

## **To the Members of the Oregon Public Defense Commission:**

We submit this written public comment in response to the proposed Habeas Performance Standards, which are scheduled as a Potential Action Item for approval at the Commission's February 18, 2026, meeting.

Briefly, after reviewing the proposed standards, several current habeas practitioners submitted written feedback to the habeas workgroup prior to the February 6, 2026, deadline. For the Commission's consideration, those feedback letters have been included as an attachment. In addition to written concerns, the attorneys requested a meeting with the habeas workgroup. As of the date of this public comment, no meeting has been scheduled.<sup>1</sup> We respectfully urge the Commission to refrain from voting on the proposed standards at this time so a meeting can take place between the habeas workgroup and those attorneys who have expressed their concerns.<sup>2</sup>

Several attorneys were not aware of workgroup meetings or had limited opportunity to participate meaningfully in the drafting process. Given that these standards will govern daily practice statewide, we strongly encourage the Commission to convene additional meetings dedicated specifically to habeas practitioners and allow sufficient time for collaborative development. The collective experience of attorneys actively litigating these cases is essential to crafting workable and effective standards.

Some of the main concerns can be summarized as follows:

### **Oregon Rules of Professional Conduct:**

Many of the proposed standards duplicate, expand upon, or conflict with the Oregon Rules of Professional Conduct.

The ORPCs already establish comprehensive requirements for:

- Competence (ORPC 1.1)
- Diligence (ORPC 1.3)
- Communication (ORPC 1.4)
- Professional judgment and ethical advocacy

### **Structural Concerns:**

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<sup>1</sup> We acknowledge the habeas standards presented today contain minor changes from previous versions, however, it is our continued position these changes are not sufficient to gain our full support.

<sup>2</sup> The fact that a substantial group of practitioners responsible for most of the habeas work felt compelled to collectively voice concerns about the proposed standards highlights the importance of carefully considering those perspectives before finalizing them.

Although the introduction states that commentary is not intended to establish minimum standards, the formatting and language create ambiguity and may reasonably be interpreted as binding requirements or presumptions that must be overcome.

This structure risks:

- Confusion about what is mandatory versus advisory
- Increased attorney-client conflict if clients interpret commentary as enforceable requirements
- Exposure to unfounded bar complaints or malpractice claims
- Reduced clarity in compliance expectations

### **Inflexible Requirements and Loss of Professional Judgment:**

The draft standards frequently prescribe specific steps, timelines, and litigation strategies without sufficient flexibility for case-by-case discretion. Habeas corpus litigation varies widely depending on the factual record, institutional setting, client capacity, and legal theory. Habeas attorneys must retain discretion to determine what investigation, discovery, expert consultation, testimony, and motion practice are reasonably necessary under the circumstances of each case.<sup>3</sup>

While best practices are valuable, rigid mandates may:

- Delay cases unnecessarily
- Increase costs without corresponding benefit
- Constrain strategic flexibility
- Interfere with ethical obligations
- Create unrealistic expectations

### **In-Person Appearance and Client Meeting Requirements:**

The proposed commentary includes language suggesting that attorneys must appear personally at critical stages and meet with clients in person during the pendency of the case.

Mandatory in-person appearance and visitation requirements would significantly increase costs, reduce attorney capacity, and potentially impair timely representation. In-person contact may be appropriate in certain cases, but it should remain discretionary and based on professional judgment.

### **Scope of Appointment and Post-Disposition Obligations:**

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<sup>3</sup> One example of this concern is the mandatory use of investigators. The Investigation standard requires the retention of an investigator in conditions of confinement cases (Standard 3.1, Commentary 1). While investigators are an important resource, they are not necessary in every case, and the standards should reflect that—just as they do for authority to confine and extradition cases. Requiring investigators in all habeas matters would significantly increase costs for OPDC, even when their involvement provides no meaningful benefit.

Several standards appear to extend representation beyond the scope of habeas appointment, including:

- Obligations related to appellate practice
- Filing post-trial motions absent appellate consultation
- Advising on unrelated legal matters following release

**Recommendations:**

1. Delay adoption of the current draft standards.
2. Convene additional habeas-focused practitioner meetings.
3. Align performance standards directly with the RPCs.
4. Articulate concise minimum standards rather than prescriptive litigation directives.
5. Separate binding standards from optional practice guidance.
6. Preserve attorney discretion in discovery, investigation, expert use, hearing strategy, and client communication methods.

Thank you,



Brandon M. Kammer  
Kammer Law Firm, LLC



Katharine Edwards  
Law Office of Katharine Edwards, LLC



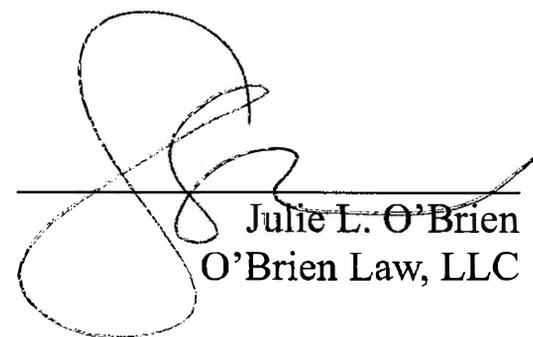
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KATHARINE EDWARDS  
ABBY GREENFIELD  
*Trial Attorneys*

February 6, 2026

Dear OPDC Commission Workgroup:

I am writing to express my feedback in response to OPDC's draft Performance Standards for Habeas Corpus and to urge the committee to delay adoption of the Performance Standards. I have been an attorney licensed to practice in the State of Oregon since 2017. Since 2020, I have been contracted with OPDC to provide court-appointed legal representation to incarcerated adults on habeas corpus matters. In that time, I have handled more than 120 Oregon state habeas corpus cases in counties all across the state.

While I genuinely appreciate the agency's and the workgroup's efforts to create performance standards and draft guidance for contracted habeas attorneys, I have serious concerns about the contents of the proposed standards put forth. I have met with the other attorneys contracted on habeas cases, and it seems we share many of the same concerns and have much of the same suggested edits. In short, the proposed standards impose requirements upon attorneys which will likely restrict our discretion and limit our professional and legal judgment in ways that will harm both clients and attorneys when put into practice. Many of the specific standards place more onerous requirements on attorneys than the Oregon Rules of Professional Conduct (RPCs) require, and more concerningly, many of them directly conflict with the RPCs. I echo the suggestions submitted by Brandon Kammer.

Much of my feedback centers on the commentary rather than the bold-faced Standards, as I believe this formatting is part of the potential problem. Despite the disclaimer that the commentary is not intended to be part of the actual standards, it nonetheless creates the expectation that the commentary should be carried out as a way to meet the respective standards. Furthermore, as a public document, I am concerned that clients will review the commentary and assume that the suggestions contained therein are requirements, significantly increasing the likelihood of attorney-client conflicts, unfounded Bar complaints, and frivolous malpractice claims. While I enthusiastically support the inclusion of best practices and helpful suggestions, I believe this content would be better served as an entirely separate guidance manual. To that end, I would happily participate in drafting a manual of helpful hints and suggestions in addition to the existing commentary, and I would likewise participate in creating some type of CLE for OPDC to offer in connection with such a guidance manual.

In general, I suggest that the Performance Standards simply align directly with the Rules of Professional Conduct and place an obligation on attorneys to provide competent representation consistent with our RPC and ethical obligations. At a minimum, I strongly implore the agency to delay implementation of these standards until more practitioners can weigh in.

With regard to my specific areas of concern, I have highlighted the following sections:

**Standard 1.1 – Comment 3:** This commentary is vague and has the potential to create expectations by the client which conflict with the attorney’s ethical obligations to both the client and the tribunal. While the client’s desired outcome should be pursued, the attorney nonetheless has an obligation to put forth only legally viable claims and make legally sound decisions to effectuate the client’s desired outcome.

**Standard 2.1 – Comment 2:** Attorneys do not have a duty to take any action on behalf of prospective clients. Directing attorneys to assist prospective habeas corpus clients prior to appointment is ethically problematic and also places an unfair burden on attorneys to perform unpaid work.

**Standard 2.1 – Comment 5:** There should not be a list directing attorneys on specific information to seek in discovery. Attorneys must use discretion and professional judgment to seek evidence on a case-by-case basis. Directing attorneys to seek specific information in all cases will delay and complicate cases and create unrealistic client expectations. This could be edited to merely indicate that this is a non-exhaustive list of the types of information which may be helpful to request, if relevant to the facts of the case.

**Standard 2.2 – Standard text:** Sometimes it is simply not possible to conduct a phone interview with the client within seven days of appointment. Legal calls are scheduled through the prisons and only available on specific dates and during specific timeframes. At times, facility scheduling availability simply does not align with attorney scheduling availability. While phone contact within seven days of appointment should be a goal and best practice, it should absolutely not be written as a firm deadline.

**Standard 2.2 – Comments 2 and 8:** While visiting clients in person is nice when possible, it is usually not possible and furthermore, it is usually unnecessary with only very few exceptions. Oregon prisons are located all over the state and attorneys with full caseloads are simply unlikely to have capacity to travel to visit each client in person, regardless of the client’s preference. This should not be put forth as any kind of expectation, even impliedly. This could be edited to note that some clients might require certain accommodations or have special needs related to their representation which would make it beneficial to make in-person visits when possible. This comment could further note that OPDC does have travel reimbursement available should an attorney determine that type of visit to be necessary. Additionally, letters are one valid form of client contact and should not be discounted, particularly where a lawyer determines that written contact may be the most efficient or reasonable under the circumstances.

**Standard 3.1 – Standard text and Comment 8:** It is entirely unnecessary to include an admonishment against destroying evidence or using illegal means to obtain evidence. Prohibitions against this type of conduct are already more than covered in the RPCs.

**Standard 3.2:** While this is a perfectly reasonable suggestion, engagement of experts is heavily dependent on actual availability of an appropriate expert and moreover, entirely

dependent upon OPDC approval of experts. This is more complicated than it sounds and the standard must include the caveat that even despite an attorney's best efforts, it is possible that there could be a delay or difficulty in retaining experts.

**Standard 4.1 – Comment 2:** Requiring attorneys to seek specific types of evidence in discovery is much too prescriptive. The provided list includes multiple types of documents that would be completely outside the scope of most types of cases (e.g. All documents related to all complaints during entire period of incarceration in ODOC; PREA records in cases unrelated to sexual assaults, etc.). As stated previously, a list of *possible* requests could be helpful depending on the facts of the case, but a list directing attorneys to make specific requests at minimum is only going to create problems.

**Standard 6.2 – Comment 1:** Local and statewide detention practices, time served calculations, work release, alternative incarceration programs, etc., are outside the scope of conditions of confinement cases. If an attorney does not handle cases related to sentencing calculations and release programs, then this obligation to be versed in this area should not be imposed upon them.

**Standard 7.1 – Comment 8:** This is the preference of some attorneys but not all. An attorney should freely use their own judgment, discretion, and experience to determine whether it is appropriate or advantageous to insist upon live testimony contrary to a judge's expressed preference. This comment should be edited to simply state that a lawyer should consider the implications of not presenting live direct testimony and to file motions to allow live testimony as the lawyer deems appropriate under the circumstances.

**Standard 7.3 – Comment 4:** As in the feedback for the previous comment, whether to insist upon live direct testimony should be up to the attorney's discretion and not directed as a compulsory action in every case.

**Standard 7.3 – Comment 5:** While a client should participate in the determination of whether or not to testify, attorneys have the obligation to seek the client's desired outcome. If the client's testimony would not provide helpful support for their case, or worse, if the client's testimony is likely to harm their case, then the attorney should not be required to leave the ultimate decision up to the client.

**Standard 8.1:** This language is vague and unclear.

**Standard 8.2 – Comment 3:** This language is vague and unclear. Release generally moots a habeas corpus case, and if a case is dismissed for mootness, then the attorney's appointment ends. This standard creates an implied obligation that exceeds the scope of appointment and potentially violates the attorney's ethical obligations by impliedly requiring attorneys to advise clients on other types of cases and relief for which they are not appointed or retained.

**Standard 9.2:** This requires attorneys to continue representation outside the scope of appointment and potentially forces attorneys to engage in practice outside the scope of

expertise. Habeas appointments do not include appellate work, and many attorneys are not versed in appellate work. This standard should direct attorneys to know the deadline to file a notice of appeal and require attorneys to advise clients to contact appropriate appellate counsel, with the suggestion to contact appellate counsel on their behalf. Attorneys should not be required to file a notice of appeal or engage in appellate work beyond referring to appellate counsel.

**Standard 9.2 – Comment 2:** Attorneys should not be directed to file post-trial motions absent instruction from appellate counsel to do so.

Again, I would like to stress that I sincerely appreciate the efforts of all involved in drafting the proposed Performance Standards and I thoroughly support the creation of guidelines to promote consistency among practitioners and support attorneys in practice. But in order to implement the most effective, practical standards and avoid unintended future problems, I urge the commission to consider my colleagues' and my feedback, and to, at a minimum, delay adoption of the proposed standards.

Thank you for your time and consideration.

Kind Regards,



Katharine Edwards

**Brandon Kammer**  
Licensed in Oregon, Washington,  
and California (inactive)

February 5, 2026

To Whom it May Concern:

My name is Brandon Kammer. I have been a licensed attorney since 2012 and have practiced in Oregon since 2015. I currently serve as a contracted attorney provider for the Oregon Public Defense Commission (OPDC), and since 2020 I have represented more than 155 adults in custody (AICs) in habeas corpus cases, with a particular focus on medical-related claims. I submit this feedback in response to OPDC's request for comments on the draft performance standards for habeas corpus attorneys.

Before preparing this response, several practicing habeas corpus attorneys met to review the draft standards, discuss shared concerns, and evaluate the potential impact these standards may have on both current and future habeas practitioners. We strongly encourage the work group to seek input from additional attorneys who regularly handle habeas cases before presenting these standards for approval and finalization.

If additional input is not sought, I offer the following general observations, concerns, and recommendations regarding the draft habeas corpus performance standards.

### **General Comments**

After reviewing the draft performance standards, it is my opinion that these standards impose unnecessary restrictions on habeas attorneys and limit an attorney's professional judgment on how best to represent their clients. The draft standards also appear to hold habeas attorneys to more stringent standards than those applied to other civil practitioners.

In my view, the standards would be more effective, more consistent, and more sustainable if they were aligned with the Oregon Rules of Professional Conduct (RPCs), which already provide a comprehensive and well-established minimum framework for attorney performance.

Many of the proposed standards—specifically Standards 1.1, 1.2, 2.1, 3.1, 3.2, 4.1, 4.2, 5.1, 5.2, 5.3, 6.1, 6.2, 7.1–7.5, 8.1, 8.2, 9.1, and 9.2—fall squarely within the scope of RPC 1.1 (Competence), which requires “the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Standard 1.3 aligns with RPC 1.3 (Diligence), and Standard 2.2 aligns with RPC 1.4 (Communication). Standard 2.3 resembles RPC 1.14.

Given this overlap, I recommend tailoring the habeas standards to the RPCs rather than creating a separate, more restrictive set of standards.

**Recommendations for Proposed Standards:**

The proposed standards address several key procedural aspects of habeas corpus litigation. Rather than prescribing specific ways of how each aspect should be conducted, which in my opinion limits an attorney's professional judgment on how best to litigate their case, I would provide what minimum standard is required by the attorney for each procedural aspect of the case. This approach would preserve attorney discretion while still ensuring quality and accountability. Below is an example of how the minimum standards could be articulated:

**Case Appointment** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Discovery** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation necessary to conduct discovery necessary for the representation.

**Investigation** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation necessary to investigate the client's claims.

**Client Communication** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

**Pleadings** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation to prepare and file the pleadings necessary for the representation.

**Motions** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation to prepare and file any motions necessary for the representation.

**Evidentiary Hearing** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation necessary to present the client's case at an evidentiary hearing.

**Case Resolution** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation necessary to dispose of the client's case.

**Compliance Monitoring** – A lawyer appointed to represent a Plaintiff in a habeas corpus case shall have the legal knowledge and skill and act with the thoroughness and preparation necessary to monitor compliance agreements between the client and Defendant.

Once you have the minimum standards established, you could then offer optional practice suggestions in the commentary of each distinct aspect. This structure would ensure that the standards do not restrict an attorney’s professional judgment in litigating a habeas case, while still offering practical guidance where appropriate.

### **Section-by-Section Feedback**

#### **Standard 1.1**

The draft standard goes beyond the RPCs and PCR 6.1 by requiring “zealous representation at all stages” and mandating advocacy for the client’s “expressed interests” without qualification. This language may conflict with RPC 1.16, 2.1, and 3.1, which recognize the attorney’s independent professional judgment and ethical obligations.

#### **Standard 1.2**

Commentary referencing “less experienced” versus “more experienced” attorneys is vague and risks creating subjective or inconsistent expectations. Competence is the appropriate standard.

#### **Standard 1.3**

Commentary requiring personal appearance at all “critical stages” is unclear because “critical stages” is not defined. This creates uncertainty and exceeds what RPC 1.3 requires.

#### **Standard 2.1**

This standard reiterates RPC 1.1.

#### **Standard 2.2**

The requirement to “demonstrate appropriate commitment to the client’s expressed interests” is vague and unnecessary given RPC 1.4. Several commentary provisions prescribe specific timelines and tasks that should remain within the attorney’s professional judgment.

#### **Recommendations:**

- Align the standard with RPC 1.4.
- Modify language to:
  - “A lawyer should conduct a client interview as soon as reasonably practicable after appointment.”
  - “A lawyer should maintain regular contact with the client.”
- Remove mandatory timelines and “must” language in commentary.

### **Standard 3.1**

The standard is based off RPC 1.1.

Commentary requiring immediate retention of an investigator in confinement cases restricts attorney judgment and is not appropriate in all cases.

#### **Recommendations:**

- Modify Commentary 1 so that retaining an investigator is discretionary.
- Change Commentary 5 to state that witness interviews *may* be conducted by an investigator.

### **Standard 3.2**

Commentary suggesting experts will be used in “most” confinement cases is arbitrary and not case-specific. Written communications to experts may be discoverable, so I would advise against creating written expectations and sending them to experts.

#### **Recommendations:**

- Modify Commentary 1 to state that experts should be used *when needed*.
- Remove or revise Commentary 3.

### **Standard 4.1**

Commentary prescribing specific discovery requests does not account for case-specific needs and may conflict with RPC 3.4.

#### **Recommendations:**

- Allow attorneys to determine appropriate discovery based on professional judgment.
- Revise Commentary 5 to avoid conflict with RPC 3.4.
- Remove Commentary 8 as it is arbitrary and unclear.

### **Standard 4.2**

This standard reiterates RPC 1.1.

### **Standards 5.1–5.3**

All relate to RPC 1.1.

### **Standard 6.1**

This standard reiterates RPC 1.1. Commentary requiring “zealous advocacy” is arbitrary and inconsistent with RPCs.

**Standard 6.2**

This standard reiterates RPC 1.1.

**Standards 7.1–7.5**

These standards address aspects of the evidentiary hearing. ORS 34.695 refers to the final hearing as an “evidentiary hearing,” not a “trial,” and the standards should reflect that. The commentary is overly prescriptive and restricts attorney judgment.

**Recommendations:**

- Replace “trial” with “hearing” throughout.
- Align the standards with RPC 1.1 and remove overly specific requirements which limit an attorney’s professional judgment.

**Standards 8.1–9.2**

These standards reiterate RPC 1.1.

Moving forward, I am happy to discuss these comments or assist in any way that may help further refine and improve the draft standards. Thank you for your time and attention to this matter.

Best regards,



Brandon M. Kammer



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February 6, 2026

To Whom it May Concern:

My name is Drake Aehegma. I have been licensed and practicing law in the State of Oregon since 2013. I currently serve as a contracted habeas corpus attorney for the Oregon Public Defense Commission ("OPDC"). I submit this letter in response to OPDC's request for comments on the draft standards for habeas corpus attorneys.

I have reviewed the submission of fellow habeas corpus attorneys Brandon Kammer, and Patrick Block, and Julie L. O'Brien. I agree with their comments. I share their concerns as well as a hope for a chance to collaborate on the proposed draft standards.

I strongly believe that the proposed standards should not be adopted or implemented in their current form and would happily make myself available to voice comments regarding the practical effect of adopting these rules as currently drafted.

Thank you for your consideration of my comments and concerns.

Sincerely,



Drake Aehegma

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February 6, 2026

To Whom it May Concern:

My name is Patrick Block. I have been licensed and practicing law in the State of Oregon since 1992. I currently serve as a contracted habeas corpus attorney for the Oregon Public Defense Commission (“OPDC”). Since 2020, I have represented more than 150 adults in custody (“AIC”) in habeas corpus cases throughout the State of Oregon. I submit this letter in response to OPDC’s request for comments on the draft performance standards for habeas corpus attorneys.

I have reviewed the submission of fellow habeas corpus attorney, Brandon Kammer, and agree with all of his comments. I strongly believe that the proposed performance standards should not be adopted or implemented prior to a scheduled meeting with the current contracted habeas corpus attorneys to voice their comments regarding the practical effect of adopting these rules.

In addition to Mr. Kammer’s well reasoned comments, I want to address my concern regarding one particular aspect of the proposed performance standards. The requirements set forth in the commentary of the proposed performance standards requiring attorneys to appear in person in Court and personally meet with clients is unworkable, would result in enormous expense to the State and the inability of contracted habeas corpus attorneys to handle the number of cases currently assigned to those attorneys.

The commentary to the proposed standards of performance include: “A lawyer must appear personally for all critical stages of the case.” Standard 1.3, commentary 2. “If a client requests in person contact, counsel should make reasonable efforts to accommodate that request. Counsel should meet in person as needed to prepare the client for testimony/trial.” Standard 2.2, commentary 2. “If feasible, at least once during the pendency of the case, the lawyer should meet the client in person. Lawyers should meet with their client in person as needed throughout the case.” Standard 2.2, commentary 8a. ii and iii.

These commentary statements, if adopted, would make it extremely difficult, if not impossible, for habeas corpus attorneys to adequately represent their clients in an efficient and timely manner.

Contracted habeas corpus attorneys run a state wide practice representing AICs from the Oregon coast to Malheur County in Eastern Oregon. I live in Multnomah County. However, a

large number of my AIC clients are in Umatilla County and Malheur County which are the two counties with the largest prisons in Oregon. At all trials in habeas corpus cases, the AICs appear by video so that they do not have to be transported from the prisons to the courtroom for trial. Also, in almost every trial, the witnesses, which are usually experts, and the attorneys appear by video. Appearing remotely is an effective system and saves the state a tremendous amount of money in avoiding the cost of travel for attorneys and experts. Due to the number of cases assigned to contracted habeas corpus attorneys, it would be virtually impossible for the attorneys and experts to appear personally all over the state and arrange personal visits to the prisons.

Accordingly, these commentary rules requiring personal appearances, should not be adopted.

Thank you for your consideration of my comments and concerns.

Very truly yours,

*/s/ Patrick L. Block*

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KATHARINE EDWARDS  
ABBY GREENFIELD  
*Trial Attorneys*

February 6, 2026

To Whom it May Concern:

My name is Abby Greenfield. I have been a licensed attorney in Oregon since October 2024 and have been an Associate at the Law Office of Katharine Edwards since that time. Attorney Edwards has served as a contracted and hourly habeas attorney provider for the Oregon Public Defense Commission (OPDC) since 2020. I have had the privilege of practicing under her direct guidance and supervision, representing incarcerated individuals in habeas corpus proceedings, with a particular focus on medical claims. This letter is submitted in response to OPDC's request for comments on the draft habeas corpus attorney performance standards.

Prior to writing this letter, I met with several fellow practicing habeas corpus attorneys to collectively discuss our concerns regarding the performance standards as currently drafted. We exchanged ideas about how OPDC could implement standards that more accurately reflect the realities of habeas practice, remain consistent with the Oregon Rules of Professional Conduct (ORPC), and preserve our ability to provide individualized, competent, and zealous representation to our clients.

I echo the recommendations and feedback submitted by Mr. Kammer and offer additional comments to highlight the impact these draft standards could have on early-career attorneys or practitioners new to habeas corpus litigation.

Before OPDC finalizes these standards, I respectfully request that the habeas corpus attorneys who regularly handle these cases be given a meaningful opportunity to contribute their insight and experience. Absent such input, the standards as currently written place habeas attorneys at risk of being unable to perform their duties effectively, may subject them to requirements that conflict with the ORPC, and limits their ability to exercise independent professional judgement without being unduly constrained.

### HABEAS PROVIDER WORKGROUP INPUT

The introduction states that the proposed standards were developed by "OPDC staff with input from a *habeas* provider workgroup." To my knowledge, the first notice of a meeting addressing habeas performance standards appeared in OPDC's general weekly update email on January 16, 2026, referencing a meeting scheduled for January 21, 2026. On January 23, 2026, OPDC circulated another weekly update email requesting feedback on draft habeas corpus performance standards by February 6, 2026. Subsequent weekly update emails dated January 30, 2026, and February 2, 2026, did not reference additional workgroups or requests for feedback. I

only became aware of the February 5, 2026, meeting while writing this response because I independently checked the OPDC website's meeting agenda and schedule page. Additionally, the emails and workgroup meetings were dedicated to various topics leaving limited time to address habeas corpus. I believe more time and opportunities are needed to thoughtfully implement the standards that will apply to all of us.

While I appreciate OPDC's efforts to notify habeas attorneys via email of opportunities to submit feedback or attend meetings, additional notice and more targeted outreach would have been beneficial. I know that I, along with other habeas practitioners, would welcome the opportunity to offer further recommendations.

### STANDARDS VS. COMMENTARY

The introduction to the draft habeas attorney performance standards explains that the commentary is intended to supplement the standards and acknowledges that, in certain cases, some standards and commentary may be "inapplicable or even mutually exclusive". As currently drafted, however, it is unclear how the standards and commentary are intended to be applied in practice.

For example, the commentary sections use the word "must" twelve times.<sup>1</sup> Although the introduction states that the commentary "is not meant to establish minimum performance standards," the mandatory and inflexible language used throughout the commentary conflicts with that stated purpose and creates uncertainty regarding its intended role and enforceability.

### IMPLICATIONS FOR ATTORNEYS NEW TO HABEAS PRACTICE

These standards may be especially challenging for attorneys emerging in the practice of habeas law. Rather than allowing developing practitioners to individually evaluate claims, exercise ethical judgment, and bring only meritorious issues before the court, the standards risk pressuring attorneys to advance claims inconsistent with their professional judgment and ethical obligations.

From my perspective—as an attorney who has been practicing law for less than two years—the mandatory language in the commentary creates unnecessary confusion. The standards impose precise obligations often without explicit allowance for professional judgment in balancing competing priorities. Attorneys may feel pressure to comply literally with the standards even in circumstances where strict adherence could conflict with ethical duties or the client's expressed objectives. Being bound to a set of standards, with only a brief acknowledgment in the introduction that they may not always be appropriate, is insufficient to

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<sup>1</sup> Standard 1.1, commentary 1; Standard 1.2, commentary 6; Standard 1.3, commentary 2; Standard 2.1, commentary 1; Standard 2.2, commentary 5; Standard 2.3, commentary 2; Standard 3.1; commentary 8; Standard 6.1, commentary 3-4; Standard 9.2, commentary 3.

protect habeas attorneys. Expecting all of us to follow a single prescribed approach fails to respect our individualized professional judgment, particularly given that every case presents unique circumstances.

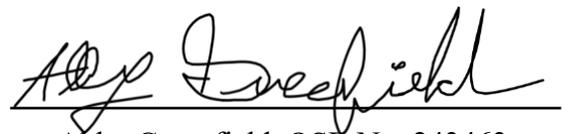
Many standards imply rigid adherence to a specific set of procedures. While I understand that the intent is to ensure due diligence, they may not account for the realities of practice. Habeas attorneys may feel constrained, believing that every step must be executed exactly as prescribed, even when creative or adaptive strategies would better serve the client. This rigidity can stifle independent judgment and delay case progress especially when it is difficult to determine which obligations are essential versus situational, increasing the risk of inadvertent non-compliance

Guidance for habeas practitioners such as summaries of pertinent case law, best practices, and practical considerations for navigating complex procedural and substantive issues would be a valuable resource, particularly for attorneys new to habeas practice. By contrast, these draft standards do not function as an applicable “baseline for practice”. Instead, they impose prescriptive and at times unclear requirements in both scope and application that limit attorneys’ ability to practice effectively, and risk creating confusion rather than clarity. As written, the standards blur the line between helpful reference materials and mandatory directives, setting a dangerous and confusing precedent.

## CONCLUSION

I recognize, as the draft habeas performance standards introduction itself does, that applying a one-size-fits-all set of baseline standards is complicated and challenging. However, many of the standards are already established by the ORPCs and create unnecessary confusion. Rather than embedding detailed commentary directives into the standards, I believe that any commentary or guidance should be maintained in a separate internal resource that could be referenced by contract or hourly habeas practitioners. Crucially, the unique perspectives of the habeas attorneys who are frequently on the ground handling these cases day to day must be taken into account when developing and implementing these standards.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Abby Greenfield", written over a horizontal line.

Abby Greenfield, OSB No. 243463  
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# Wayne A. Lamb – Law

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Friday, February 6, 2026

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To Whom it May Concern:

My name is Wayne Lamb, and I currently contract with OPDC representing litigants in Habeas Corpus proceedings.

I have been licensed and practicing law in the State of Oregon since 2021. I also have contracted over the past couple of years with OPDC in criminal defense. In total, I have represented approximately 300 cases in state court through OPDC.

I submit this letter in response to OPDC's request for comments on the draft performance standards for habeas corpus attorneys. I have reviewed the submission of fellow habeas corpus attorney, Brandon Kammer, and agree with all of his comments.

I strongly believe that the proposed performance standards should not be adopted or implemented prior to a scheduled meeting with the current contracted habeas corpus attorneys to voice their comments regarding the practical effect of adopting these rules. Further, it seems odd to me that these rule and contract amendments are so frequent and sweeping, and the attorneys who are impacted do not receive much notice to be able to participate in the rule drafting (maybe that's point).

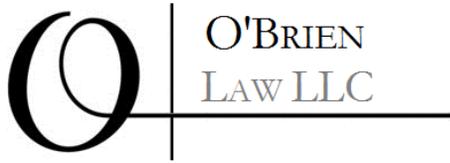
I am one of many attorneys who is actively working to remove OPDC from his caseload entirely. My criminal defense mentor made the change last year, and he had the same type of caseload I had (5-20 cases per month depending on case type). Two other colleagues I know did the same. OPDC's unstable contract agreement and sweeping changes are hugely responsible.

As a result, how many cases are sitting on the unrepresented stack as a result in the face of an "unrepresented crisis." Dare I say that OPDC is a major cause of this crisis? I digress, but the point is that OPDC should work with it's contractors to actually combat the larger problem: an inability to find representation for all indigent defendants.

Best,

/s/ Wayne A. Lamb

Wayne A. Lamb



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February 5, 2026

**Via E-Mail Only**

Oregon Public Defense Commission Standards Development  
resource.counsel@opdc.state.or.us

**RE: Proposed Habeas Corpus Performance Standards Feedback**

To Whom it May Concern:

My name is Julie O'Brien and I am currently contracted with Oregon Public Defense Commission ("OPDC") for 2025-2027 to accept habeas corpus case assignments. I have been litigating habeas corpus cases since October, 2022, with a particular focus on medical conditions of confinement. I have enjoyed my working relationship with OPDC and appreciate the time and energy of the Habeas Standards Workgroup in developing both standards and commentary. I also appreciate the opportunity to provide feedback on the newly proposed Habeas Performance Standards with Commentary ("Standards"). I offer my feedback below.

**I. Standards v. Commentary**

Pursuant to the Standards' introduction paragraphs, habeas practice standards (bolded) and subsequent commentary (non-bold) appear within the document. I believe that maintaining performance standards as a separate document from any suggested commentary would clarify the purpose of each topic and preclude confusion as to attorney expectations. The introductory paragraphs do state that commentary is not intended as performance standards. However, the numerical listing of proposed practices that an attorney *should* perform, after each specific performance standard creates the appearance of presumptive litigation practices that would supplant attorney judgment. Although commentary can be helpful as potential practice suggestions, varying factual patterns and case development calling for attorney judgment is constant. As specified in the Standards' introduction paragraphs, this makes commentary challenging and line items of commentary can actually be adverse to client interests in particular cases. Removing the commentary from the Standards would prevent confusion as to attorney expectations. It would be ideal if the commentary could lay the foundation for a separate practice guide document.

## II. Standards

Absent the commentary, some practice standards create undue burden. Some are unnecessary due to the backdrop of the Oregon Rules of Professional Conduct (“RPC”). For example, Standard 4.1 Discovery requires that a lawyer be familiar with “all applicable statutes, rules, and case law governing discovery.” To require familiarity with all case law specific to discovery is beyond civil practice competence. An attorney should have legal research skills to perform research as needed for discovery issues that arise, but need not and cannot know all cases. Standard 5.2 precludes attorneys from missing filing deadlines and requires that they contemplate pre-hearing motions. The RPC (Rule 1.1 Competence and Rule 1.3 Diligence) currently requires all counsel to abide by judicial deadlines and zealously advocate for clients.

I have had the pleasure of speaking with other attorneys who also contract with OPDC to accept habeas corpus appointments. We are fortunate to have an excellent bar of engaged and enthusiastic civil practitioners who are eager to zealously represent their clients and contemplate standards development. I believe that other practicing habeas attorneys would also likely be happy to work cooperatively towards standards development that would maintain essential professional judgment while continuing to provide excellent client representation. Brandon Kammer has shared with me his February 5, 2025 correspondence feedback, in which he recommends proposed standards aligned with the RPCs. I echo his thoughts.

I would be happy to participate in additional development of the standards or development and appreciate this current opportunity for comment.

Best Regards,

O'BRIEN LAW, LLC



Julie L. O'Brien  
jobrien@obrienlaw-llc.com

Chair Harris

Vice-Chair Mandiberg

Members of the Commission

I am Olcott Thompson, the Executive Director of the Marion County Association of Defenders (MCAD). I have been involved with MCAD's contracts with the state back to the Indigent Defense Services Division days.

As you may know by now Marion County no longer has any people charged with crime on the unrepresented list. As detailed by Judge Prall last September Marion County was the first county to have an unrepresented list. Now it is first of those counties with no unrepresented persons.

To recap, Marion County started having problems with not enough defense attorney when the Public Defender of Marion County (PDMC) decided it could no longer accept appointments to Ballot Measure 11 cases. When MCAD ran out of capacity shortly after PDMC stopped taking any appointments, things started spiraling out of control. One important side note is OPDS continued paying PDMC as if they were taking their full complement of cases and refused to pay MCAD for taking the cases PDMC should have taken. That funding issue has continued to this date.

Even with the addition of an OPDS Trial Division office the number of unrepresented cases was around 800 a year ago. Beginning last March with PDMC funded for essentially the same number of attorneys as MCAD, PDMC was forced by the court and OPDC to cover two days of arraignments each week even as it continued to refuse to accept all appointments allowing MCAD to no longer have unexpected appointments and to agree to accept all appointments on the three days each week it covered arraignments. MCAD followed through and has since March 1, 2025, accepted all appointments on the days it has covered arraignments. Still no decrease in the compensation paid to PDMC or any increase for MCAD.

Over the next 7 months with MCAD taking all the appointments the court requested, the OPDC Trial Division taking cases, and a number of hourly attorneys taking cases, the number of unrepresented defendants was just over 200 by October 1. Beginning March 1, the court also expanded the cases it would appoint attorneys. Everyone who was in custody would receive a lawyer even if they were going to be released. Prior to March 1, people charged with misdemeanors and many c felonies would not get an appointed attorney if they were going to be released. The court was not appointing either MCAD or PDMC to most misdemeanors and some c felonies as it had for months. Those cases, generally the oldest first, had the OPDC Trial Division or hourly attorneys appointed.

Beginning October 1, with PDMC not signing a contract, MCAD covered arraignments every day and took every appointment the court asked us to take. Yes, many misdemeanors and some c felonies were not appointed to MCAD attorneys. Even so, the number of unrepresented people remained about 200 until this year.

In mid-December, OPDC and PDMC signed a contract and PDMC resumed taking appointments. Even though PDMC was way behind the number of appointments they needed to take it refused take take appointments on all the remaining available days in December and agreed to take a few days in January. A review of the cases reported by PDMC for December strongly suggests their attorneys took at most 2/3 of the cases they should have taken for half a month.

At this point I do not know how PDMC fared in January but a review of its reports for October, November, and December, 2025, suggest it has substantially overreported its appointments.

In late January the number of unrepresented defendants was under 150. OPDC Trial Division agreed to take approximately 1/3 of the remaining appointments and, at the direction of the court, PDMC over a period of 2 to 3 weeks took the remainder. At the same time the court at the renewed request of MCAD agreed to appoint an attorney to everyone who asked for one.

Through all of this MCAD has continued to accept appointments on every day it has handled arraignments. Throughout the first four months of this contract period we have been at close to 100% of capacity. We entered February, the fifth month of this contract period at about 84% of capacity for the five months which include February. It is primarily through the efforts of MCAD that Marion County decreased the number of unrepresented defendants, the county has no more unrepresented people, and the county has stabilized. MCAD continues to be paid less per attorney than PDMC, we have no supervision or training money, and we were not paid for two and one-half months while taking virtually no appointments.

A minor felony 75% attorney just retired from MCAD and we are replacing him with a murder qualified attorney who wants a 100% caseload. We have two attorneys, one major felony qualified and the other misdemeanor qualified, ready to join and take 100% caseloads. We have a third attorney, lesser felony qualified, who is ready to take 25% caseload. They have been approved by MCAD to join and we just await funding from OPDC. We have two candidates who want to join MCAD and have a 100% caseload. One is misdemeanor qualified and the other a person who will be taking the February bar exam.

Meanwhile, OPDC continues to pour money into PDMC with its lawyers being “full” with less than 100% caseloads. It is time for OPDC to stop throwing money at PDMC in the hope of a positive outcome, something it and OPDS have been doing for years, while receiving lesser results and at a higher cost. Instead it is time to start providing MCAD with funding for attorneys who will do the work at a lesser cost and at higher quality. It is time to cut funding for positions at PDMC and shift those positions to MCAD. We are ready with 2.5 full time equivalent attorneys as soon as funding is approved.

Olcott Thompson

Executive Director

MCAD