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Humanidad. Comunidad. Justicia.

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Dear Members of the Oregon Public Defense Commission,

I am the Director of the Public Defender of Marion County (PDMC). My intention in providing public comment is to address the indirect comments posed by this commission in previous meetings and workgroups, regarding the PDMC's "Mac Utilization" rate.

As Director Kampfe highlights, the biggest factor impacting this utilization rate is PDMC's loss of experienced attorneys. This attrition was largely fueled by two situations: 1) Forced Appointments and 2) the loss of experienced PDMC attorneys and investigators to OPDC.

In 2023, the Marion County Bench was placed in an incredibly difficult situation and chose to appoint PDMC attorneys on cases above objections, under Oregon Rules of Professional Conduct 5.1 and 1.16. Also in 2023, PDMC began losing experienced attorneys and our most senior investigators to OPDC's new trial division, located directly above our office. The last PDMC attorney hired by OPDC occurred in October of 2024.

Factors Impacting Attrition in Marion County

First Wave of Attrition:

- **The Court Forced Appointments of 2023:** In the summer of 2023, PDMC experienced the first major wave of attorney attrition. During that time the court was practicing forced appointments of clients to PDMC attorneys above objections. Many PDMC attorneys were pushed into overwhelming practice conditions that forced many public defenders to leave PDMC.
- Fortunately, by working closely with Presiding Judge Prall, most Marion County judges, and judicial staff, the practice of forced appointments stopped. In 2024, through strong collaboration with the Marion County Judges, PDMC provides the court with weekly attorney capacity reports and individual attorney declarations, when reaching a determination about their ethical capacity

Second Wave of Attrition:

- **The Opening of the State Trial Division:** In 2023/2024, OPDC opened their State Trial Division directly above our office. OPDC attorneys targeted most of PDMC's employees, sometimes calling them on their PDMC office line, through efforts to recruit PDMC employees to work for OPDC.
- Prior to ending the practice of recruiting within PDMC, OPDC was successfully able to recruit many PDMC attorneys and senior investigators to join the State Trial Division, for lower workloads, better retirement benefits, and much higher pay.

- **New Hourly Increases:** Also, with the constant extension of OPDC's Hourly THIP program, PDMC lost two more attorneys to the THIP program for lower workloads and much higher pay.

The table below illustrates PDMC's utilization rates for departed attorneys, including their qualification levels, and lists their reasons for their departures. This table does not include FTE for supervision or specialty court assignment.

ATTORNEYS NO LONGER WITH PDMC (DEPARTED) MAC UTILIZATION RATES

Departed Attorney Qualifications	Reasons for Leaving PDMC	Prorated MAC for Departed	Reported MAC for Departed	Utilization Rate % for Departed
Major Felony Trainer	Left Public Defense	0.031	0.135	
Murder Qualified	Left Public Defense	0.862	0.233	
Major Felony	OPDC	0.17	0.005	
Murder Supervisor	OPDC	0.055	0.079	
Major Felony	OPDC	0.589	0.283	
Minor Felony	Left Public Defense	1.133	0.428	
Minor Felony	Hourly-OPDC	0.931	0.308	
Major Felony	Washington	0.515	0.159	
Major Felony	Washington	0.515	0.244	
Misdemeanor	Left Public Defense	0.252	0.021	
Misdemeanor	Hourly OPDC	0.629	0.295	
Minor Felony	Left Public Defense	0.252	0.045	
Misdemeanor	Left Public Defense	0.991	0.054	
Major Felony	OPDC	0.263	0.12	
Minor Felony	OPDC	1.197	0.717	
Departed MAC Totals		9.149	3.288	0.359383539
Departed MAC Utilization Rate				36%

PDMC's Active Attorney Utilization Rates Under the Contract

Currently, OPDC's dashboard shows PDMC's utilization rate at around 60-62%. The dashboard is limited in the information it provides. The dashboard does not provide separate data for departed attorneys no longer working under the contract from the current and active attorneys working under the contract. Knowing the impact attorney attrition has on the ability to take on new clients, it is helpful to separate past attorneys from active attorneys when examining a provider's current utilization rate. Looking at PDMC's active attorney-prorated MAC numbers and current

utilization rate, we see a much different picture than the one offered through OPDC's dashboard.

The table below illustrates PDMC's current utilization rates for all active attorneys under the contract, including their qualification levels, and lists their public defense experience prior to joining PDMC. This table does not include attorney FTE for supervision, specialty court FTE, or SPPE.

ATTORNEYS CURRENT WITH PDMC (ACTIVE) MAC UTILIZATION RATES

Active and Current Attorneys	PDMC Attorney Background	Active Prorated MAC	Active Reported MAC	Active Attorney Utilization Rates
Murder Qualified	Washington County Consortia	0.727	0.78	
M11 & Jlaw	PDMC	0.748	0.679	
Misdemeanor	New PD	1.243	0.479	
M11 & Jlaw	PDMC	1.279	2.643	
M11 & Jlaw	New Mexico	0.586	0.529	
Murder Co & Jlaw	Nebraska	0.504	0.377	
Misdemeanor	California	0.485	0.271	
Murder Co & Jlaw	California	1.251	0.767	
Misdemeanor	New PD	0.586	0.411	
Misdemeanor	New PD	0.11	0.075	
Minor Felony to Major Felony	PDMC	1.506	0.789	
Murder Co to Murder Qualified	Oklahoma	0.809	0.42	
Misdemeanor	New PD	0.252	0.076	
M11 & Jlaw	OJD	0.504	0.429	
Minor Felony to M11	PDMC	1.506	0.538	
Misdemeanor	New PD	0.244	0.103	
Minor Felony to Major Felony	PDMC	1.207	0.803	
Executive Director	PDMC	0.115	0.549	
Misdemeanor	Washington Co.	0.249	0.331	
Misdemeanor to Minor Felony	PDMC	1.506	0.738	
Active MAC Totals		15.417	11.787	0.764545631
Active Prorated MAC Utilization Rate				76%

Factors Impacting PDMC's Active Attorney Utilization Rates

PDMC Attorneys New to Oregon Public Defenders:

- After the attrition waves of 2023 & 2024, PDMC recruited lawyers 1) from out of state and 2) brought new public defenders into the workforce.
- Currently, the majority of PDMC's Active MAC is still within their first year and a half of practice in Oregon.
- With the massive cuts to public defense training and supervision funds through the July 2023 contracts, PDMC adjusted quickly to meet the ever growing need to support new public defenders with ongoing training, close supervision, and the practical experience necessary to grow competent and adequate public defenders.
- PDMC's shifted 4 of our most experienced attorneys' caseloads in order to dedicate half of their work time to the training and supervising new public defenders. Under our contract with OPDC, those attorneys are listed as .5 cases carrying attorneys (MAC) or less.

Court Appointed Cases with Lower Weighted MAC Values:

- Since it is difficult for our court to find THIP attorneys willing to accept lower-level felony or misdemeanors cases, the court relies on PDMC to handle lower-level misdemeanor and minor felony cases, even when our most qualified attorneys are able and available to accept new M11, Murder, and JLaw cases. For example, even when a higher-level qualified attorney picks up 5 new minor felony clients, they only receive a total MAC credit of 9 (3% of MAC). However, when higher-level qualified attorneys are permitted to pick up 2 new Murder or JLaw cases, they receive a total MAC credit of 100 (33.33% of MAC).
- Our Murder and Jessica's Law qualified attorneys are not being fully utilized under the current provider systems. The financial incentives created through the THIP program effectively moves already contracted for cases away from highly qualified PDMC attorneys. Those attorneys are being used to cover lower-level cases, and this results in unnecessary costs for the state.

Client Specific Factors:

- Approximately 30-35% of PDMC's clients do not speak English. In 2023, OPDC stopped funding for an in-house interpreter at PDMC. OPDC also stopped funding two PDMC's Spanish speaking support workers in the new contract.
- Many contract interpreter services refuse to work with OPDC due to increasingly 1) slower payment times and 2) below-market interpreter rates within OPDC's PAE Guidelines (higher hourly rates for medical services).
- The reduction in funding for interpretation and ongoing difficulties with contract interpretation services, prevent attorney-client communications and needlessly delays case dispositions.
- Typically, with reliable interpretation resources, an attorney who does not speak the same language as their client will need four times more in time resources to provide adequate representation.

I hope this update about attrition and its impact on utilization rates is helpful. Thank you for your service and continued care for our community. Please let me know how PDMC may continue to support your ongoing commitment to provide every person accused, with ethical and constitutional public defense services.

Respectfully,



Shannon Wilson,
Director of PDMC