



# Site Visit Report

Klamath County

March 23 2023

## ABSTRACT

Documentation of Site Visit Klamath Falls to learn more about Klamath and Lake counties. In order to educate the agency on how our services are implemented. Information on issues particular to this jurisdiction that impact the public safety system.

Prepared by Jordon Huppert

## Introduction

Klamath County is a low population county in Southern Oregon, along the California border. According to 2020 census data Klamath County's population is 69,413. Despite its low population numbers Klamath County covers a large geographic area, roughly 6000 square miles. The population center is Klamath Falls and that is where the circuit court, municipal court, and justice courts are located. The circuit court consists of 5 judges and handles the bulk of the criminal caseload in the county. The District Attorney's Office is typically staffed by an elected DA supported by 10 deputy DAs. However, due to recent turnover, the DA's office is currently staffed by an Assistant Attorney General from DOJ, with a second AAG and two DDAs to support him. The Governor is currently considering applicants to appoint to the DA position.

Klamath and Lake County have a couple of unique features. Public Defense work in Klamath County was once handled by a consortium of attorneys called Klamath Defense Services (KDS), however that group was forced to disband by DOJ and the attorneys who were part of it took independent contracts with OPDS. Currently, each of the 15 attorneys work their own practice, but several share office space and equipment. Cases are assigned to the attorneys by Tammy Worthington, an employee of Diana Bettles. This jurisdiction is the only one in the state with all individual attorney contracts with PDSC. Klamath Falls also has a very high proportion of defense providers who were former State or County prosecutors, which is indicative of their small attorney pool and also the similar pay rates in this jurisdiction.

## Preparation for Site Visit

To prepare for the Klamath County site visit, OPDS staff identified four employees to handle the site visit: the Trial Division Deputy (Jordon Huppert), the Program 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 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 attorneys who would not be able to meet in person the opportunity to provide feedback.

Ms. Doak contacted all providers in Klamath County, as well as court staff and the acting district attorney to schedule meetings. Providers who responded to our request for a meeting were divided into three groups. Two of the groups were based on proximity to shared office space and the third group was primarily juvenile practitioners.

Ms. Doak also made efforts to reach out the neighboring Lake County as they share a considerable amount of legal resources. One Lake County practitioner participated

in the community provider group discussions. The Lake County Court also responded but were unable to schedule an in-person meeting. The site visit team made the decision to schedule a virtual meeting with the Lake County Court at a later date.

## **Survey Responses**

Surveys were designed to identify whether each attorney had experience 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 Klamath/Lake County, their level of experience with Klamath/Lake County specifically.

Respondents were asked which Klamath/Lake Counties 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 Klamath/Lake courts unique, and what the biggest barriers were to criminal and juvenile practice in Klamath/Lake Counties. Respondents were asked what the Court, District Attorney, or OPDS could do to help improve practice in Klamath/Lake Counties. Finally, respondents were asked for feedback on contracting directly with the agency individually and if there were any concerns with the switch from the consortia model.

There are overarching themes from the providers that are worth highlighting. First, the shift to independent contracts and away from the consortia model is viewed as a great success. This seems largely due to the work that the local providers have done to set up their own case distribution system and a valuable employee who administers case assignment, Tammy Worthington. Second, the understaffed DAs office and the DOJ AAG stepping in as a temporary fix has had large systemwide consequences. Providers would greatly prefer a local practitioner who knows and is invested in the community, not someone from Portland who is only there temporarily. Finally, there is a shortage of all attorneys in the system. This is a concern for the number of defense attorneys, but providers also are greatly impacted by an understaffed DA office. Providers were keenly aware of how the lack of resources in the DA's office rippled out into impacts on their practice.

## **Individual Stakeholder Meetings**

Public Defense Providers-

OPDS met with providers in small groups to learn more about their experiences as public defense providers in Klamath and Lake Counties. Groups 1 and 2 were divided based on the providers schedules with a preference to grouping members who shared office space. Group 3 was comprised of providers who worked exclusively or

primarily in juvenile dependency. Several providers offered up their office space to host the meetings.

The provider meetings largely reflected the themes in the survey responses outlined above. There were a few additional highlights from the meetings:

- The Court sets check ins for defendants on bench probation which require attorneys to appear routinely on closed cases. These cases are not reflected in their contract, are not considered open cases by the agency, but are reported as open cases by some providers. This practice skews the open caseload data for the county. While no one had any solution to the problem, there was an interest in OPDS's help to find one.
- Providers felt as though the DA's office under DOJ was unwilling to engage with the local bar on reform efforts, instead unilaterally adjusting their practices. For example, providers were disappointed by the increased requests for pretrial detention and higher bail amounts by the DA's office since the change in leadership, they also spoke of the issue of overcharging attempted murder cases.
- The DA's office had been overcharging attempted murder cases. These cases appear to be negotiated down, but it is still concerning because it uses up contractor MAC when appropriate charging from the start could save MAC.
- KDS kept its database of clients when it was disbanded. This is causing a delay in conflicts checking of the different providers who worked under that group and forcing the use of OEI.
- There is a huge concern for and awareness of the general attorney shortage in the counties. There are several providers who have undertaken limited individual recruiting efforts, but little to no combined effort to recruit. There is however, a great willingness to mentor and provide resources, including office space, to new attorneys in the community.
- The general camaraderie the providers exhibited may also be a useful tool in keeping newer attorneys in the community.
- There is some tension between the court and the providers around the court docketing schedule. It conflicts with the limited jail visiting times and requires providers to make numerous appearances for what amount to docketing hearings.
- Local providers are being asked to stand in for OPDS when the agency is appointed to unrepresented cases. This is causing ethical concerns among the providers, but there have been no real attempts to address this issue with the bench.
- There is a different divide between juvenile and criminal in Klamath and Lake. Criminal providers are handling both criminal and

delinquency cases under a criminal contract. Juvenile providers are handling primarily dependency cases under the juvenile contracts. They came to this split under the belief that criminal and delinquency cases were more closely related than delinquency and dependency cases.

- Specific to juvenile practice, there are a robust number of case managers in Klamath and they are generally willing to travel to Lake County. The case managers were described as “vital”. In criminal cases legal assistants and investigators fill that role.
- The juvenile dockets are predictably timed which is helpful. Lake county has begun to hold remote juvenile hearings, which is also helpful.
- The Indian Child Welfare Act (ICWA) has a dedicated court and has robust options for those clients participating in it.

#### The Court-

The meeting with the Judges and court staff was held over lunch which was provided by the court. Several judges attended accompanied by the TCA and other members of court staff. OPDS was able to inform the judges about the use of the unrepresented list and how to put defendants on that list. OPDS was also able to give judges information on the process of attorneys taking cases after their contract maximums were reached by taking hourly cases. The Judges expressed their concern about the quality of some of the defense work provided in Klamath County. We were not given the name(s) of the provider(s) they were concerned about. Finally, there was discussion at some length about the process of appointing counsel to civil commitment cases. Through collaboration with the court, OPDS was hopefully able to streamline that process during the meeting.

#### The District Attorney-

The meeting with John Casalino, acting District Attorney on assignment from DOJ, was the last meeting of the day. His deputy, also on loan from DOJ, Stephanie Tuttle was on the phone for most of the meeting and the office assistant was present with us. The office assistant had the most institutional knowledge since she had worked with the last two or three elected DAs. Mr. Casalino’s biggest concern was his lack of attorneys. He had two deputies working under him when he should have had ten. The DAs office had many of the same challenges recruiting attorneys as the defense bar, however they also faced the problem of being a non-PERS county and being unable to compete with the defense bar for salary and benefits packages. Uniquely, most of the defense providers in Klamath County had worked for the Klamath DA’s office, either as a deputy or as the elected DA. Mr. Casalino was open to feedback from the defense community, notably agreeing that he was stricter on release hearings, and that he also thought the county filed too many attempted murder charges. Despite his willingness to receive feedback, he gave no indication that he was willing to enact changes to help the defense bar. For instance, he was unwilling

to stop over charging attempted murder cases because they ate up defense attorney MAC. He was however, willing to dismiss the charges outside of plea negotiations. It is worth noting that in our court observation OPDS saw one of these dismissals. From an outside prospective, the dismissal appeared related to the negotiations for resolving the case. A review of OECl shows the dismissal is included in the Offer of Negotiation filed by the DA's office, though it does note that the dismissal is due to lack of evidence.