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July 22, 2024

Chair, Jennifer Nash
Vice-Chair, Susan Mandiberg
Commission Members

Dear Commission Members:

Throughout Oregon's Unrepresented Crisis, I've continually asked myself how I can help.

I have also sought answers for how Oregon will replace individual hourly-panel attorneys when they leave or retire. Where will new attorneys come from if fewer mentorship resources exist to attract, train, and retain them?

As a defense community, we have begun having success in transitioning to a more monitored, workload focus. We can, and should, take a breath to celebrate this progress.

I propose we build on that momentum and fully utilize our active resources to achieve stabilization of our workforce. I propose the Commission adopt recommendations for a "mentor center model" to systematically address public defense attorney capacity in Oregon. It is time to systemize attorney capacity by focusing on how to attract, train, and retain attorneys.

Speaking from deep personal experience, I have successfully mentored and trained ten attorneys over the past nine years, guiding them into impactful roles within Oregon's public defense system. In addition, other seasoned attorneys at our firm have consistently mentored and trained numerous colleagues, contributing significant value to the State of Oregon and our public defense community over several decades.

My firm is experiencing attorneys leaving because of the uncertainty in public defense. They have left for higher and more predictable income and stable career opportunities. In conjunction with their exit, my firm understandably has limited incentive to train replacements because we cannot assure potential new colleagues what the future holds, or whether there is the potential to build a successful career in public defense. All of this has taken place at a time when Oregon needs to double the amount of active attorneys in public defense.

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Nonetheless, my firm has the current capacity to enhance our mentoring, and to help increase Oregon's public defense community. That is how I can help. My firm is at a critical crossroads; either our capacity will be spun up and utilized for attracting attorneys to public defense in Oregon, or our capacity for public defense work will disappear as its resources are directed elsewhere.

For your reflection, attached is an outline of what I would recommend as a to increase, enhance, and maintain Oregon's public defense community.

Cordially,

A handwritten signature in blue ink, appearing to read "Nathan Law", with a long, sweeping underline.

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**MENTOR CENTER MODEL
TO
ATTRACT, TRAIN, AND RETAIN OREGON PUBLIC DEFENDERS.**

The following is how an entity-agnostic mentor center model will produce a sustainable stream of attorneys for public defense:

1) Attract

- a) **Attracting attorneys interested in transitioning from other practice areas** (e.g., civil, in-house counsel, insurance defense). OPDC and the Oregon State Bar's efforts to create a temporary "civil bar program" has not ameliorated the public defense crisis. Instead, the State should focus resources on mentor centers that can fully and effectively transition a willing civil attorney toward a sustained criminal law practice. For example, we have brought experienced civil attorneys into the fold of public defense. These attorneys have expressed they do not want to practice in a government or non-profit organization, are exasperated by the "billable hour" but still want to utilize their broad experience from their legal careers. These attorneys have worked with our firm from 2-6 years, and some continue to work in public defense currently in other capacities.
- b) **Reputation.** OPDC can officially designate organizations as "mentor centers" for the purpose of this plan. One of the reasons I originally joined this firm years ago was its reputation in the community. I believe lawyers generally want to be part of a respected and supportive team. New lawyers are likely to be more attracted to firms with positive reputations recognized by OPDC as mentor centers.
- c) **Out-of-State recruitment.** Mentor centers are necessary to provide instant stability for attorneys transitioning to Oregon from other states. We have demonstrated some success in this area, hiring individuals from Alabama, Alaska, and New Mexico.
- d) **Utilizing the State Bar's SPPE program.** OPDC should provide funding and guidance for organizations willing to take on these new bar candidates. For example, we are an approved employer for this program through the Oregon State Bar. Our first applicant will begin with us in August, but **at this time we don't know how he can fit into a public defense funding framework.**



2) Train

- a) **Daily training.** The Commission and OPDC should give unwavering support to organizations that invest in the public defense “pipeline.” Assuming most mentors will also have their own caseloads, experienced mentor attorneys need the time and space to train and supervise well. Supervising attorneys need to be part of a team that can back them up and cover their cases when they need to spend extended periods of time training new attorneys, and encourage them to engage in the daily contacts necessary between mentors and mentees.
- b) **Incentivize experienced attorneys to train well.** OPDC should provide funding and guidance for ongoing supervision. Supervising attorneys have a natural incentive to train their new attorneys well – their reputation depends on it. The reputation of the organization depends on it. Supervising attorneys must be completely invested in the success of their mentees.¹
- c) **The SPPE is useless to public defense without mentor centers to implement it.** OPDC should encourage mentor center organizations to spend the necessary time training license-seekers through the SPPE. Currently, the potential benefits of the SPPE program will be hamstrung by the current legislative model which cuts out private mentor centers from public defense work. Non-barred attorneys need an approved employer to train and pay them, before they can participate in the SPPE program.

3) Retain

- a) **Compensation.** This topic is beyond the scope of this letter – but is crucial for the legislature to solve.
- b) **Caseloads.** As previously stated, with a move toward workload models, we have seen some overall success toward this and should keep the momentum going.
- c) **Consistency.** One of the historic benefits of working in public defense is going away for all attorneys that may choose to work in an individual capacity. Transition from consistent income, to hourly income, will result in immediate losses of attorneys trying to stay in public defense and move from a firm to individual

¹ Page 115 of the 6th Amendment Center’s report, *The Right to Counsel in Oregon* (2019) states: “***The private law firms have the greatest vested interest in ensuring their associate attorneys are qualified, trained, and supervised.***”

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contracts. The current billing inadequacies of OPDC are well-known to attorneys in public defense and they will not likely take on the risk of having six months (or more) of transition time until they build up enough billable cases (I know this because myself and another former attorney in my firm have tried this, and that was our experience). OPDC Director, Jessica Kampfe, acknowledged, at the June 13th, 2024 Commission meeting, that there is “some risk” for individuals choosing to work under an hourly contract which they may not be willing to take on, and that we may lose some attorneys because of they do not want to take on that risk. This was the first statement I had heard from OPDC acknowledging this reason attorneys may not wish to practice as solo attorneys outside of an organizational structure. **I can tell you – the resulting attorney attrition is already occurring.**

- d) **Environment.** Employees seek support, camaraderie, clarity, safety, and career advancement, among many other things. Attorneys are often more likely to work with an organization that can provide these things rather than work alone.

The mentor center model is entity-agnostic. It is system-focused. It results in equal treatment of individual attorneys. It allows Oregon to fully develop its State trial division while not losing overall short-term capacity in the state – and it allows OPDC to be less rushed, so we build the cornerstones of our new system the right way. Importantly, the mentor center model will allow the legislature to catch up to our vision for improving Oregon’s public defense system.

July 23, 2024

Chair Nash and Member of the Commission

I apologize for not being able to address you in oral public comment. I did not realize until today that in May the Commission changed the notice requirement for requesting public comment from 5:00 p.m. one day before Commission meetings to 5:00 p.m. two days before Commission meetings.

Slow Payment

My colleagues and I remain frustrated with the minimal progress that has been made on payment times in light of the new policy 404.050.002, Emergency Invoice Processing. **More than one month after the policy went into effect on June 21, 2025, providers continue to receive payments 46 to 47 days after submission.** This is unacceptable. For small business owners to remain viable, payments need to be made at what is the standard for all business practices ---- 30 days after submission or sooner.

Continued and Increased Over Auditing

While we do not understand why the new policy has not had a material impact on improving payment times, we wish to point out some concerning observations since the policy was implemented, which we believe contribute to the delays.

We have seen a marked increase in outright rejection (with no option to make a correction and maintain a place in the queue for processing) of invoices with immaterial errors.

Some examples of these errors are:

- Rejection because of a typo in the email address on the invoice (provider was ironically advised of this by email, and the email address on other parts of the submission was correct).
- Rejection for lack of business name on the invoice. (Business name was

included on the Nintex form and on the PAE, making inclusion on the invoice redundant).

- Rejection for writing “CSS number” rather than “PAE number” on the invoice. (OPDC changed CSS to PAE as a stylistic naming change)
- Rejection for obvious scrivener’s errors in PAE number on the invoice, when the correct number was also included in the Nintex form and on the PAE form.

We believe that invoices with correct redundant information on the PAE and Nintex forms should be processed as-is. The correct information is there, even if it is impacted by a typo or inadvertent omission in one part for the invoice or form. At the very least, providers should be given an opportunity to fix the error and maintain their place in the queue.

As an example – an invoice rejected 30 days after submission which is corrected immediately will take another 45 plus days to be paid – causing the provider to wait at least 75 days from submission to payment.

We see this level of auditing as pedantic, and while it would be problematic in normal times, it appears to us to be absolutely in opposition to the spirit and intent of OPDC policy 404.050.002, Emergency Invoice Processing.

We believe that rejecting invoices for the kind of errors outlined is shortsighted – contributing to further delays and increased workload for staff and providers. When staff cancels an invoice that could otherwise be processed by using some common sense, it does not increase processing speed – it merely kicks the can down the road causing more extended delays further out while impeding any recovery from the delayed payment crisis.

As we have said in multiple past meetings – we no longer care about why payments are delayed. We are weary of excuses, explanations, pleas for grace and patience and plans that never seem to make material or sustainable change.

We demand to be treated like vendors in every other single part of Oregon state government, who are all paid in 30 days or less.

2025 Proposed Policy Option Packages

We support the agency’s request for \$75/hr. for fact investigators in the 2025 session. We are wary of the market level being the initial ask – not because we would not be

satisfied with that rate, but because our experience has shown that what is requested is rarely funded. We urge the Commission and Agency to not waiver on the rate requested, and to strongly advocate for that rate in the 2025 session.

Expiring Pre-Authorized Expenditure (PAE) Authorizations

As we have approached the first 6-month dates since PAEs with expiration dates mature, we are experiencing the problems that we predicted. Attorneys and investigators are required to request new authorizations as authorizations expire. We renew our request to change PAE expirations from 6 months to 12 months. Alternatively, we would request that the Agency allow a very simple method for attorneys to request an additional 6 months of validity for expiring authorizations, with a de facto approval by the agency.

The need to request more authorizations more frequently impacts the workload of attorneys, investigators and OPDC staff. While we recognize the problem with never expiring PAEs, we believe that 12-month expiration dates rather than 6 month expiration dates would accomplish the same business purpose.

Thank you for considering my public comment, and thank you for your service in working to improve the provision of Public Defense, and the spirit of Gideon v. Wainwright in Oregon.

James Comstock

Member of the Defense Investigators of Oregon

Proudly affiliated with the Industrial Workers of the World

Greetings,

I am hopeful this can be shared, as I was unaware of the change in deadlines for comment. Chair Nash, and Commission members, I am very concerned that the problem facing our defense community with slow payment and unprecedented auditing have begun to alienate local and national experts. I have now heard from several experts that they will begin refusing to work OPDS cases because they are subsidizing the work for the State and getting nicked and dined. Attorneys can't work without quality investigators and mitigators, but just as significant, if not more so are the experts that we rely on to consult and testify. You must find solutions, or we will lose all credibility. The continued slow pace and recent draconian auditing are not helping. Thank you for continuing to work towards solutions. Please be mindful how far these problems stretch, and how imperative it is that we find improvements. Thank you- Laura Rittall, mitigation specialist.