdemeanor probation violation, and status offense cases; Meets the qualifications for appointment to misdemeanor cases as specified in Standard IV, section 1, and satisfies at least one of the following:
 - (1) Has served as counsel or co-counsel counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer; or
 - (2) Has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer.
 - b. Lesser felony and lesser felony probation violation cases. Lesser felony cases are defined in Standard IV, section 2:
 - (1) Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a);
 - (2) Has met the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) for at least nine months;
 - (3) Has served as counsel, co-counsel, or associate counsel in two juvenile delinquency cases adjudicated after a contested hearing before a judicial

officer;

- (4) In at least one juvenile felony case adjudicated after a contested hearing before a judicial officer has served as co-counsel or associate counsel with an attorney who has previously tried juvenile felony cases; and
 - (5) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle lesser felony cases involving the potential for commitment to a youth correctional facility until age 25.
- c. Major felony and major felony probation violations. Major felony cases are defined in Standard IV, section 3:
- (1) Meets the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b);
 - (2) Has met the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b) for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
 - (3) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25.
- d. Murder cases:
- (1) Meets the qualifications for appointment to murder cases in trial courts as specified in Standard IV, section 4(A); and
 - (2) Has met the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) for at least three years.
- e. **Waiver proceedings:**
- (1) **Meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) and criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for juvenile murder cases as specified in Standard IV, section 7A(d) and criminal murder cases as required by Standard IV, section 1(4).**
 - (2) **In addition, the attorney satisfies one of the following:**

- i. **Has (a) served as counsel or co-counsel in at least two delinquency cases adjudicated before a judge which involved alleged conduct at or above the major felony level, or (b) has observed, or reviewed transcripts in, at least two contested waiver hearings which involve alleged conduct at or above the major felony level.**
 - ii. **Has demonstrated a skillful understanding of juvenile law, criminal law, the interplay between the two, and is able to advise the client of all outcomes and consequences of the waiver hearing;**
 - iii. **Has demonstrated an understanding of child and adolescent brain development, or is willing to undertake the specialized training needed;**
 - iv. **Has demonstrated an understanding of working with mitigators as part of the defense team; or**
 - v. **Can certify participation in OPDS approved training specifically related to juvenile waiver hearing preparation and litigation.**
- (3) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.**

B. Juvenile Dependency Cases in Trial Courts

Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) or has had equivalent civil or criminal experience involving complicated child-custody issues and satisfies at least one of the following:

- a. Has served as counsel, co-counsel or associate counsel in at least two dependency cases adjudicated before a judge; or
- b. Has observed at least five dependency cases adjudicated before a judge.

C. Termination of Parental Rights Cases in Trial Courts

Meets the qualifications for appointment to juvenile dependency cases as specified in Standard IV, section 7B for at least six months or has had equivalent experience, civil or criminal, involving complicated child-custody issues and

- a. Meets the qualifications for appointment to adult criminal major felony cases as specified in Standard IV, section 3 or meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c);

- b. **Has served as co-counsel or associate counsel in at least one termination of parental rights trial that resulted in an adjudication; or**
- c. **On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle trials resulting in the termination of parental rights.**

8. Appeals in Misdemeanor Cases. Misdemeanor Probation Violations Proceedings, and Contempt Proceedings

The minimum qualifications for appointment in appeals in misdemeanor cases, misdemeanor probation violation proceedings, and contempt proceedings require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS 138.005 - 138.504, ORS 33.015 – 33.155, and ORS Chapter 19;
 - b. Oregon State Bar, Criminal Law (current edition);
 - c. The Oregon Rules of Appellate Procedure;
 - d. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of an attorney in public or private practice in appeals in criminal or juvenile delinquency cases; has undertaken such representation for at least 12 months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable appellate procedure and criminal law;
 - b. Has served as counsel or co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
 - c. Has observed oral argument and reviewed the appellate record in at least five appeals in criminal cases;
 - d. Has significant experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
 - e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

9. Appeals in Lesser Felony Cases. Felony Probation Violation Proceedings. Judicial

Review of Parole Cases, and Post-Conviction Relief Cases

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment in appeals in lesser felony cases, felony probation violation proceedings, judicial review of parole cases, and post-conviction relief cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
 - a. ORS Chapter 144;
 - b. The Oregon Felony Sentencing Guidelines (OAR Ch 213); and
 - c. The Rules of the Board of Parole and Post-Prison Supervision (OAR 255).
- C. Meets at least one of the following criteria:
 - a. Has served as counsel in at least five appeals in criminal cases which were briefed on the merits and argued to the court;
 - b. Has significant and extensive experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

10. Appeals in Non-Capital Murder and Major Felony Cases

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than capital murder cases.

The minimum qualifications for appointment in appeals in major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 9;
- B. Has served as counsel in at least 10 appeals in criminal cases which were briefed on the merits and argued to the court; and
- C. Has demonstrated proficiency in appellate advocacy in felony defense.

11. Appeals in Capital Murder Cases

The minimum qualifications for appointment in appeals in capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 10;
- B. For appointment as lead counsel, is an experienced and active trial or appellate

lawyer with at least three years' experience in criminal defense;

- C. Has demonstrated the proficiency and commitment necessary for high quality representation in capital murder cases.
- D. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- E. For co-counsel in capital murder appeals, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- F. *Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Appeals in Juvenile Delinquency Proceedings – Misdemeanor Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of misdemeanor offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
 - a. ORS 419A.200 - 419A.211; and
 - b. Oregon State Bar, Juvenile Law, (current edition).

13. Appeals in Juvenile Delinquency Proceedings – Felony Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of felony offenses require that an attorney:

Meets the qualifications specified in Standard IV, sections 10 and 12.

14. Appeals in Juvenile Dependency and Termination of Parental Rights Proceedings

The minimum qualifications for appointment in appeals in juvenile dependency and termination of parental rights cases require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS Chapter 419B;
 - b. ORS Chapter 419A;
 - c. ORS Chapter 19;
 - d. The Oregon Rules of Appellate Procedure;
 - e. Oregon State Bar, Juvenile Law (current edition);
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - a. Has served as counsel or co-counsel in at least five appeals in juvenile dependency or termination of parental rights proceedings including briefing the cases on the merits and arguing the cases to the court;
 - b. Has significant and extensive experience in written motion practice and arguments in state trial court and appellate court or in federal district court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience and who will attest to the quality of the attorney's work by appearing as co-counsel on all filed briefs.

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

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

- A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;
- B. Has reviewed and is familiar with:
 - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686; and
 - b. The Oregon State Bar's performance standards for counsel representing petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition;
- D. Has attended and completed a legal education and training program on post-conviction relief proceedings within two years prior to appointment.

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

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 15;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. *Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases.* The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys must either:
 - (1) Specialized training in the defense of persons accused of capital crimes; or
 - (2) The availability of ongoing consultation support from other capital murder qualified attorney(s).

17. Habeas Corpus Proceedings

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL

1. Certificate and Supplemental Questionnaire

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards, or as otherwise specified by the Office of Public Defense Services.

2. Submission Requirements

- A. *Contract Attorneys.* Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure

that OPDS has current information for each attorney who performs services under the contract.

- B. *Assigned Counsel (for all Non-contract Appointments)*. Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

3. Supporting Documentation

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
 - a. At the request of OPDS; or
 - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Supporting documentation requested by OPDS may include, but is not limited to:
 - a. A written statement explaining why the attorney believes that he or she has the qualifications required to handle the case type(s) selected by the attorney; and
 - b. Written statements from those with direct knowledge of the attorney's practice explaining why they believe that the attorney is qualified to handle the case type(s) selected by the attorney. Written statements may include those from persons in the following three groups:
 - (1) Judges before whom the attorney has appeared;
 - (2) Defense attorneys who are recognized and respected by the local bar as experienced trial lawyers and who have knowledge of the attorney's practice; and
 - (3) District attorneys or deputies against whom or with whom the attorney has tried cases.
- C. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 3.C, shall submit prior to execution of its contract with OPDS and update as necessary:
 - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
 - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
 - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 3.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and

- d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 3.C, completed and signed by each attorney.

4. **Approval for Appointment**

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

- a. Are more than minimally qualified;
- b. Have specialized skills needed in a particular community;
- c. Are available to cover cases in the appropriate geographic area;
- d. Are able to meet specific needs of the court such as availability at specific times;
- e. Are able to effectively and efficiently manage a law practice, observing appropriate fiscal and organizational practices; and
- f. Have other qualities that would benefit the court, the clients or OPDS.

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

- B. *Request for Reconsideration.* An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. *Provision of Lists to the Courts.* OPDS will prepare a list of attorneys approved for appointment for counties that routinely appoint attorneys who do not provide public defense services pursuant to a contract with OPDS. Other courts should contact OPDS for assistance in identifying attorneys available for appointment.
- F. *Updating Lists.* OPDS will update lists as necessary.

5. **Suspension from Appointment**

- A. *Suspension from Future Appointments.* If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. *Suspension from Current Appointments.* The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. *Request for Reconsideration.* An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. *Review of Request for Reconsideration.* Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request, the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. *Extension of Time for Good Cause.* The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

**PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION
FOR NON-CAPITAL CASE TYPES**

Name: _____

Bar Number: _____

Address: _____

Vendor or Tax ID#: _____

Email: _____

Foreign language fluency in: _____

Phone Number: _____

Years of Experience:

Mobile Phone Number: _____

Practice of Law _____ Criminal _____

Juvenile _____ Appellate _____

For appointments in the following county(ies): _____

TRIAL LEVEL

APPELLATE LEVEL

Murder
 Lead Counsel G
 Co-counsel G
Major Felony G
Lesser Felony G
Misdemeanor G

Murder
 Lead Counsel G
 Co-counsel G
Major Felony G
Lesser Felony G
Misdemeanor G

Juvenile Delinquency
 Major Felony G
 Lesser Felony G
 Misdemeanor G
Juvenile Dependency G
Juvenile Termination G

Juvenile Delinquency
 Major Felony G
 Lesser Felony G
 Misdemeanor G
Juvenile Dependency G
Juvenile Termination G

Civil Commitment G
Contempt G
Habeas Corpus G

Civil Commitment G
Contempt G
Habeas Corpus G

Post-Conviction Relief
 Murder G
 Other Criminal G

Post-Conviction Relief
 Murder G
 Other Criminal G

Please check only one box below:

G I certify that I have read the PDSC Qualification Standards for Court-Appointed Counsel (Rev. __) and that I meet the requirements of those standards and wish to be listed as available to accept appointment to the case types checked above. If I have checked any case types because I believe I possess equivalent skill and experience, pursuant to Standard III, section 3.B, I have submitted supporting documentation and explained how I am qualified for those case types.

or

G I certify that the above-named attorney will be working under the supervision of an attorney as described in Standard III.3.C, and have submitted a statement from the attorney or contract provider describing that supervision.

Signature

Date

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

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

1. Name (please print):
2. Date admitted to Oregon State Bar:
3. Oregon State Bar number:
4. Number of years and location(s) of legal practice in Oregon:
5. Number of years and location(s) of legal practice outside Oregon:
6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
7. What percentage of your present practice involves handling public defense cases?
8. Do you meet the stated minimum qualifications for the case types selected on your certificate of attorney qualification? If you answer no here, proceed to Question 9. If you answer yes, describe in detail below and on additional pages if necessary, how you satisfy each of the minimum qualifications for the case type(s) that you have certified.
9. If you answered No to Question 8, are you certifying qualification on the basis of equivalent skill and experience? If no, proceed to Question 10. If yes, please separately attach the following: 1) A statement explaining why you believe equivalent skill and experience qualifies you to handle the case types you have certified; and 2) At least two letters or statements from persons familiar with you legal experience and skill that describe why they believe you are qualified to handle the case types you have certified.
10. If you answered No to Question 9, are you certifying qualification because you will be working under the supervision of an attorney who meets the qualifications for the case types that you have certified? If yes, attach a statement from the supervising attorney, pursuant to Standard III.3.C or Standard V.3.C, describing the supervision that the attorney will perform?
11. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

12. List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
13. List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.
14. Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
15. Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
16. Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
17. Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
18. Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.

I certify that the above information is true and complete.

SIGNATURE

DATE

Attachment 3



Oregon

Office of Public Defense Services

198 Commercial St. SE, Suite #205

Salem, Oregon 97301

Telephone (503) 378-3349

Fax (503) 378-4462

www.oregon.gov/opds

To: Members, Public Defense Services Commission
Lane Borg, Executive Director

From: Eric Deitrick, General Counsel

Re: OPDS Complaint Policies

Date: October 15, 2019

Background: OPDS has a complaint policy regarding both (1) the quality of public defense providers and (2) payments regarding attorney fees and non-routine expense requests. ORS 151.216 implies that OPDS shall have a policy regarding the former, and directs OPDS to have a policy regarding the latter.

The current OPDS complaint policy was adopted by the PDSC on October 22, 2004, and it has remained unchanged. Presently, there are several reasons to amend the complaint policy. It's unnecessarily long and complicated. It differentiates between current and former clients in a way that is not helpful. And the threshold of "facially reasonable issue regarding quality of services," is vague and provides uncertain guidance to the agency.

Additionally, there is no list of remedies for those who have received founded complaints. Historically, OPDS has fashioned remedies on a case-by-case basis. Former general counsel Paul Levy noted the need to update this policy in a memo to the agency.

Agency Recommendation: OPDS recommends the PDSC adopt the proposed OPDS complaint policy. On a practical level, the product is more clear and direct. It also eliminates the "facially reasonable issue regarding quality of services."

In its place, it requires OPDS to investigate complaints if the complaint "presents sufficient information to show that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel." This aligns the complaint policy with the contract terms and the level of services for which the client is entitled. This standard provides better direction to agency staff in assessing where to focus our limited resources responding to complaints.

The proposal continues to provide the agency with discretion when complaints do not meet that burden, but the agency believes investigation is warranted. Finally, the proposal includes a list of possible remedies for founded complaints.

Proposed Motion: I move to adopt the proposed OPDS Complaint Policy.

PDSC COMPLAINT POLICY AND PROCEDURES

The following Public Defense Complaint Policy and Procedures (PDCPP) is adopted by the Public Defense Services Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective October 22, 2004.

Policy:

It is important for the Office of Public Defense Services (“OPDS”) to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the processing of such complaints, and to address such complaints in a manner which is consistent with its obligation to provide high quality, cost-efficient public defense services.

Certain complaints are in the jurisdiction of the courts or of the Oregon State Bar and should be conducted under procedures adopted by them for such matters. OPDS has an independent duty to oversee the quality and cost of public defense services and to take appropriate action to ensure quality and cost effectiveness.

The PDCPP governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and non-routine fees and expenses incurred in cases.

In order to provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.

Procedures:

1. Complaints regarding the quality of services provided by public defense attorneys.
 - a. A “public defense attorney” is an attorney who provides legal representation at state expense pursuant to ORS 151.216 and other statutes.
 - b. A complaint regarding the quality of services provided by a public defense attorney shall be made in writing and signed by the complainant.
 - c. Upon receipt of a complaint under this paragraph, OPDS will make an initial determination whether the complaint raises a facially reasonable issue regarding the quality of services provided by a public defense attorney.
 - d. If the complaint raises a facially reasonable issue regarding the quality of services, OPDS shall determine whether:

- i. the complaint relates to a current concern or dispute which may be capable of resolution through OPDS intervention (for example, a current client contacts OPDS to report lack of contact with the client's lawyer); or
 - ii. the complaint relates to past or continuing conduct which cannot be resolved by OPDS intervention.
- e. If the complaint relates to a current concern which may be capable of informal resolution, OPDS shall provide the attorney and, if applicable, the attorney's employer or consortium administrator, with a copy of the complaint. OPDS shall attempt to resolve the issue with the attorney or the attorney's employer or consortium administrator by agreeing upon an appropriate course of action.
- f. If the concern is about past or continuing conduct which has not been or cannot be resolved by OPDS intervention, OPDS shall then determine whether the concern is one which is being or should be addressed:
 - i. by the court (for example, if the client is seeking to have counsel relieved and new counsel appointed, or if the client has filed a petition for post conviction relief alleging inadequate representation by counsel); or
 - ii. by the bar (for example, if the allegation is one of misconduct by the lawyer).
- g. If one or more of the collateral proceedings identified in *fi* and *fii* above has already been initiated, OPDS shall inform the complainant, the attorney, and, if applicable, the attorney's employer or consortium administrator that OPDS will monitor the progress of the proceeding in the court or bar.
- h. If the complaint is of a nature which would more appropriately be addressed by the court or bar and such proceedings have not been initiated, OPDS will inform the complainant of the availability of those processes and inform the attorney, and the attorney's employer or consortium administrator if applicable, that the complainant has been so advised.
- i. If:
 - i. the complaint is not capable of informal resolution and is also not properly the subject of a court or bar proceeding (such as an allegation that an attorney is continually failing to meet obligations under the attorney's contract with PDSC or fails to meet PDSC's Qualification Standards for Court Appointed Counsel to Represent Indigent Persons at State Expense), or
 - ii. the court or bar proceedings have resulted in a determination that the lawyer has failed to adequately represent the client or has violated an OSB disciplinary rule,
- j. Then:
 OPDS shall review information submitted and findings made in collateral proceedings, if any, and may perform its own investigation. After notice to the attorney and the attorney's employer or consortium administrator, if

any, of the information obtained by OPDS and an opportunity for the attorney and the employer or administrator to respond, OPDS shall determine whether all of the information available establishes or fails to establish that the attorney's representation with respect to the matter complained of has been unsatisfactory.

- i. If OPDS determines that the representation has been unsatisfactory it may take appropriate action to attempt to correct the problem.
- ii. If corrective action is not possible or if the attorney or the employer or consortium administrator fails to correct the conduct complained of in a timely manner, OPDS may take such additional action as is appropriate under the circumstances, including but not limited to suspension of the attorney from appointment for any or all case types, in addition to any action authorized under PDSC's contract with the attorney or the attorney's employer or consortium.
- k. OPDS shall notify the attorney and the employer or consortium administrator, if any, in writing of its finding and of any action taken or sanction imposed in response to a finding of unsatisfactory representation.
- l. If a complaint is resolved informally, no written notice to the complainant is required. If a complaint is not resolved informally, OPDS shall notify the complainant in writing of its finding and of any corrective action taken or sanction imposed in response to a finding of unsatisfactory representation.
- m. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.

2. Complaints regarding payment from public funds of attorney fees and non-routine fees and expenses.

- n. A complaint regarding payment from public funds of attorney fees or non-routine fees and expenses shall be made in writing and signed by the complainant.
- o. Upon receipt of a complaint under this paragraph, OPDS shall make an initial determination whether the complaint raises a facially reasonable claim regarding the payment from public funds of attorney fees or non-routine fees and expenses.
- p. If the complaint raises a facially reasonable claim, OPDS shall review records related to the attorney fees or non-routine expense authorization or payment.
- q. If the matter complained of is not resolved by a review of the records, OPDS shall contact the attorney or provider for an explanation. The attorney or provider may respond orally or in writing.
- r. If, after a review of the records and any additional information obtained from the attorney or provider, a reasonable concern remains that attorney

- fees or non-routine fees or expenses may have been unreasonable, OPDS shall notify the attorney or provider of its concern and shall conduct such further investigation as may appear appropriate under the circumstances.
- s. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable.
 - t. If OPDS determines that the fee or expense was unreasonable, it may take any or all of the following actions unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
 - i. decline payment for the goods or services in question;
 - ii. seek reimbursement for any funds determined to have been improperly obtained or used;
 - iii. warn the attorney or provider;
 - iv. upon approval by the executive director of OPDS, suspend the attorney's eligibility for appointment in public defense cases or decline to authorize future fees or expenses for the provider; and
 - v. take such additional measures as may be appropriate under the circumstances.
 - u. If a fee or expense determined to be unreasonable was specifically pre-authorized by OPDS and used for the purpose authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future pre-authorization of unreasonable fees and expenses.
 - v. OPDS shall notify both the attorney or provider and the complainant in writing of its finding and of any action taken or sanction imposed in response to a finding that a fee or expense was unreasonable.
 - w. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.
2. Nothing in the PDCPP prohibits OPDS from receiving information in any form from any source regarding the performance of public defense providers or the cost of public defense services, and taking such action as it deems appropriate.
 3. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.

Proposed OPDS Complaint Policy

The following OPDS Complaint Policy and Procedures is adopted by the Public Defense Service Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective

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Policy

It is important for OPDS to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the process of such complaints, and to address such complaints in a manner that is consistent with its obligation to provide high quality, cost-efficient public defense services. OPDS has an independent duty to oversee quality and cost effectiveness.

This policy governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and nonroutine fees and expenses incurred in cases.

To provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.

Complaint Policy and Procedures Regarding Quality of Services of Public Defense Attorneys

I. Definitions and screening

- A. "Public defense attorney" means counsel appointed to perform legal services for financially eligible individuals as required by ORS 34.355, 135.055, 138.500, 138.590, 161.346, 161.348, 161.365, 419A.211, 419B.201, 419B.208, 419B.518, 419B.908, 419C.209, 419C.408, 419C.535, 426.100, 426.135, 426.250, 426.307, 427.295, 436.265 or 436.315, the Oregon Constitution, or the United States Constitution.
- B. All complaints about public defense attorneys shall be directed to the General Counsel division of OPDS. Complaints regarding the quality of services provided by a public defense attorney must be made in writing. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.

- C. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient information that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract.
- D. If the complaint does not present sufficient information to show that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract, the General Counsel Division will notify the public defense attorney by providing him or her with a copy of the complaint and close the matter. OPDS shall also notify the complainant that the matter has been closed.
- E. If the complaint does present sufficient information to show that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract, an attorney from the General Counsel Division will begin an investigation and notify the public defense attorney by providing him or her, and their supervisor or consortium administrator (if applicable) with a copy of the complaint.
- F. OPDS reserves the right to investigate any complaint even if it does not present sufficient information to show that the public defense attorney may have failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract.

II. Procedure for investigating complaints

- A. During the course of investigation, if more information is needed, OPDS may contact the complainant. Complaints will not be decided based solely on the assertions of the complainant. OPDS will investigate all complaints by contacting the public defense attorney and discussing the complaint with the attorney and providing the attorney with an opportunity to respond to the complaint. OPDS may gather information from any other source.
- B. When a complaint is received, OPDS will determine whether it is appropriate to refer the complainant to the Oregon State Bar (OSB) or the court. If the complainant has already initiated a complaint with OSB, OPDS will monitor OSB's resolution of the complaint. OPDS may still conduct its own independent investigation.

III. Resolution of complaints

- A. After conducting an investigation and considering the public defense attorney's response, OPDS shall determine whether the public defense attorney's representation failed to satisfy state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract. If OPDS determines that the public defense attorney's representation failed to satisfy the requisite standards, OPDS may take any actions including but not limited to the following:
 - 1. Discussion with attorney and supervisor or consortium administrator (if applicable), with agreement for an appropriate course of action;
 - 2. Written reprimand;
 - 3. Mandatory training and/or attendance at a continuing legal education program;
 - 4. Require the public defense attorney to obtain a mentor;
 - 5. Modification of the public defense attorney's qualifications for case types;
 - 6. Suspension from representation in public defense cases.
- B. OPDS shall notify the attorney and the supervisor or consortium administrator (if applicable) in writing of its findings and of any action taken or sanction imposed in response to a finding of unsatisfactory representation.
- C. OPDS shall notify the complainant in writing of any action taken as a result of their complaint following investigation.
- D. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.
- E. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the performance of public defense attorneys and taking such action as it deems appropriate.

Complaint Policy and Procedures Regarding Payment from Public Funds of Attorney Fees and Non-routine Fees and Expenses

I. Screening of complaints

- A. A complaint regarding payment from public funds of attorney fees or non-routine fees and expenses shall be made in writing and directed to the General Counsel division of OPDS. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will

not disclose such information, except as required by law, without the consent of the person making the submission.

- B. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient evidence that the payment from public funds of attorney fees or non-routine fees and expenses was unreasonable.
- C. If the complaint does not present sufficient evidence that the payment from public funds of attorney fees or non-routine fees and expenses was unreasonable, OPDS will notify the complainant and close the matter.
- D. If the complaint does present sufficient evidence that the payment from public funds of attorney fees or non-routine fees and expenses was unreasonable, an attorney from the General Counsel Division will begin an investigation.

II. Procedure for investigating complaints

- A. OPDS shall review records related to the attorney fees or non-routine expense authorization or payment. If the matter complained of is not resolved by a review of the records, OPDS shall contact the public defense attorney or provider for additional information. During the course of investigation, if more information is needed, OPDS may contact the complainant. OPDS may gather information from any other source.

III. Resolution of complaints

- A. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable. If the fee or expenditure was not unreasonable the matter shall be closed and the complainant notified of the closure.
- B. If OPDS determines that the fee or expense was unreasonable, it make take any or all of the following actions, unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
 - 1. Decline payment for the goods or services in question;
 - 2. Seek reimbursement for any funds determined to have been improperly obtained or used;
 - 3. Written reprimand;
 - 4. Upon approval by the executive director of OPDS, suspend the attorney's eligibility for appointment in public defense cases or decline to authorize future fees or expenses for the provider; and,

5. Take such additional measures as may be appropriate under the circumstances.
- C. If a fee or expense determined to be unreasonable was specifically preauthorized by OPDS and used for the purposes authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future preauthorization of unreasonable fees and expenses.
 - D. OPDS shall notify the attorney, provider (if applicable), and the complainant in writing of its findings and of any action taken or sanction imposed.
 - E. OPDS shall maintain a record of each complaint filed under this section and of any action taken in response to the complaint.
 - F. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the cost of public defense services and taking such action as it deems appropriate.

Attachment 4



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone: (503) 378-3349
Fax: (503) 378-4463
www.oregon.gov/opds

Date: November 8, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Heather Pate, Contracts Manager
Shelley Dillion, Contract Analyst
Nikita Gillis, Contract Analyst
Amy Jackson, Contract Analyst
Caroline Meyers, Contract Analyst
Billy Strehlow, Contract Analyst

RE: Public Defense Contract Extensions – January 1, 2020-June 30, 2020

Motion: Move to approve Public Defense Contract Extensions for the term January 1, 2020 – June 30, 2020.

During the February 2019 Commission meeting the commission directed OPDS to contract in a manner other than the credit model going forward. During the course of the 2019 legislative session the agency had a bill that would have better directed how to contract beginning January 2020. Because OPDS was waiting for the outcome of that bill, the normal contracting timeframe was shortened and in an attempt to begin changing the way in which contractors are paid, OPDS determined that a 6-month extension, with slight modifications would help bridge the gap between the credit model and a new model.

An RFP for Yamhill County went out on October 28, and closed on October 8. We will be bringing contract(s) for that county to the December 19 commission meeting.

Public Defense Contract Extensions recommended for Approval by the Public Defense Services Commission at its November 14, 2019 Meeting:

County	Proposed Contractor	Value
Baker	Eagle Cap Defenders	\$362,195
Benton	Benton County Legal Defense Corporation	\$632,980
Clackamas	Juvenile Advocates of Clackamas	\$1,024,274
	Clackamas Indigent Defense Corporation	\$1,972,328
Clatsop	Mary Ann Murck	\$105,235
	Clatsop County Defenders	\$484,791
Columbia	Justice Alliance of Columbia County	\$304,536
	Columbia Indigent Defense Corporation	\$90,395

Coos	Coos Criminal Consortium	\$160,650
	Southwestern Oregon Public Defender Service	\$688,500
Crook	Twenty-Second Circuit Defenders CRO	\$529,029
Curry	Curry County Public Defense LLC	\$321,300
Deschutes	Crabtree & Rahmsdorff Defense Services, Inc. DES	\$1,774,733
	Bend Attorney Group	\$926,919
	Kollie Law Group, PC	\$479,941
Douglas	Roseburg Defense Consortium	\$443,652
	Umpqua Valley Public Defender	\$1,234,955
	Arneson and Stewart, PC	\$365,211
Gilliam/Hood River/Sherman/Wasco Wheeler	Morris and Sullivan	\$728,450
	7 th District Consortium	\$437,847
Grant/Harney	Robert Raschio	\$252,850
	John Lamborn	\$203,254
Jackson	Los Abogados	\$594,951
	Jackson Juvenile Consortium	\$714,000
	Rogue Valley Defenders, Inc.	\$539,784
	Southern Oregon Public Defenders JAC	\$2,036,940
Jefferson	Twenty-Second Circuit Defenders JEF	\$1,015,509
Josephine	Southern Oregon Public Defenders JOS	\$723,060
	Josephine County Defense Lawyers	\$787,500
Klamath/Lake	Klamath Defender Services, Inc.	\$1,974,658
Lane	Public Defender Services of Lane County	\$2,066,976
	Lane Juvenile Lawyers Association	\$1,756,563
	Lane County Defense Consortium	\$532,394
Lincoln	Oregon Coast Defenders	\$797,746
Linn	Linn Defenders Inc.	\$1,190,991
Malheur	Doug Rock	\$117,007
	David R. Carlson	\$172,030
	Stunz Fonda Kiyuna & Horton, LLP	\$137,132
	Stoddard & Dennison	\$368,594
Marion	Public Defender of Marion County	\$1,237,590
	The Juvenile Advocacy Consortium	\$1,466,974
	Marion County Association of Defenders, Ltd.	\$2,031,092
Multnomah	Troy & Rosenberg	\$319,835
	Multnomah Defenders, Inc.	\$2,810,179
	Metropolitan Public Defender Services, Inc. MCR	\$3,534,517
	Metropolitan Public Defender Services, Inc. Capital	\$639,815
	Sage Legal Center	\$237,267
	Youth, Rights & Justice	\$1,296,345

	Portland Juvenile Defenders, Inc.	\$1,107,062
	Portland Defense Consortium	\$1,221,679
Polk	Polk County Conflict Consortium	\$387,681
	Vidrio Park & Jarvis, LLC	\$487,843
Statewide	OPC Inc	\$925,871
	O'Conner & Weber	\$369,926
	Harris Matarazzo	\$129,529
Tillamook	Tillamook County Defense Consortium	\$281,170
Umatilla/Morrow	Blue Mountain Defenders	\$534,067
	Intermountain Defenders, Inc	\$816,031
Union/Wallowa	Grande Ronde Defenders	\$363,724
Washington	Ridehalgh & Associates, LLC	\$509,920
	Metropolitan Public Defender Services, Inc. WSH	\$2,423,058
	Oregon Defense Attorney Consortium, Inc	\$1,280,449
	Karpstein & Verhulst	\$540,030
	Hillsboro Law Group, PC	\$340,368



Oregon

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Date: November 8, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Heather Pate, Contracts Manager
Nikita Gillis, Contract Analyst
Billy Strehlow, Contract Analyst

RE: Public Defense Capital and Mitigation Contracts

Motion: Move to approve the extension of the Public Defense Capital Contracts for the term January 1, 2020 – June 30, 2020 and Mitigation contracts for the term of January 1, 2020-December 31, 2020.

Capital Contracts that have a trial scheduled in 2020.

Legal Services Contracts	Rate	Value
Andy Simrin, PC	\$105	\$ 47,250
Benjamin Kim	\$105	\$ 96,600
Bert Dupre, Attorney at Law, LLC	\$105	\$ 71,400
Christopher Edward Burris	\$105	\$ 63,000
Christopher M. Clayhold	\$105	\$ 96,600
Daniel J. Casey	\$105	\$ 94,500
Elizabeth JC Baker	\$105	\$ 96,600
Gordon Mallon	\$105	\$ 96,600
Jeffery Ellis	\$105	\$109,673
Katherine O. Berger	\$105	\$ 96,600
Kathleen M. Carroll	\$105	\$ 96,600
Laurie Bender	\$105	\$ 96,600
Lynne Morgan	\$105	\$ 96,600
Mark Sabitt	\$105	\$ 52,500
Michael B. Charlton	\$105	\$ 96,600
Richard L. Wolf, PC	\$105	\$ 97,073
Russell, S. Barnett, III, PC	\$105	\$ 96,600
Steve M. Lindsey	\$105	\$ 96,600
Steven H. Gorham	\$105	\$ 96,600
W. Keith Goody	\$105	\$ 70,875
Wm. David Falls	\$105	\$ 96,600

Capital Contracts: Paid hourly as cases are assigned.

Capital Contracts	Rate Per Hour
Dianna J. Gentry	\$105
Frank Stoller	\$105
Geoffrey J. Gokey	\$105
Laura Graser	\$105
Patrick John Sweeney	\$105
Steven L. Krasik	\$105

Mitigation Paid hourly as cases are assigned.

Mitigation Investigation Services Contracts	Rate Per Hour
Alice D. Ellis Gaut	\$65.10
Andrea Titus	\$65.10
Carin Connell	\$65.10
Christine L. Inglis, Investigation and Mitigation Services, Inc.	\$65.10
Julie Burton Demorest	\$65.10
Keeley McCallum	\$65.10
Laura Rittall Investigations Inc	\$65.10
Mary Goody Mitigation Specialists, LLC (James Hudson)	\$65.10
Pamela Lundberg Rogers	\$65.10
Rhonda L. Coats	\$65.10
Rita R. Lapp	\$65.10
Roger Keith Harris	\$65.10
Teresa A. McMahon, MSW, Inc	\$65.10
Bernard A. Brown	\$65.10
Michael S. Maunder	\$65.10
Tiffany Cunningham	\$65.10
Richard Huresy	\$65.10



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Date: November 8, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Eric Deitrick
General Counsel, OPDS

RE: Contract for Service

Motion: Move to approve a two-year contract in the amount of \$600,000 to the Forensic Justice Project.

Overview of Issue:

Forensic Justice Project (FJP) launched in August 2018 and has been serving defense attorneys and defendants by offering resources by offering resources for defenders on forensic issues, including litigation assistance, sample motions and template discovery requests. FJP has also assisted in and lead litigation challenging conviction where forensic or other scientific issues were a part of the post-conviction process for defendants claiming innocence. FJP offers *amicus* support to educate courts as well as seminars and training for defenders. FJP collaborates with experts from around the country to bring better resources to Oregon at a lower cost. In the past this has been paid for through the NRE process, it makes sense to formalize the relationship with the state through a contract to provide this type of service in a more global way to the defenders in the state.

Recommendation:

OPDS recommends the approval of the Forensic Justice Project contract in the amount of \$600,000 for two-years to allow the state to provide these needed services to defenders.



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Date: November 8, 2019

To: Public Defense Services Commission
Lane Borg, Director

From: Heather Pate, Contracts Manager
Caroline Meyers, Contract Analyst
Amy Jackson, Contract Analyst

RE: Parent Child Representation Program Contracts (PCRP) – January 1, 2020 – December 31, 2021

Motion: Move to approve Parent Child Representation Program Contracts for the term January 1, 2020 – December 31, 2021.

Oregon's Parent Child Representation Program (PCRP) provides high-quality legal representation for parents and children. It is designed to improve legal representation for parents and children through reduced attorney caseloads, rigorous quality assurance, and the use of social workers as part of the team. The program began in August 2014 with Linn and Yamhill counties and has expanded to include; Columbia, Coos and Lincoln.

County	Proposed Contractor	Value
Columbia	Columbia County Indigent Defense Consortium	\$720,484
	Justice Alliance of Columbia County	\$2,029,400
Coos	Coos County Indigent Defense Consortium	\$2,507,960
	Southwestern Oregon Public Defender Service	\$697,222
Lincoln	Lincoln Juvenile Defenders LLC	\$1,934,110
Linn	Linn County Juvenile Defense Corporation	\$4,188,640
Yamhill	Yamhill Juvenile Group	\$2,229,744

Attachment 5

**OREGON
GOVERNMENT ETHICS
COMMISSION**



3218 Pringle Rd. SE Suite 220
Salem, OR 97302-1544
Email: ogec.mail@Oregon.gov
Phone: (503) 378 – 5105
Fax: (503) 373 – 1456
Web: <http://www.oregon.gov/OGEC/>

GOVERNMENT ETHICS LAWS OVERVIEW

<p>Prohibited Use of Position or Office (ORS 244.040)</p>	<p>Public officials are prohibited from using or attempting to use their public positions to obtain financial benefits for themselves, relatives, household members, or businesses with which any is associated, if the benefit would not be available but for the public official holding the position.</p>
<p>Financial Interest in Public Contract (ORS 244.047)</p>	<p>A person who ceases to be a public official may not have a direct beneficial financial interest in a public contract (defined at ORS 279A.010) for two years after the date of its authorization, if the person played a significant role in authorizing (<i>i.e.</i>, selecting, executing, recommending, or approving) that public contract as a public official.</p>
<p>Limits to Accepting Gifts (ORS 244.025; see ORS 244.020(10))</p>	<p>Public officials and their relatives are limited to accepting gifts (defined at ORS 244.020(7)) worth no more than an aggregate of \$50 in a given calendar year from any individual source reasonably known to have an economic interest in the public official’s decision-making.</p>
<p>Conflicts of Interest (ORS 244.020(1); ORS 244.020(13); ORS 244.120)</p>	<p>When a public official, in an official capacity, is faced with making a decision, recommendation, or other action that “<i>would</i>” or “<i>could</i>” financially affect the official, a relative, or business with which either is associated, the public official is faced with an “<i>actual</i>” or “<i>potential</i>” conflict. A conflicted <i>member of a governing body</i> must provide notice of the conflict by making a public announcement, and if the conflict is “<i>actual</i>” (<i>i.e.</i>, “<i>would</i>” financially affect...) must refrain from participation in the matter. <i>Most other public officials</i> must provide written notice to a supervisor/employer. Either type of notice must state the nature of the conflict. A written notice must additionally request that the supervisor/employer dispose of the matter.</p>
<p>Nepotism Prohibitions (ORS 244.177 – 179)</p>	<p>Public officials may not directly – or participate in any interview, discussion, or debate to – appoint, employ, promote, discharge, fire, or demote a relative or household member of the public official. Public officials are also prohibited from supervising relatives and household members.</p>

* *NOTE: The terms “business”, “business with which the person is associated”, “member of the household”, “public official”, and “relative” are defined at ORS 244.020(2), (3), (11), (15), and (16), respectively.*

DISCLAIMER: This document presents a brief overview of the most generally applicable Oregon Government Ethics duties and may not account for all relevant laws, exceptions or circumstances. It is ***intended for use as a training tool only and should not substitute for review of ORS Chapter 244 or consultation with an attorney or the Oregon Government Ethics Commission regarding application of the law in a specific situation.***

Oregon Government Ethics Commission

Oregon Public Meetings Law: Executive Session Provisions



Oregon Government Ethics Commission

3218 Pringle Rd. SE, Suite 220

Salem, OR 97302-1544

Telephone: 503-378-5105

Fax: 503-373-1456

Web address: www.oregon.gov/oqec

- 192.610 Definitions for ORS 192.610 to 192.690
- 192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits
- 192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members
- 192.685 Additional enforcement of alleged violations of ORS 192.660

192.610 Definitions for ORS 192.610 to 192.690. As used in ORS 192.610 to 192.690:

(1) "Decision" means any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of a governing body is required, at any meeting at which a quorum is present.

(2) "Executive session" means any meeting or part of a meeting of a governing body which is closed to certain persons for deliberation on certain matters.

(3) "Governing body" means the members of any public body which consists of two or more members, with the authority to make decisions for or recommendations to a public body on policy or administration.

(4) "Public body" means the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.

(5) "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. "Meeting" does not include any on-site inspection of any project or program. "Meeting" also does not include the attendance of members of a governing body at any national, regional or state association to which the public body or the members belong. [1973 c.172 §2; 1979 c.644 §1]



192.660 Executive sessions permitted on certain matters; procedures; news media representatives' attendance; limits.

(1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

- (a) To consider the employment of a public officer, employee, staff member or individual agent.
- (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.
- (c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063 and 441.196 including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.
- (d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.
- (e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.
- (f) To consider information or records that are exempt by law from public inspection.
- (g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.
- (h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.
- (i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.
- (j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.
- (k) To consider matters relating to school safety or a plan that responds to safety threats made toward a school.
- (l) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.
- (m) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.
- (n) To discuss information about review or approval of programs relating to the security of any of the following:
 - (A) A nuclear-powered thermal power plant or nuclear installation.
 - (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(2) The governing body of a public body may hold an executive session (continued):

(C) Generation, storage or conveyance of:

- (i) Electricity;
- (ii) Gas in liquefied or gaseous form;
- (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- (iv) Petroleum products;
- (v) Sewage; or
- (vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

- (a) The filling of a vacancy in an elective office.
- (b) The filling of a vacancy on any public committee, commission or other advisory group.
- (c) The consideration of general employment policies.
- (d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:
 - (A) The public body has advertised the vacancy;
 - (B) The public body has adopted regular hiring procedures;
 - (C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and
 - (D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

- (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.
- (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

(10) Notwithstanding ORS 244.290, the Oregon Government Ethics Commission may not adopt rules that establish what entities are considered representatives of the news media that are entitled to attend executive sessions under subsection (4) of this section. [1973 c.172 §6; 1975 c.664 §2; 1979 c.644 §5; 1981 c.302 §1; 1983 c.453 §1; 1985 c.657 §2; 1995 c.779 §1; 1997 c.173 §1; 1997 c.594 §1; 1997 c.791 §9; 2001 c.950 §10; 2003 c.524 §4; 2005 c.22 §134; 2007 c.602 §11; 2009 c.792 §32; 2015 c.421 §2; 2015 c.666 §3]

192.680 Enforcement of ORS 192.610 to 192.690; effect of violation on validity of decision of governing body; liability of members. (1) A decision made by a governing body of a public body in violation of ORS 192.610 to 192.690 shall be voidable. The decision shall not be voided if the governing body of the public body reinstates the decision while in compliance with ORS 192.610 to 192.690. A decision that is reinstated is effective from the date of its initial adoption.

(2) Any person affected by a decision of a governing body of a public body may commence a suit in the circuit court for the county in which the governing body ordinarily meets, for the purpose of requiring compliance with, or the prevention of violations of ORS 192.610 to 192.690, by members of the governing body, or to determine the applicability of ORS 192.610 to 192.690 to matters or decisions of the governing body.

(3) Notwithstanding subsection (1) of this section, if the court finds that the public body made a decision while in violation of ORS 192.610 to 192.690, the court shall void the decision of the governing body if the court finds that the violation was the result of intentional disregard of the law or willful misconduct by a quorum of the members of the governing body, unless other equitable relief is available. The court may order such equitable relief as it deems appropriate in the circumstances. The court may order payment to a successful plaintiff in a suit brought under this section of reasonable attorney fees at trial and on appeal, by the governing body, or public body of which it is a part or to which it reports.

(4) If the court makes a finding that a violation of ORS 192.610 to 192.690 has occurred under subsection (2) of this section and that the violation is the result of willful misconduct by any member or members of the governing body, that member or members shall be jointly and severally liable to the governing body or the public body of which it is a part for the amount paid by the body under subsection (3) of this section.

(5) Any suit brought under subsection (2) of this section must be commenced within 60 days following the date that the decision becomes public record.

(6) The provisions of this section shall be the exclusive remedy for an alleged violation of ORS 192.610 to 192.690. [1973 c.172 §8; 1975 c.664 §3; 1979 c.644 §6; 1981 c.897 §42; 1983 c.453 §2; 1989 c.544 §1]

192.685 Additional enforcement of alleged violations of ORS 192.660.

(1) Notwithstanding ORS 192.680, complaints of violations of ORS 192.660 alleged to have been committed by public officials may be made to the Oregon Government Ethics Commission for review and investigation as provided by ORS 244.260 and for possible imposition of civil penalties as provided by ORS 244.350.

(2) The commission may interview witnesses, review minutes and other records and may obtain and consider any other information pertaining to executive sessions of the governing body of a public body for purposes of determining whether a violation of ORS 192.660 occurred. Information related to an executive session conducted for a purpose authorized by ORS 192.660 shall be made available to the Oregon Government Ethics Commission for its investigation but shall be excluded from public disclosure.

(3) If the commission chooses not to pursue a complaint of a violation brought under subsection (1) of this section at any time before conclusion of a contested case hearing, the public official against whom the complaint was brought may be entitled to reimbursement of reasonable costs and attorney fees by the public body to which the official's governing body has authority to make recommendations or for which the official's governing body has authority to make decisions. [1993 c.743 §28]

Resources:

- *Chapter 192 – Records, Public Reports and Meetings 2009 Edition Public Meetings*

Notes: _____

State of Oregon
EXECUTIVE SESSION CHECKLIST

Prior to the meeting:

- Provide notice of an executive session in the same manner you give notice of a public meeting. **The notice must cite the specific statutory provision(s) authorizing the executive session.**

At the meeting:

- Announce that you are going into executive session pursuant to ORS 192.660 and **cite the specific reason(s) and statute(s)** that authorize the executive session for **each subject** to be discussed.
- If you intend on coming out of executive session to take final action, announce when the open session will begin again.
- Specify if any individuals other than the news media may remain.
- Tell the media what may not be disclosed from the executive session. **If you fail to do this, the media may report everything!** If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters. *A member of the news media must be excluded from executive session held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party.
- Come back into open session to take final action.** If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.
- Keep minutes or a sound, video, or digital recording of executive sessions.

*The governing body may choose to allow other specified persons to attend the executive session. See *Barker v. City of Portland*, 67 Or App 23, 676 P2d 1391 (1984).

Statutory Provisions for Executive Session

<p>To consider the employment of an officer, employee, staff member or agent if: (i) the job has been publicly advertised, (ii) regularized procedures for hiring have been adopted, and (iii) in relation to employment of a public officer, there has been an opportunity for public comment. For hiring a chief executive officer, the standards, criteria and policy to be used must be adopted in an open meeting in which the public has an opportunity to comment. This reason for executive session may not be used to fill vacancies in an elective office or on any public committee, commission or other advisory group, or to consider general employment policies</p>	<p>ORS 192.660(2)(a) ORS 192.660(7)</p>
<p>To consider dismissal or discipline of, or to hear charges or complaints against an officer, employee, staff member or agent, if the individual does not request an open meeting.</p>	<p>ORS 192.660(2)(b)</p>
<p>To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063 and 441.196.</p>	<p>ORS 192.660(2)(c)</p>
<p>To conduct deliberations with persons you have designated to carry on labor negotiations.</p>	<p>ORS 192.660(2)(d)</p>
<p>To conduct deliberations with persons you have designated to negotiate real property transactions.</p>	<p>ORS 192.660(2)(e)</p>
<p>To consider information or records that are exempt from disclosure by law, including written advice from your attorney.</p>	<p>ORS 192.660(2)(f)</p>
<p>To consider preliminary negotiations regarding trade or commerce in which you are in competition with other states or nations.</p>	<p>ORS 192.660(2)(g)</p>
<p>To consult with your attorney regarding your legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed.</p>	<p>ORS 192.660(2)(h)</p>
<p>To review and evaluate the performance of an officer, employee or staff member if the person does not request an open hearing. This reason for executive session may not be used to do a general evaluation of an agency goal, objective or operation or any directive to personnel concerning those subjects.</p>	<p>ORS 192.660(2)(i) ORS 192.660 (8)</p>
<p>To carry on negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.</p>	<p>ORS 192.660(2)(j)</p>
<p>To consider matters relating to school safety or a plan that responds to safety threats made toward a school.</p>	<p>ORS 192.660(2)(k)</p>
<p>For a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct.</p>	<p>ORS 192.660(2)(l)</p>
<p>For the State Landscape Architect Board or its advisory committee to consider information obtained as part of an investigation of registrant or applicant conduct.</p>	<p>ORS 192.660(2)(m)</p>
<p>To discuss information about review or approval of programs relating to the security of any of the following: (A) a nuclear-powered thermal power plant or nuclear installation; (B) transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation; (C) generation, storage or conveyance of (i) electricity (ii) gas in liquefied or gaseous form (iii) hazardous substances as defined in ORS 453.005(7)(a), (b), and (d), (iv) petroleum products, (v) sewage, or (vi) water; (D) telecommunications systems, including cellular, wireless or radio systems; or (E) data transmissions by whatever means provided.</p>	<p>ORS 192.660(2)(n)</p>

State of Oregon

Sample Script to Announce Start of Executive Session

- The [governing body] will now meet in executive session for the purpose of [limited to enumerated purposes in ORS 192.660] _____.
- The executive session is held pursuant to ORS 192.660(____) [choose appropriate section(s) for *this* session], which allows the Commission to meet in executive session to [list activity(ies)] _____.
- Representatives of the news media and designated staff shall be allowed to attend the executive session.* All other members of the audience are asked to leave the room.
- Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session.
- At the end of the executive session, we will return to open session and welcome the audience back into the room.

*The governing body may choose to allow other specified persons to attend the executive session. See *Barker v. City of Portland*, 67 Or App 23, 676 P2d 1391 (1984).

Sample Script:

The Oregon Government Ethics Commission will now meet in executive session for the purpose of consultation with counsel concerning legal rights and duties regarding current litigation or litigation likely to be filed.

The executive session is held pursuant to ORS 192.660(2)(h), which allows the Commission to meet in executive session to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room.

Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session.

At the end of the executive session, we will return to open session and welcome the audience back into the room.

Oregon Government Ethics Commission (OGEC) Resource Chart

TRAINING	In-Person & On-Site	Trainers are available to present training sessions or workshops on government ethics law, lobbying regulations and executive session provisions. You can request this training by calling our office at: 503-378-5105 or by completing a 'request for training' on-line at: https://www.oregon.gov/OGEC/Pages/training_request.aspx
	Webinars	OGEC offers Adobe Connect Webinars. These 30 to 60 minute trainings are presented live by an OGEC trainer using the internet. We offer several different classes each month or we can also provide customized webinar trainings: <ul style="list-style-type: none"> • Monthly Webinar Calendar (bottom of page): https://www.oregon.gov/OGEC/Pages/training.aspx • To register or arrange for customized webinar training please e-mail us at: ogec.training@oregon.gov
	iLearnOregon	These training modules are short, focused and convenient. This training focuses on government ethics law, lobbying regulations and executive session provisions. Anyone with an e-mail address can register to take classes through iLearnOregon, whether you are a public official or a private citizen. iLearnOregon can be accessed via the following links: <ul style="list-style-type: none"> • State employee – https://www.oregon.gov/OGEC/docs/training/ilearn_new_acct_state_employee_20101130.pdf • Non-State employee – https://www.oregon.gov/OGEC/docs/training/ilearn_new_acct_non_state_employee_20101129.pdf
GUIDANCE	Request Guidance on Ethics Related Issues/Situations	<ul style="list-style-type: none"> • Written – Send requests via e-mail to: ogec.mail@oregon.gov ; by fax to: 503-373-1456 or by U.S. mail to: 3218 Pringle Road SE, Suite 220, Salem, Oregon 97302-1544 • Telephone – 503-378-5105 • In-person – By visiting our office at the mailing address listed under “Written” above.
	Review Previously Issued Guidance	<ul style="list-style-type: none"> • Advice – https://apps.oregon.gov/OGEC/CMS/Advice • Opinions – https://www.oregon.gov/OGEC/pages/opinion_category.aspx
FORMS & PUBLICATIONS	Guide for Public Officials	Link to Guide and 2015 Supplement: https://www.oregon.gov/OGEC/Pages/forms_publications.aspx
	Public Records	Public Records Look-up: https://apps.oregon.gov/OGEC/EFS/Records To request copies of public records in the custody of the OGEC: https://www.oregon.gov/OGEC/Pages/public_records.aspx
	File a Complaint	Complaint form can be accessed via: https://apps.oregon.gov/OGEC/CMS/complaint

Oregon Government Ethics Law



Oregon Government Ethics Commission
3218 Pringle Rd. SE, Suite 220
Salem, OR 97302-1544
Telephone: 503-378-5105
Fax: 503-373-1456
Web address: www.oregon.gov/ogec

About the Commission

The Oregon Government Ethics Commission (OGEC), established by vote of the people in 1974, is a nine-member citizen commission charged with enforcing government ethics laws.

Oregon government ethics laws prohibit public officials from using their office or position for personal financial gain, and require public disclosure of economic conflict of interest. The OGEC also enforces state laws that require lobbyists and the entities they represent to register and quarterly report their expenditures. The third area of OGEC jurisdiction is the executive session provisions of public meetings law.

Am I a “public official”?

The answer is yes if you are serving the State of Oregon or any of its political subdivisions or any other public body, as an elected official, appointed official, employee, agent or otherwise, irrespective of whether you are compensated for services [ORS 244.020(15)].

What you need to know if you are a public official:

The provisions in Oregon Government Ethics law restrict some choices, decisions or actions a public official may make. The restrictions placed on public officials are different than those placed on private citizens because service as a public office is a public trust and provisions in ORS Chapter 244 were enacted to provide one safeguard for that trust. [ORS 244.010(1)]

- Public officials are prohibited from using or attempting to use their positions to gain a financial benefit or to avoid a financial cost for themselves, a relative, or their businesses if the opportunity is available only because of the position held by the public official [ORS 244.040(1)].
- There are conditions that must be met before a public official may accept a gift and in some cases, there are limits on the value of gifts that can be accepted. Certain public officials are required to file reports that disclose some of the gifts accepted and the specific economic interests.
- When met with a conflict of interest, a public official must follow specific procedures to disclose the nature of the conflict. There are also restrictions on certain types of employment subsequent to public employment and on nepotism.

This handout will discuss how the provisions in ORS Chapter 244 apply to public officials and will summarize Commission procedures. It should be used in conjunction with applicable statutes and rules. This guide should not be used as a substitute for a review of the specific statutes and rules.

You will find links to ORS Chapter 244, and relevant Oregon Administrative Rules (OAR), and other publications referenced in this guide on the Commission's website at www.oregon.gov/ogec. Questions or comments may be submitted to the Commission by email at ogec.mail@state.or.us, by Fax to 503-373-1456 or by telephone to 503-378-5105.

Are you a public official?

“Public official” is defined in ORS 244.020(15) as any person who, when an alleged violation of this chapter occurs, is serving the State of Oregon or any of its political subdivisions or any other public body as defined in ORS 174.109 as an elected official, appointed official, employee or agent, irrespective of whether the person is compensated for the services.

There are approximately 200,000 public officials in Oregon. You are a public official if you are:

- Elected or appointed to an office or position with a state, county or city government.
- Elected or appointed to an office or position with a special district.
- An employee of a state, county or city agency or special district.
- An unpaid volunteer for a state, county or city agency or special district.
- Anyone serving the State of Oregon or any of its political subdivisions, such as the State Accident Insurance Fund or the Oregon Health Sciences University.

“As defined in ORS 244.020(15), a public official includes anyone serving the State of Oregon or any of its political subdivisions or any other public body in any of the listed capacities, including as an “agent.” An “agent” means any individual performing governmental functions. Governmental functions are services provided on behalf of the government as distinguished from services provided to the government. This may include private contractors and volunteers, depending on the circumstances. This term shall be interpreted to be consistent with Attorney General Opinion No. 8214 (1990).” The Commission has adopted, by rule, additional language used to clarify the use of “agent” in the definition of “public official” in the following OAR 199-005-0035(7).

My position as a _____ defines me as a public official.



What does a public official need to know about relatives?

Public officials need to know how Oregon Government Ethics law defines who is a “relative”. While a public official should exercise sound judgment when participating in actions that could result in personal financial benefits, a public official should also exercise sound judgment when participating in actions could result in financial benefits for a relative.

There are provisions in ORS Chapter 244 that restrict or prohibit a public official from using actions of the position held to benefit a relative; or may limit the value of financial benefits accepted by a relative of the public official or may require the public official to disclose the nature of a conflict of interest when a relative may receive a financial benefit.

In everyday conversation the use of “relative” is applied to a broader spectrum of individuals with “family ties” than those defined as relatives in ORS 244.020(16). In general, when a provision in ORS Chapter 244 refers to “relative” it means one of the following:

- The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official or candidate
- The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official or candidate
- Person for whom the public official or candidate have a legal support obligation
- Person benefiting from a public official when benefits are from the public official’s public employment
- Person who benefits a public official or candidate when benefits are from the person’s employment

I have approximately _____ relatives as defined by statute.



ORS Chapter 244 does address the issue of nepotism. Nepotism, as used in ORS Chapter 244, is based on the relative relationship, as well as other members of the public official’s household. Changes to Oregon Government Ethics law passed by the 2013 Legislative Assembly mean that the definitions for “relative” in ORS 244.020(16), and “member of household” in ORS 244.020(11), now apply to these nepotism regulations as well.

If I am a volunteer, does that make me a public official?

If the position for which you have volunteered serves the State of Oregon or any of its political subdivisions or any other public body, “irrespective of whether” you are “compensated” you are a public official.

Volunteers may be elected, appointed or selected by the government agency or public body to hold a position or office or to provide services.

Among the public officials who volunteer are elected or appointed members of governing bodies of state boards or commissions, city councils, planning commissions, fire districts, school districts and many others. There are also many who apply and are selected to perform duties for a government agency, board or commission without compensation, such as fire fighters, reserve law enforcement officers and parks or recreation staff members.

The Commission recognizes that there are many who volunteer to work without compensation for many state and local government agencies, boards, commissions and special districts.

I am a _____ volunteer.



Financial Gain

What are the provisions in the law that prohibits a public official from using the position or office held for financial gain?

Public officials become public officials through employment, appointment, election or volunteering. ORS 244.040(1) prohibits every public official from using or attempting to use the position held as a public official to obtain a financial benefit, if the opportunity for the financial benefit would not otherwise be available **but for** the position held by the public official. The financial benefit prohibited can be either an opportunity for gain or to avoid an expense.

Not only is a public official prohibited from using the position as a public official to receive certain financial benefits, but the public official is prohibited from using or attempting to use the position as a public official to obtain financial benefits for a relative or a member of the public official's household. Also prohibited is the use or attempted use of the public official position to obtain financial benefits for a business with which either the public official, a relative or a member of the public official's household are associated.

Public officials often have access to or manage information that is confidential and not available to members of the general public. ORS 244.040(4) specifically prohibits public officials from attempting to use confidential information gained because of the position held or by carrying out assigned duties to further the public official's personal gain. ORS 244.040(5) also prohibits a former public official from attempting to use confidential information for personal gain if that confidential information was obtained while holding the position as a public official, from which access to the confidential information was obtained.

ORS 244.040(6) also has a single provision to address circumstances created when public officials who are members of the governing body of a public body own or are associated with a specific type of business. The type of business is one that may occasionally send a representative of the business who appears before the governing body on behalf of a client for a fee. Public officials who are members of governing bodies and own or are employed by businesses, such as a law, engineering or architectural firms, may encounter circumstances in which this provision may apply.

There a variety of actions that a public official may take or participate in that could constitute the prohibited use or attempted use of the public official position. The use of a position could be voting in a public meeting, placing a signature on a government agency's document, making a recommendation, making a purchase with government agency funds, conducting personal business on a government agency's time or with a government agency's resources [i.e. computers, vehicles, heavy equipment or office machines].

NOTES:

Are there any circumstances in which a public official may use their position to accept financial benefits that would not otherwise be available but for holding the position as a public official?

Yes, ORS 244.040(2) provides a list of financial benefits that would not otherwise be available to public officials but for holding the position as a public official. The following financial benefits are not prohibited and may be accepted by a public official and some may also be accepted by a public official's relative or member of the public official's household:

Official Compensation: Public officials may accept any financial benefit that is identified by the public body served by the public official as part of the "official compensation package" of the public official. If the public body identifies such salary, health insurance or various paid allowances in the employment agreement or contract of a public official, those financial benefits are part of the "official compensation package" [ORS 244.040(2)(a)].

OAR 199-005-0035(3) provides a definition of "official compensation package:"

An "official compensation package" means the wages and other benefits provided to the public official. To be part of the public official's "official compensation package", the wages and benefits must have been specifically approved by the public body in a formal manner, such as through a union contract, an employment contract, or other adopted personnel policies that apply generally to employees or other public officials. "Official compensation package" also includes the direct payment of a public official's expenses by the public body, in accordance with the public body's policies.

Reimbursement of Expenses: A public official may accept payments from the public official's public body as reimbursement for expenses the public official has personally paid while conducting the public body's business [ORS 244.040(2)(c)].

The Commission has provided a definition in OAR 199-005-0035(4): "reimbursement of expenses' means the payment by a public body to a public official serving that public body, of expenses incurred in the conduct of official duties on behalf of the public body. Any such repayment must comply with any applicable laws and policies governing the eligibility of such repayment."



Honorarium: Public officials are allowed to accept honorarium by ORS 244.040(2)(b) as it is defined in ORS 244.020(8). A public official must know how honorarium is defined because there are many occasions where someone will offer them a financial benefit and call it an honorarium, but it does not meet the definition of honorarium.

A payment or something of economic value given to a public official in exchange for services provided by the public official is an honorarium when the setting of the economic value has been prevented by custom or propriety. The services provided by a public official may include but not be limited to speeches or other services provided in connection with an event.

The limitation for honorarium is \$50.



Awards for Professional Achievement: Public officials may accept an award, if the public official has not solicited the award, and the award is offered to recognize an achievement of the public official [ORS 244.040(2)(d)].

Awards for professional achievement should not be confused with awards of appreciation, allowed by ORS 244.020(7)(b)(C), honorarium allowed by ORS 244.040(2)(b) or gifts that are allowed or restricted by other provisions in ORS Chapter 244.

Awards for professional achievement are best illustrated by awards that denote national or international recognition of a public official's achievement. *These awards may also be offered by public or private organizations in the state that are meant to recognize a public official for an achievement.* Professional achievements recognized may be identified as a single accomplishment or an accomplishment achieved during a period of time, such as a calendar year or a public official's career upon retirement. Public officials may be educators, lawyers, certified public accountants or hold a doctorate in some field. These public officials may receive awards recognizing achievements in their fields and those awards would be considered by the Commission to be awards allowed by ORS 244.040(2)(d).



Gifts

There are occasions when public officials can accept gifts and Oregon Government Ethics law does not limit the quantity or value of gifts, but there are other occasions when the acceptance of gifts is limited to an aggregate value of \$50 from a single source in each calendar year [ORS 244.025].

When Oregon Government Ethics law uses the word “gift” it has the meaning in ORS 244.020(7)(a):

“Gift” means something of economic value given to a public official, a candidate or a relative or member of the household of the public official or candidate:

(a) Without valuable consideration of equivalent value, including the full or partial forgiveness of indebtedness, which is not extended to others who are not public officials or candidates or the relatives or members of the household of public officials or candidates on the same terms and conditions; or

(b) For valuable consideration less than that required from others who are not public officials or candidates.” In other words, a “gift” is something of economic value that is offered to:

- A public official or candidate or to relatives or members of the household of a public official or candidate,
 - Without cost, at a discount or as forgiven debt and,
 - The same offer is not made or available to the general public who are not public officials or candidates.

To know whether gifts from a single source are limited or unlimited you must determine if the decisions or votes of the public official, who is offered a gift, would have a distinct economic impact on the source making the offer. If the source of the offer would receive a financial gain or avoid a financial cost from the decisions or votes of a public official, gifts from that source to that public official would be limited as to the aggregate value of gifts accepted from that source in a calendar year. This economic interest is a pivotal factor in determining the propriety of gifts and is found in the expression “legislative or administrative interest” which is defined in ORS 244.020(10) and is used in ORS Chapter 244, primarily, when applying the provisions regarding gifts accepted by public officials.

While a “gift” is defined in ORS 244.020(7)(a), ORS 244.020(7)(b), identifies specific gifts that are exempt from gift restrictions if the offers are made or accepted in the specific circumstances and conditions described.

What does a public official need to know about a “Legislative or Administrative Interest” [ORS 244.020(10)]?

Beginning in 2010, the change to the definition of what is a legislative or administrative interest represents one of the most significant changes made in Oregon Government Ethics law during the last session of the Oregon Legislative Assembly.

The change is significant because knowing if the source of a gift offered to a public official has a legislative or administrative interest determines whether or not the gift offered is allowed or restricted. Before this change, a public official only had to know if a gift was offered from a source with a legislative or administrative interest in the public official’s governmental agency, but now the focus is on the vote or decision of each individual public official. The change places greater responsibility on the individual public official to decide if a gift offered is restricted by ORS Chapter 244. The definition of a legislative or administrative interest is provided in ORS 244.020(10) as follows:

“‘Legislative or administrative interest’ means an economic interest, distinct from that of the general public, in:

- (a) Any matter subject to the decision or vote of the public official acting in the public official’s capacity as a public official; or
- (b) Any matter that would be subject to the decision or vote of the candidate who, if elected, would be acting in the capacity of a public official.”

In the context of gifts offered to or accepted by a public official or candidate, the public official or candidate must determine if the source of the offered gift has a legislative or administrative interest in the decision or vote of the public official or candidate, if elected. In applying the phrase “legislative or administrative interest,” there are several factors to consider:

Source: The Commission adopted a rule [OAR 199-005-0030(2)] that identifies the source of a gift is the person or entity that makes the ultimate and final payment of the gift’s expense. OAR 199-005-0030 also places on the public official the burden of knowing the identity of the source and insuring that the aggregate value in ORS 244.025 is not exceeded.

Distinct from that of the general public: This phrase refers to an economic interest and in the context of gifts the economic interest of the source of a gift. The economic interest is whether a vote or decision by a public official would result in a financial gain or a financial detriment to the party who holds the interest. There are many votes or decisions made by public officials that have the same general economic impact on all members of the general public. Income or property tax rates would be examples.

There are other decisions or votes that have an economic impact on specific persons, businesses or groups that are not experienced by members of the general public alike. To illustrate, private contractors have an economic interest in a public body’s authority to award contracts and that economic interest is distinct from the economic interest held

by members of the general public in the contracting authority of a public body. Also, real estate developers would have an economic interest in a public body's authority to approve subdivision applications and that economic interest is distinct from the economic interest held by members of the general public in the approval authority of a public body.

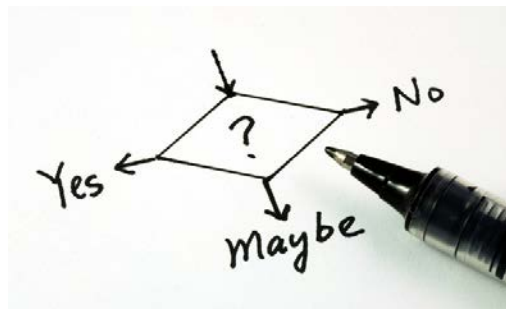
Vote: This has the common meaning of to vote as an elected member of a governing body of a public body or as a member of a committee, commission or board appointed by a governing body, Oregon Legislative Assembly or the Office of the Governor.

Decision: The Commission defines the term "decision" in OAR 199-005-0003(2). A public official makes a decision when the public official exercises the authority given to the public official to commit the public body to a particular course of action. Making a recommendation or giving advice in an advisory capacity does not constitute a decision.

The change to the definition of a legislative or administrative interest places the focus on the decision or vote of each individual public official. That means that any decision to accept or reject the offer of a gift must be made individually by each public official. It also means that there will be some public officials who may accept unlimited gifts from a source and other public officials within the same public body that would have restrictions on gifts from that same source because not all public officials in the same public body have similar responsibilities that would require any or similar decisions or votes.

If the source of the offer of a gift to a public official does not have a legislative or administrative interest in the decisions or votes of the public official, the public official can accept unlimited gifts from that source. [ORS 244.040(2)(f)] However, if the source of the offer of a gift to a public official has a legislative or administrative interest in the decisions or votes of the public official, the public official can only accept gifts from that source when the aggregate value of gifts from that source does not exceed \$50 in a calendar year [ORS 244.025].

While gifts from a source with a legislative or administrative interest in the decisions or votes of a public official are limited, there are some gifts that are exempt from the definition of what is a "gift." If the offer of a gift is exempt from the definition of a "gift," the offer may be accepted by a public official. The value of gifts that are allowed as exemptions does not have to be included when calculating the aggregate value of gifts received from that source in one calendar year.



There are gifts that are allowed because when offered under specific conditions and within certain circumstances the gifts are exempt from the definition of a “gift.” ORS 244.020(7)(b) provides a description of gifts that are allowed. If you are a public official accepting gifts or a source offering gifts it is important you become familiar with the requirements that may apply to you.

The following **GIFTS ARE ALLOWED** as exemptions to the definition of what is a “gift”:

- Campaign contributions as defined in ORS 260.005 [ORS 244.020(7)(b)(A)].
- Contributions to a legal expense trust fund established under ORS 244.209 [ORS 244.020(7)(b)(G)].
- Gifts from relatives or members of the household of public officials or candidates [ORS 244.020(7)(b)(B)].
- Anything of economic value received by a public official or candidate, their relatives or members of their household when:
 - The receiving is part of the usual and customary practice of the person’s business, employment, or volunteer position with any legal non-profit or for-profit entity [ORS 244.020(7)(b)(O)(i)].
 - The receiving bears no relationship to the person’s holding the official position or public office [ORS 244.020(7)(b)(O)(ii)].
- Unsolicited gifts with a resale value of less than \$25 and in the form of items similar to a token, plaque, trophy and desk or wall mementos [ORS 244.020(7)(b)(C) *and see resale value discussed in OAR199-005-0010*].
- Publications, subscriptions or other informational material related to the public official’s duties [ORS 244.020(7)(b)(D)].
- Waivers or discounts for registration fees or materials related to continuing education or to satisfy a professional licensing requirement for a public official or candidate [ORS 244.020(7)(b)(J)].
- Entertainment for a public official or candidate and their relatives or members of their households when the entertainment is incidental to the main purpose of the event [ORS 244.020(7)(b)(M) *and see “incidental” defined in OAR199-005-0025(1)*].
- Entertainment for a public official, a relative of the public official or a member of the public official’s household when the public official is acting in an official capacity and representing a governing agency for a ceremonial purpose [ORS 244.020(7)(b)(N) *and see “ceremonial” defined in OAR199-005-0025(2)*].

- Cost of admission or food and beverage consumed by the public official, a relative, household member, or staff member when accompanying the public official, who is representing government (state, local or special district), at a reception, meal or meeting held by an organization [ORS 244.020(7)(b)(E) *and the accompanying discussion in OAR199-005-0015*].
- Food or beverage consumed by a public official or candidate at a reception where the food and beverage is an incidental part of the reception and there was no admission charged [ORS 244.020(7)(b)(L) *and the accompanying discussion in OAR199-005-0025(1)*].
- When public officials travel together inside the state to an event bearing a relationship to the office held and the public official appears in an official capacity, a public official may accept the travel related expenses paid by the accompanying public official [ORS 244.020(7)(b)(K)].
- Payment of reasonable expenses if a public official is scheduled to speak, make a presentation, participate on a panel or represent a government agency at a convention, conference, fact-finding trip or other meeting. The paid expenses for this exception can only be accepted from another government agency, Native American Tribe, an organization to which a public body pays membership dues or not-for-profit organizations that are tax exempt under 501(c)(3) [ORS 244.020(7)(b)(F) *and see definition of terms for this exception in OAR 199-005-0020*].
- Payment of reasonable food, lodging or travel expenses for a public official, a relative of the public official or a member of the public official's household or staff may be accepted when the public official is representing the government agency or special district at one of the following:
 - Officially sanctioned trade promotion or fact-finding mission; [ORS 244.020(7)(b)(H)(i)]
 - Officially designated negotiation or economic development activity when receipt has been approved in advance [ORS 244.020(7)(b)(H)(ii). *Defined terms and an explanation of how and who may officially sanction or designate these events are addressed in OAR 199-005-0020(1)(b)(B).*]
- Payment of reasonable expenses paid to a public school employee for accompanying students on an educational trip [ORS 244.020(7)(b)(P)].
- Food and beverage when acting in an official capacity in the following circumstances:
 - In association with a financial transaction or business agreement between a government agency and another public body or a private entity, including such actions as a review, approval or execution of documents or closing a borrowing or investment transaction [ORS 244.020(7)(b)(I)(i)];
 - While engaged in due diligence research or presentations by the office of the

- State Treasurer related to an existing or proposed investment or borrowing [ORS 244.020(7)(b)(I)(ii)]; or
- o While engaged in a meeting of an advisory, governance or policy-making body of a corporation, partnership or other entity in which the office of the State Treasurer has invested moneys [ORS 244.020(7)(b)(I)(iii)].

The last gift I received was from _____. The source of this offer is / is not economically affected by my decisions or votes as a public official.

Gifts vs. Prohibited Use of Position

In understanding issues related to gifts, the operative definition of a “gift” is used in deciding how Oregon Government Ethics law would apply to a gift offered to or accepted by a public official or candidate. The application of the gift provisions regarding candidates is not included in this discussion. The following is a paraphrase of the definition taken from ORS 244.020(7)(a):

Gift: “Something of economic value” given to a public official, a relative of the public official or a member of the public official’s household and the recipient either makes no payment or makes payment at a discounted price. The opportunity for the gift is one that is **not available to members of the general public**, who are not public officials, **under the same terms and conditions as** those that apply to the gift offered to **the public official**, the relative or a member of the household.

The definition of a “gift” has remained much the same since Oregon Government Ethics law was enacted. Originally, the law prohibited the offer or acceptance of any gifts; it allowed some gifts and for others it imposed limits on the aggregate value on gifts that could be accepted. With the recent revisions, Oregon Government Ethics law does not prohibit gifts but does place conditions on when some gifts may be accepted and for other gifts there is a limit on the aggregate value that can be accepted.

The primary focus of ORS 244.040(1) is on the use or attempted use of the position held by the public official and not on whether a gift is accepted by a public official. However, accepting gifts that would not be available “but for” holding a position as a public official could represent a prohibited financial benefit.

The financial benefit prohibited by ORS 244.040(1) is one obtained by a public official through the use or attempted use of a position or office held. The prohibited benefit may be gained through the public official’s access to and use of the public body’s resources.

The financial benefit may take several forms. It may be the avoidance of a personal expense, money, extra income from private employment, creation of a new employment opportunity or the use of confidential information for financial gain.

Gifts, on the other hand, are not received by a public official, primarily, because of the public official’s use of a public body’s resources, but because gifts are offered by

sources other than the public official's government employer or the public body represented by the public official. Sources of gifts are private individuals, businesses or organizations; they are public bodies that are not the employer of or represented by the public official. Sources of gifts may also be employees of the same public body of the public official and they offer gifts acquired with their personal resources, not the public body's resources. If something of economic value is received from the employer of or the public body represented by a public official, that "something" is not a gift, it is a financial benefit either allowed or prohibited by ORS 244.040.

Conflict of Interest

Oregon Government Ethics law defines **actual conflict of interest** [ORS 244.020(1)] and **potential conflict of interest** [ORS 244.020(13)]. In brief, a public official is met with a conflict of interest when participating in official action which could result in a financial benefit or detriment to the public official, a relative of the public official or a business with which either are associated.

The difference between an actual conflict of interest and a potential conflict of interest is determined by the words "would" and "could." A public official is met with an **actual** conflict of interest when the public official participates in action that **would** affect the financial interest of the official, the official's relative or a business with which the official or a relative of the official is associated. A public official is met with a **potential** conflict of interest when the public official participates in action that **could** affect the financial interest of the official, a relative of that official or a business with which the official or the relative of that official is associated.

Questions to ask yourself:

I own a business that my public body does business with. Yes / No

I have a relative that owns a business that my public body does business with. Yes / No
A member of my household owns a business that my public body does business with. Yes / No

I have identified _____ a business or businesses with which I, my relatives and members of my household are associated.



What if I am met with a conflict of interest?

A public official must announce or disclose the nature of a conflict of interest. The way the disclosure is made depends on the position held. The following public officials must use the methods described below:

An elected public official, other than a member of the Legislative Assembly, or an appointed public official serving on a board or commission:

- (a) When met with a *potential* conflict of interest, announce publicly the nature of the potential conflict prior to taking any action thereon in the capacity of a public official; or
- (b) When met with an *actual* conflict of interest, announce publicly the nature of the actual conflict and refrain from participating* as a public official in any discussion or debate on the issue out of which the actual conflict arises or from voting on the issue.

Any other appointed official, including public officials in public bodies who are appointed, employed or volunteer:

Must provide a written notice to the person who appointed or employed them. The notice must describe the nature of the conflict of interest with which they are met [ORS 244,120(1)(c)].

My appointing authority is _____.

***NOTE:** If a public official is met with an actual conflict of interest and the public official's vote is necessary to meet the minimum number of votes required for official action, the public official may vote.

The public official must make the required announcement and refrain from any discussion, but may participate in the vote required for official action by the governing body. [ORS 244.120(2)(b)(B)]

These circumstances do not often occur. This provision does not apply in situations where there are insufficient votes because of a member's absence when the governing body is convened. Rather, it applies in circumstances when all members of the governing body are present and the numbers of members who must refrain due to actual conflicts of interest make it impossible for the governing body to take official action.

If in doubt, contact the Oregon Government Ethics Commission to seek guidance prior to engaging in any action, decision or recommendation in your official capacity.

The following circumstances may exempt a public official from the requirement to make a public announcement or give a written notice describing the nature of a conflict of interest:

- If the conflict of interest arises from a membership or interest held in a particular business, industry, occupation or other class and that membership is a prerequisite for holding the public official position [ORS 244.020(13)(a)].
- If the financial impact of the official action would impact the public official, relative or business of the public official *to the same degree* (meaning equally or proportionately) as other members of an identifiable group or "class." The Commission has the authority to determine the minimum size of a "class" [ORS 244.020(13)(b) and ORS 244.290(3)(a)].
- If the conflict of interest arises from an unpaid position as officer or membership in a nonprofit corporation that is tax-exempt under 501(c)(3) of the Internal Revenue Code [ORS 244.020(13)(c)].

How is the announcement of the nature of a conflict of interest recorded?

The public body that is served by the public official will record the disclosure of the nature of the conflict of interest in the official records of the public body [ORS 244.130(1)].

Is a public official required to make an announcement of the nature of a conflict of interest each time the issue giving rise to the conflict of interest is discussed or acted upon?

The announcement needs to be made on each occasion the conflict of interest is met. For example, an elected member of the city council would have to make the public announcement one time during a meeting of the city council. If the matter giving rise to the conflict of interest is raised at another meeting, the disclosure must be made again at that meeting. An employee in a city planning department would have to give a separate written notice on each occasion they participate in official action on a matter that gives rise to a conflict of interest [ORS 244.120(3)].

If a public official failed to announce the nature of a conflict of interest and participated in official action, is the official action voided?

No. Any official action that is taken may not be voided by any court solely by reason of the failure of the public official to disclose an actual or potential conflict of interest [ORS 244.130(2)].

**My positions as a _____ requires me to _____
announce the nature of conflicts of interest on _____ occasion.**

NOTES:

Employment

Does Oregon Government Ethics law prohibit a public official from owning a private business or working for a private employer while continuing employment with or holding a position with a public body?

No. Many public officials hold or perform services as volunteers, meaning there is little or no compensation and they have a private source of income to maintain a household. There are also public officials who do receive compensation, but for personal reasons find it necessary to seek additional sources of income. Some obtain employment with a private business and others establish a private business of their own.

ORS 244.040(3) prohibits a public official from, directly or indirectly, soliciting or accepting the promise of future employment based on the understanding that the offer is influenced by the public official's vote, official action or judgment. Any employer who may directly or indirectly offer employment under these conditions may also violate this provision.

In general, public officials may obtain employment with a private employer or engage in private income producing activity of their own. They must not use the position held as a public official to create the opportunity for additional personal income. The public official must also insure that there is a clear distinction between the use of personal resources and time for personal income producing activity and the use of the public body's time and resources. The Commission has created guidelines for public officials to follow in order to avoid violating Oregon Government Ethics law when engaged in private employment or a personally owned business.

GUIDELINES FOR OUTSIDE EMPLOYMENT OF PUBLIC OFFICIALS

1. Public officials are not to engage in private business interests or other employment activities on their governmental agency's time.
2. A governmental agency's supplies, facilities, equipment, employees, records or any other public resources are not to be used to engage in private business interests.
3. The position as a public official is not to be used to take official action that could have a financial impact on a private business with which you, a relative or member of your household are associated.

4. Confidential information gained as a public official is not to be used to obtain a financial benefit for the public official, a relative or member of the public official's household or a business with which any are associated.
5. When participating in an official capacity and met with a potential or actual conflict of interest related to a business, associated with the public official, relative or household member, the public official must disclose the nature of the conflict of interest using one of the following methods:
 - o Employees of governmental agencies must give written notice to their appointing authority.
 - o Elected or appointed public officials must publicly disclose once during each meeting convened by the governing body they serve.

What are the restrictions on employment after I resign, retire or leave my public official position?

- ORS 244.040(1) prohibits public officials from using their official positions or offices to create a new employment opportunity; however, most former public officials may enter the private work force with few restrictions.

Resources

All members of the Commission staff are cross-trained in the laws and regulations under the Commission's jurisdictions. Questions regarding the Commission's laws, regulations and procedures are a welcome daily occurrence. Timely and accurate answers are a primary objective of the staff. Guidance and information is provided either informally or in written formal opinions. The following are available:

- Telephone inquiries are answered during the call or as soon as possible.
- E-mail inquiries are answered with return e-mail or telephone call as soon as possible.
- Letter inquiries are answered by letter as soon as possible.
- Written opinions on specific circumstances can also be requested.

If a person requests, receives or relies on any of the advice or opinions authorized by ORS 244.280 through ORS 244.284, does that person have what is referred to as "safe harbor" protection from becoming a respondent to a complaint filed with or initiated by the Commission?

There is no "safe harbor," if the term is understood to mean that any person who relies on any advice or opinions offered by the Commission or the staff is protected from being a respondent to a complaint, found violating laws within the jurisdiction of the Commission or receiving a penalty for a violation.

There is, however, specific and conditional protection for any person who has requested and relied upon advice or an opinion from the Commission or its staff.

It is important to remember that the provisions of law apply to the individual actions of the person or public official. There are events or occasions when more than one public official may be present and participating in their official capacities. Depending on the circumstances and conditions for an event or transaction the law may have a different application for one public official than for other public officials.

Sanctions for Violations

- Civil Penalty [ORS 244.350]
- Forfeiture [ORS 244.306]
- Letters of Reprimand, Correction or Education [ORS 244.350(5)]

Resources and Information

- Telephone 503-378-5105
- Fax 503-373-1456
- e-mail: OGEC.mail@state.or.us
- Website: <http://www.oregon.gov/OGEC>
- Training
 - In person
 - iLinc Webinars – Presented live using the internet
 - iLearn – Self-paced online eLearning



Executive Session provisions of Public Meetings law ORS 192.660

EXECUTIVE SESSION CHECKLIST

Prior to the meeting:

- Provide notice of an executive session in the same manner you give notice of a public meeting. **The notice must cite the specific statutory provision(s) authorizing the executive session.**

See attached document below for the permissible grounds for going into executive session.

At the meeting:

- Announce that you are going into executive session pursuant to ORS 192.660 and **cite the specific reason(s) and statute(s)** that authorize the executive session for **each subject** to be discussed. –Reminder, you may hold a public session even if an executive session is authorized.
- If you intend on coming out of executive session to take final action, announce when the open session will begin again.
- Specify if any individuals other than the news media may remain.
- Tell the media what may not be disclosed from the executive session. **If you fail to do this, the media may report everything!** If you discuss matters other than what you announce you are going to discuss in the executive session, the media may report those additional matters. *A member of the news media must be excluded from executive session held to discuss litigation with legal counsel if he or she is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party.
- Come back into open session to take final action.** If you did not specify at the time you went into executive session when you would return to open session, and the executive session has been very short, you may open the door and announce that you are back in open session. If you unexpectedly come back into open session after previously announcing you would not be doing so, you must use reasonable measures to give actual notice to interested persons that you are back in open session. This may require postponing final action until another meeting.
- Keep minutes or a sound, video, or digital recording of executive sessions.

Statutory Provisions for Executive Session

To consider the employment of an officer, employee, staff member or agent if: (i) the job has been publicly advertised, (ii) regularized procedures for hiring have been adopted, and (iii) in relation to employment of a public officer, there has been an opportunity for public comment. For hiring a chief executive officer, the standards, criteria and policy to be used must be adopted in an open meeting in which the public has an opportunity to comment. This reason for executive session may not be used to fill vacancies in an elective office or on any public committee, commission or other advisory group, or to consider general employment policies	ORS 192.660(2)(a) ORS 192.660(7)
To consider dismissal or discipline of, or to hear charges or complaints against an officer, employee, staff member or agent, if the individual does not request an open meeting.	ORS 192.660(2)(b)
To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063, 441.085 and 441.990(3).	ORS 192.660(2)(c)
To conduct deliberations with persons you have designated to carry on labor negotiations.	ORS 192.660(2)(d)
To conduct deliberations with persons you have designated to negotiate real property transactions.	ORS 192.660(2)(e)
To consider information or records that are exempt from disclosure by law, including written advice from your attorney.	ORS 192.660(2)(f)
To consider preliminary negotiations regarding trade or commerce in which you are in competition with other states or nations.	ORS 192.660(2)(g)
To consult with your attorney regarding your legal rights and duties in regard to current litigation or litigation that is more likely than not to be filed.	ORS 192.660(2)(h)
To review and evaluate the performance of an officer, employee or staff member if the person does not request an open hearing. This reason for executive session may not be used to do a general evaluation of an agency goal, objective or operation or any directive to personnel concerning those subjects.	ORS 192.660(2)(i) ORS 192.660 (8)
To carry on negotiations under ORS Chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.	ORS 192.660(2)(j)
For a health professional regulatory board to consider information obtained as part of an investigation of licensee or applicant conduct.	ORS 192.660(2)(k)
For the State Landscape Architect Board or its advisory committee to consider information obtained as part of an investigation of registrant or applicant conduct.	ORS 192.660(2)(l)
To discuss information about review or approval of programs relating to the security of any of the following: (A) a nuclear-powered thermal power plant or nuclear installation; (B) transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation; (C) generation, storage or conveyance of (i) electricity (ii) gas in liquefied or gaseous form (iii) hazardous substances as defined in ORS 453.005(7)(a), (b), and (d), (iv) petroleum products, (v) sewage, or (vi) water; (D) telecommunications systems, including cellular, wireless or radio systems; or (E) data transmissions by whatever means provided.	ORS 192.660(2)(m)