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Olcott Thompson

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Marion County Association of Defenders

3. Email *

mcaddir@gmail.com

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503 551 4549

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Marion County, Qualification Standards, Requested feedback

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MARION COUNTY ASSOCIATION OF DEFENDERS

MCAD

187 HIGH STREET, STE 300

SALEM, OR 97301

OLCOTT THOMPSON— EXECUTIVE
DIRECTOR

LISA RICHARDSON — OFFICE MANAGER
CELL: 971-345-7612

EMAIL: MCADLAW@GMAIL.COM
WWW.MCADLAW.COM

TEL. (503) 990-8168
FAX (503) 339-1967

June 10, 2025

Chair Jennifer Nash
Vice Chair Susan Mandiberg
Members of the Commission

I am Olcott Thompson, the Executive Director of the Marion County Association of Defenders (MCAD), the consortium in Marion County. This is a report on what is happening in Marion County, why the number of unrepresented persons has decreased, as well as a comment on a number of other things including the “topics” for the June commission meeting and things brought up at the May 29, 2025, commission workgroup meeting.

MARION COUNTY

A.

Beginning in March the Marion County Circuit Court and the Marion County Association of Defenders (MCAD) agreed that if MCAD provided lawyers who would accept all the appointments three days a week the court would no longer randomly appoint MCAD lawyers to represent clients who appeared the other two days of the week, days the Public Defender of Marion County was to cover. If MCAD lawyers did not receive their “full complement” of appointments on the days they were accepting appointments they would, if possible, take cases from the unrepresented list.

The court also expanded the clients who would receive appointed lawyers. If someone was in custody even if they were going to be released they would receive a lawyer. Also all people charged with DUI or domestic violence would receive an MCAD lawyer on the three days a week MCAD lawyers were accepting appointments. Prior to this only people who were going to remain in custody on these types of cases would receive appointed lawyers. All others were added to the unrepresented list.

This is, in large part, why the number of unrepresented people in Marion County has fallen. Because MCAD lawyers no longer have to worry about random appointments they are more willing to be in court and accept appointments at least one day each month. They have far more control over when they will receive appointments and can, therefore, better plan the scheduling of new clients and their future court appearances. They can add more clients after their appointment day by taking people off the unrepresented list. The attorney's life is far less hectic.

The court by being able to expand the categories of people who will receive an appointed lawyer is adding fewer people to the unrepresented list while MCAD and the OPDS trial division are removing more people from the list than are being added resulting in the decreasing numbers.

One caveat, however. One Marion County judge has decided to randomly appoint an MCAD lawyer to some cases and is refusing to allow that lawyer to withdraw. There is a hearing on the matters on Monday and if the judge sticks with his position Marion County's numbers will likely start to go back up because this means the bench will be back to its random appointments of MCAD members.

B.

The OPDS contract requires MCAD to provide a number of hours representing people MCAD attorneys are appointed to represent. While virtually everybody, including OPDC, measures time by counting cases, MCAD keeps track of the number of hours each attorney works for each client. For the first year of this biennium MCAD was to provide 35,831 hours of work. For this second and current year of the biennium we are to provide 36,325 hours. MCAD attorneys provided 37,841 hours in the first year and have provided over 31,400 hours through the first nine months of this second year. At the current rate of about 3000 hours per month MCAD will meet its two year commitment of hours by the end of May.

As an illustration of why the OPDC case numbers do not work in Marion County I offer the following:

300 misdemeanors (the OPDC MAC which has come to mean the number of misdemeanors a person is to accept appointment to in a year) for a full time public defense lawyer is 25 misdemeanors a month. Using the OPDC adopted 1578 hours for a full time attorney means 5.26 hours per misdemeanor.

As a reminder, it takes 4 to 5 hours to get through a plea of guilty or not guilty at the court annex. That means there is just one hour left per misdemeanor (using 4.26 hours for the range of four to five hours) or 25 hours for the misdemeanors that were not resolved at the court annex.

It takes over 30 minutes for a round trip from downtown where the courthouse and most offices are to the annex. That is chargeable time to a client because it is time spent for the client. There is also, usually, a significant wait time at the court annex and throughout the Marion County courts.

If 15 of the 25 cases can be resolved at the annex an attorney is doing great. The issue here is generally the Marion County District Attorney's Office has significant staffing issues and, therefore, misdemeanor attorneys in particular have issues properly evaluating cases and little decision making authority. The decision making authority issue exists throughout the District Attorney's Office except at the very top.

The 10 (or realistically more) cases that were not resolved at the annex now go downtown to individual judges at the courthouse for an initial status conference which require an hour of time for each status conference chewing up another 10 hours leaving only 15 hours. If half of the ten can be resolved fairly quickly only 5 more hours will be used to enter pleas, and sentencings.

At this point there are but 10 hours left for 5 trials. Each of those possible trials will have an hour long pretrial conference. All that is left after the pretrial conferences is 5 hours for trial preparation and trial or possible resolution on the eve of trial.

5.26 hours per hour for 300 misdemeanors does not come close to working and helps explain why MCAD attorneys are not at 100% MAC.

QUALIFICATION STANDARDS

I have reviewed the latest proposed qualification standards and with the requirement that all present lawyers requalify in six months there will likely be attorneys who will drop down in qualifications. Six months is far too short a time period for someone to complete all their now additional qualifications. At least in Marion County it is hard for an attorney to have an actual trial every six months due to problems in the District Attorney's Office.

Further, it appears the standards were not written with requalifying in mind. For example, I am murder qualified and have been for over 20 years but will not be able to requalify because I have never been co-counsel for a murder or Jessica's Law case. I have tried multiple murder and Jessica's Law cases to a jury but always as lead counsel.

Increasing the requirements for each level will also mean it will take longer for attorneys to move to a higher level of qualification exacerbating the current shortage of more qualified attorneys. I am not saying the changes in the standards are not warranted just that the effect will be a longer period of time before an attorney to move to a higher level.

There appears to be an extra “and” after the highlighted portion in standard 3.a.1 for Criminal Attorney 1.

Finally, is OPDC realistically going to be able to timely process the number of recertification requests it will receive each April (the CLE certificate date is April 30) when one-third of the attorneys covered by the standards will need to recertify much less all the recertification requests with will be submitted six months from the adoption of the new standards.

THE TOPICS FOR THE JUNE COMMISSION MEETING

1. Suggestions for OPDC action:

Be honest - the present standards were adopted to show the OPDS had the ability to cover the projected case load. They were not rooted in reality and one of their major props was pulled yesterday when the Washington Supreme Court adopted effective January 1, 2026 (just over six months from now), a standard of 120 misdemeanors and 47 felonies.

Stop presenting MAC as the number of cases an attorney should be accepting appointment to. OPDC needs to be consistent that the MAC number is a maximum number and most attorneys should not reach that number.

Pay for in county travel time and mileage. It takes time to travel from an office to court, time that cannot be spent doing something else for a client. It is part of the cost of representing clients. In Marion County I know of several attorneys who were not under contract with OPDC who took hourly appointments and won't take anymore because OPDC won't pay for their significant travel time to and from the court annex.

Cut the time between billing and payment to about 20 days and trust and be kind to the people who are doing the work, not punitive. Investigators and interpreters who will work within this system in particular have little income except from OPDC. They (and everyone) needs to be treated far better and paid sooner. Until those issues get corrected and stay corrected people will be hesitant to work in this system.

Back in the “old days” when there was far less money, the Indigent Defense Services Division and OPDS did what they could to get as much money to the people doing the work as fast as they could. Now it feels like OPDC is trying to pay as little as possible as late as possible, keeping as much money as it can for itself, because who cares about the people doing the work.

Recognize that consortia are different from PD Offices and treat them differently. Consortia can and do training and supervision and should be paid for those functions as

well. Make such pay to an organization contingent on providing details of what they will do doing.

Stop overpromising and underachieving. Be realistic in what OPDC can do and when it can do it. We are all still waiting on the contract extensions that were to be sent to us on May 30. Stop having everything done at the last minute which just makes sure mistakes are not corrected before they happen meaning more effort must be used to fix the mistakes.

Ultimately, and maybe the bottom line, resume talking directly to providers and work out solutions to issues with their input. Right now the agency has moved to deciding on a solution by itself and then (at the last minute) imposing it on providers. Talk to the providers first, have a genuine dialogue. Most providers want things to work. Brainstorming solutions with multiple inputs will always result in a better solution than just one or two people imposing a solution on others.

2. Local barriers:

I do not know what barriers OPDC knows of in Marion County. As discussed above with the explanation of why 300 misdemeanors is not a viable number there is significant wait time and there are serious problems within the District Attorney's Office mostly related to relatively constant turnover and lack of experience. There is virtually nothing OPDC can do about the DA Office problems and having thought at length about wait times there is little that can be done about the significant wait times without completely changing judicial behavior which is highly unlikely.

There is absolutely nothing that can be done about the travel time to the annex and the jail which is next door to the annex.

These comments are, of course, rooted in the experience of Marion County practitioners. An outside view would be useful.

Interpreters remain an issue. They are few and far between, even Spanish ones. Many were driven out during COVID when OPDS paid less than the courts and delayed payment for so long.

3. Reducing misdemeanors to violations

The reality of this idea as a cost saving matter depends on when the misdemeanor is reduced to a violation. If it is upon sentencing there is no saving in attorney time because the attorney will be there through sentencing. If it is at arraignment then no attorney would need to be appointed saving attorney time for other cases.

I am not at all sure Marion County judges would do this either at sentencing or at arraignment. Some might but most would probably not. There would certainly be massive push back from the DA's Office.

OTHER ITEMS

It was suggested at the May 29 workgroup meeting that OPDC try to learn why people are leaving public defense. I have always spoken to attorneys who are leaving to find out why and if there is something MCAD could do better or should stop doing.

First, from the past year attorneys were completely fed up with the random unannounced appointments by the court. Attorneys had no input as to when they would be appointed or to what clients/cases and no control over when the court decided they would need to be in court next. While that problem has been solved I am not confident it won't return very soon.

Second, attorneys left because they had sufficient retained work that they no longer needed public defense money to keep their office afloat.

Fairly soon, over the next 5 years, expect a number of MCAD attorneys will actually retire so their leaving public defense will be because they are leaving the profession.

It was also asked if attorneys would rather receive more money with the same number of cases or the same money with fewer cases. They would rather receive more money so they can hire more staff which will allow them to spend more time "being an attorney." The additional money is not actually for the attorney but to allow them to have more staff.



Olcott Thompson