



Site Visit Report

Jackson County

March 24 2023

ABSTRACT

Documentation of contacts with Criminal and Juvenile Justice service providers and recommendations on the issue of appointment of counsel for clients who qualify for state-funded representation

Prepared by Jordon Huppert

Introduction

Jackson County is a low to middle population county in Southern Oregon, along the I5 corridor. According to the 2020 census data Jackson County's population was 223,259. The Circuit Courthouse is located in Medford along with a federal courthouse and a municipal court. Jackson County also has a justice court located in Central Point. The circuit court consists of nine judges and handles the bulk of the criminal cases in the county. The District Attorney's Office is located a few blocks from the courthouse and is staffed by an elected DA, Beth Heckert, who is supported by deputy district attorneys and their staff.

Public Defense work in Jackson County is handled by four entities: Southern Oregon Public Defender (SOPD), Inc, a non-profit agency which handles criminal and juvenile cases; Los Abogados, LLC, a consortium which handles criminal cases; Rogue Valley Defenders (RVD), a consortium which handles criminal and juvenile cases; and Jackson Juvenile Consortium, LLC, a consortium which handles juvenile cases.

Preparation for Site Visit

To prepare for the Jackson County site visit, OPDS staff identified four employees to handle the site visit: the Trial Division Deputy (Jordon Huppert), the Contract Analyst (Megan Doak), the Legislative and Provider Liaison (Autumn Shreve), and the Executive Director (Jessica Kampfe).

In preliminary discussions surrounding the planned site visit, it was decided that the site visit would consist of a preliminary written survey, individual stakeholder meetings, and court observations. A survey was sent to public defense providers ahead of the site visit with questions to assist in understanding the issues relevant to local practice, as well as to give members of the provider community who would not be able to meet in person the opportunity to provide feedback.

Ms. Doak contacted all providers in Jackson County, as well as court staff and the district attorney's office to schedule meetings. Meetings were arranged between the site visit team and several providers, one of the judges and the trial court administrator, and the district attorney. Los Abogados initially indicated they were unable to meet so a remote meeting was arranged prior to the site visit with Don Scales and several of their attorneys. After that meeting Los Abogados reached out to arrange an in-person meeting. RVD was unable to agree to a time to meet with us and no meeting was arranged. RVD later reached out to us and arranged a virtual meeting. SOPD and Jackson Juvenile Consortium agreed to meeting times.

Ms. Doak also made efforts to reach out the neighboring Josephine County as the team would be passing through that county on our way home. There are two

providers in Josephine County, SOPD and Josephine County Defense Lawyers, Inc. (JCDDL). JCDDL is a consortium run by Holly Preslar. Unfortunately, after several attempts to set a meeting with Ms. Preslar we were unable to arrange a time and place and time to meet. We agreed to set up a virtual meeting with her in the future.

Survey Responses

Surveys were designed to identify whether the attorney's experience was in criminal practice, juvenile practice, or both, and to determine approximately the extent of that experience. Respondents were also asked to identify from which jurisdiction the bulk of their experience came and, if not from Jackson County, their level of experience with Jackson County specifically.

Respondents were asked which Jackson County court practices facilitated and/or hindered the efficient appointment and effective practice of criminal and juvenile law. Respondents were also asked the same question about District Attorney practices and public defense practices. Respondents were asked what made Jackson courts unique, and what the biggest barriers were to criminal and juvenile practice in Jackson County. Respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in Jackson County.

There are overarching themes from the providers that are worth highlighting. Perhaps the largest take away from the survey results is how few of them there were. Jackson County alone has over 35 contracted attorneys and we only received 7 responses to the survey. Of those seven responses, several attorneys said they did not have an answer for a question or had insufficient information to the question. Those responses are not included in this report. The lack of answers and information make drawing any conclusions from the surveys a dangerous exercise in extrapolation. That said, the survey results appear show the generalization that the system is working well. The complaints voiced by the attorneys are the same as those throughout the state (lack of compensation, lack of attorneys, trouble with DAs filing too many cases and cases that don't deserve to be filed, etc.). This is not to belittle those complaints, only to highlight that Jackson County appears to be trending with the rest of the State.

Individual Stakeholder Meetings

Virtual Meeting with Don Scales (March 17th, 2023):

Due to personal commitments Don Scales, the leader of the Los Abagados consortium, was unavailable to meet with the site visit team in person so we scheduled an earlier meeting over Teams. At the time of the meeting Los Abagados consists of Mr. Scales and six other attorneys. Joining Mr. Scales at this meeting were Michael Kellington, Lisa Graff, Zach Newman, and one of their investigators. The group discussed the upcoming 2023-2025 OPDS contract. There were specific concerns around the inclusion of the 15% variance and whether OPDS could force

attorneys to take additional cases and on how attorneys would be able to take cases outside the contract if they wanted to. The conversation then shifted to local practices. The DA's Office is filing low level cases (ex: trespasss and disorderly conduct) and a large number of contempt cases. The contempt cases are filed for petty violations or violations that have been cured. The DA's office eventually agrees to dismiss these cases or offers them violaiton treatment, but they are still taking defense attorney time and MAC. Finally, we discussed recruitment problems in rural Oregon and OPDS' internal attempts to start a Rural Fellowship Program.

John Hamilton:

The site visit team met with John Hamilton, leader of the Jackson Juvenile Consortium (JJC), at his office and were joined by Tracey Howell-Naumes, a member of the consortium. JJC is a seven member consortium focusing on juvenile law, they accept juvenile cases, both dependancy and delenquency, in Jackson county. At the time of the meeting four of the attorneys had cut off intake of cases due to reaching their contracted MAC and Mr. Hamilton expected one additional cut off coming soon. In spite of the difficulties of managing the MAC standards, Mr. Hamilton seemed generally in favor of caseload limitations enforced by OPDS. Mr. Hamilton's major concerns about caseload limitations were how they might impact civil liability in both the context of a law suit and in context of PCR. If an attorney was near their caseload maximum, would they be presumed ineffective? To mitigate these questions, Mr. Hamilton has been doing his best to align caseloads for his attorneys with those in PCR jurisdiction. He sees this as the target representation model, though if that is because of OPDS' comitment to that program or his own belief in the model was unclear.

Mr. Hamilton expressed that the main problem facing defense in Jackson County, and Oregon as a whole, was a lack of attorneys in the system. He was very clear that OPDS should not accept blame for this problem and can point to the same problem in the education department and in nursing as evidence that it is a widespread issue. All agreed that OPDS did have a role in solving the problem. The group discussed various potential solutions from the Rural Fellowship Program to greater efforts at increasing awareness of what juvenile defense work is; in lawyers, law students, and as far back as undergraduates.

The final area of discussion was around what OPDS could do to facilitate future contracting. The entirety of that discussion can be summed up in one word: simplification. Mr. Hamilton stressed the need to keep the process of interacting with OPDS as simple as possible. He used the extraordinary case credit process as an example, he doesn't use it. Mr. Hamilton, and his attorneys, find the process too complicated and time consuming to be worth the extra work that it takes to fill out the form and add the decision into reporting caluclations. They assume that between the cases that take extra work and those that take an unusually low amount of work, the workload evens out. This same philosphy carried through to billing OPDS and concerns about how complicated hourly billing would be. Mr.

Hamilton suggested that OPDS allow for 'block billing', or the ability to bill by activity for a given day rather than case by case. For example, an attorney who spent three hours at jail seeing four clients would bill for three hours as jail visiting. Mr. Hamilton also stressed that while OPDS was putting additional requirements on providers they needed a way to let providers keep OPDS accountable.

Meeting with Judge and TCA:

The site visit team met with Judge Bloom and Trial Court Administrator Tina Qualls in a conference room at the courthouse. The discussion centered around the unrepresented crisis and the court's responses. The court had begun setting misdemeanors and low level felony cases for arraignment in July and August. Director Kampfe expressed her great concern that this was detrimental to the people being charged with crimes as well as to the system as a whole because it simply papered over the problem without solving it. We conveyed the message that he not set over arraignment but instead follow the procedure for placing people on the OJD Unrepresented List. The court has begun is to have the DAs give offers on the record to people who were being arraigned, but were not being appointed an attorney. The DAs would give them the offer and the court would allow them to accept and be sentenced at the same appearance. We expressed a deep sense of unease at this practice because it appeared to violate some very basic tenants of the criminal justice system. The judge indicated that it wasn't happening often, but we asked that it be stopped.

Meeting with the DA:

The site visit team met with the elected district attorney, Beth Heckert, and with two of her deputy district attorneys, Patrick Green and Michael Cohen. Like all participants in the system, the DAs are concerned about the unrepresented crisis that is becoming apparent in Jackson county. The DAs primary concern was the possibility that they would be required to release people from custody or would need to dismiss cases. The group discussed possible solutions. The DAs were already trying to divert misdemeanors and low level crimes to municipal courts due to a shortage of deputies. They were very interested to hear the site visit team's views on the Washington County Wingspan 3 program. The DAs office seemed interested in adapting a similar program to their jurisdiction. Director Kampfe told them that any such program would have to be created by local attorneys and evaluated by OPDS for financial support.

As mentioend above, the DA's office is short on attorneys. At the time of the visit, the office had five attorney vacancies, two of which from their misdemeanor unit which normally consisted of four attorneys. Also concerning, the office has had the job openings posted since December of 2022 and has not had any applicants. They reported the same difficulties as the defense bar in recruiting people to the rural communities.

We also discussed some specific concerns the office had. Among them, that clients failing to appear was eating into attorney capacity. The DAs were curious about how the contracted caseloads treated FTAs and we told them. There was a discussion around how to speed up the process of appointing attorneys to civil commitment cases. Finally, there was a discussion around out of county attorneys, which were doing well and which were doing harm to their clients.

Lunch with Los Abogados:

After initially declining an opportunity to set up a meeting with us because the head of the consortium was unavailable, the rest of the attorneys in the group invited the site visit team to lunch. We were joined by PDSC commissioner Peter Buckley. The discussion was dominated by discussion of the new tri-branch workgroup bill (SB 337) which was released that morning. The group was greatly concerned about the possibility of the consortia model going away. Other topics of discussion included the DA's diverting cases to municipal court - which the attorneys agreed was happening - and the DA's process of offering deals to unrepresented clients -which everyone agreed was a major problem. The nature of this meeting did not lend itself well to discussion, but it was hopefully good for report building.

Southern Oregon Public Defender (SOPD):

The team's final meeting of the day was with SOPD, again joined by Commissioner Buckley. At the time of the site visit SOPD employs fourteen criminal attorneys and three juvenile attorneys in Jackson County and an additional five criminal attorneys in Josephine County. SOPD is run by Doug Engle, though Mr. Engle informed the team that he is retiring and that Clint Osborn would be taking over SOPD. Mr. Osborn joined the meeting, which took place at SOPD's office. Again, the discussion began with a focus on the growing unrepresented crisis facing Jackson County. SOPD's Jackson County major felony lawyers are cutting off appointments and four of their Josephine County lawyers have cut off as well. The lawyers have reached their maximum contracted caseloads. The team also discussed the court's response of setting out arraignments on cases into the new contract term, which was disfavored by all. There was also significant concern over the DA's office being several months behind in filings. Taken together, there is a real chance that Jackson County will be hit with a wave of cases at the start of the new contract period (assuming that the DA's office is able to catch up on filings).

The group also discussed the strengths of the Jackson County system. The system appears to have wholeheartedly embraced treatment as an option for resolving cases. The local jail runs an inpatient drug and alcohol recovery program and the community has several good options for rehabilitation programs. One notable example, mentioned by multiple providers, was the Rogue Retreat which provided housing as well as treatment and other wrap around services. The courts have a rapid aid and assist docket that functions fairly well, but they did note that OPDS' slow down in CSS processing time has made things difficult. The county's embrace of treatment services may have come about because of limitations in the local jail

resources. The municipal courts and the federal government take jail beds and the Courts have prioritized holding people pretrial than holding them once they are sentenced.

Finally, the discussion turned towards recruitment of new lawyers. SOPD has run out of space in their building to house new attorneys and expansion is not financially viable for them. Mr. Engle expressed some frustration at the idea that a newly hired lawyer would have their own caseload expectations instead of being able to take cases from existing lawyers and lower their overall caseloads. Combined with the need to increase support staff for new lawyers, this problem has limited SOPD's expansion. Historically, SOPD has served as a training ground for consortium lawyers, a place where new lawyers get experience and then move on to private practice. This appears to have changed recently, perhaps due to the non-profit nature of SOPD allowing for student loan forgiveness. They are still willing to act as a training ground but without bringing on new lawyers they have begun to look at taking on law students. The site visit team discussed how that might be feasible for SOPD and how OPDS might be able to help facilitate the firm bringing on law students.

Virtual Meeting with Rogue Valley Defenders (4/5/2023):

Rogue Valley Defenders (RVD) is a consortium group with five criminal lawyers, one of whom splits her contract with juvenile work. The site visit team was unable to schedule a meeting with the members of RVD due to their scheduling conflicts, but we arranged a virtual meeting. Ms. Doak was unable to attend, but the team was joined by K.O. Berger, OPDS' juvenile trial deputy for Jackson County. RVD attorneys Christine Herbert, Matthew Rowan, Zachary Light, Peter Carini, and Charles Sarkiss joined the meeting via Teams. The conversation was largely dominated by discussions surrounding the upcoming 2023-2025 contract. None of that discussion was particularly helpful since the contracts were finalized prior to the meeting and so it is not included in this report. The site visit team was able to follow up on some of the topics of discussion from our prior meetings. Specifically, the practice of setting over cases for arraignment appears to be continuing, as does the court pressuring defendants into taking deals without attorneys at arraignment. On the positive side, the court is making very favorable release decisions. There was a scheduled meeting with the bench the day after our meeting and it all hoped that these issues could be addressed at that meeting.