

OPDS's Final Report to the Public Defense Services Commission on Service Delivery in Klamath County

(December 15, 2005)

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense service and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems. During 2004 and the first half of 2005, the Commission completed evaluations of the local delivery systems in Benton, Lane, Lincoln, Linn, Multnomah and Marion Counties and developed Service Delivery Plans in those counties to improve the operation of their public defense systems and the quality of the legal services provided by those systems.

This report presents the results of OPDS's initial examination and preliminary investigation of conditions in Klamath County's public defense delivery system. It also represents the first step in PDSC's service delivery planning process.

PDSC's Service Delivery Planning Process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified seven Service Delivery Regions in the state for the purposes of reviewing local public defense delivery systems and the services they provide in Oregon, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and a report such as this, the Commission will review the condition and operation of local public defense delivery systems and services in each region by holding public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's report and public comments in response to that report and during its meetings in the region, PDSC will develop a Service Delivery Plan for the region. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services.

In either event, the Commission's Service Delivery Plans will (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, OPDS will implement the strategies or changes proposed in the Commission's Service Delivery Plan for that region. Any Service Delivery Plan that PDSC develops will not be the last word on the service delivery system in that region, or on the quality and cost-efficiency of the region's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some regions of the state on an expedited basis in order to address pressing problems in those regions.

Background and Context to the Service Delivery Planning Process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

A range of strategies to promote quality and cost-efficiency. Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractors Advisory Group, made up of experienced public defense contractors from across the state. That group advises OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS has also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. In 2004, site teams of volunteer public defense managers and lawyers have visited the largest contractors in Deschutes, Clackamas and Washington Counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In 2005, the Quality Assurance Task Force is planning site visits of the largest contractors in counties across the state, including Columbia, Jackson, Klamath, Multnomah and Umatilla Counties.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC has undertaken a statewide initiative to improve juvenile law practice in collaboration with the state courts, including a new Juvenile Law Training Academy for public defense lawyers.

In accordance with its Strategic Plan for 2003-05, PDSC has developed a systematic process to address complaints over the behavior and performance of public defense contractors and individual attorneys. The Commission is also concerned about the “graying” of the public defense bar in Oregon and a potential shortage of new attorneys to replace retiring attorneys in the years ahead. More and more lawyers are spending their entire careers in public defense law practice and many are now approaching retirement. In most areas of the state, no formal process or strategy is in place to ensure that new attorneys will be available to replace retiring attorneys. As a result, PDSC is exploring ways to attract and train younger lawyers in public defense practice across the state.

“Structure” versus “performance” in the delivery of public defense services.

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission’s service delivery planning process. That process is aimed primarily at reviewing and improving the “structure” for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into “best practices,”

recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC's other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the "performance" of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time-to-time in the course of the Commission's service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission's deliberative processes. OPDS, with advice and assistance from its Contractors Advisory Group and others, is usually in the best position to address performance issues.

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems. The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions,

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, "Indigent Defense Systems in the United States," 58 Law and Contemporary Problems 31-49 (1995).

resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals. As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages.

This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

- Not-for-profit public defender offices. Not-for-profit public defender offices operate in eleven counties of the state and provide approximately 35 percent of the state’s public defense services. These offices share many of the attributes one normally thinks of as a government-run “public defender office,” most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon’s public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission’s expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office “infrastructure” than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission’s policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their

² Spangenberg and Beeman, *supra* note 2, at 36.

³ *Id.*

management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

- Consortia. A “consortium” refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC’s RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for “succession” in the event that some of the consortium’s lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms, but in which they no longer wish to practice law.

In addition to the access to experienced public defense lawyers they offer, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the State Bar’s “firm unit” rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium’s administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to

communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the State Bar and (iv) a special qualification process to receiving court appointments.

- Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

- Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense in aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

- Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

OPDS's Preliminary Investigation in Klamath County

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are (1) to provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) to identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense delivery system begins with its review of an OPDS report like this.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve two other important functions. First, they provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has

discovered that “holding a mirror up” to local justice systems for all the community to see can, without any further action by the Commission, creates momentum for local reassessments and improvements. Second, the history, past practices and rumors in local justice systems can distort perceptions of current realities. PDSC’s investigations of public defense delivery systems can correct some of these local misperceptions.

On September 14, 2005, PDSC held a public meeting in Klamath County to (a) consider the results of OPDS’s investigation in the county as reported in a preliminary draft of this report, (b) receive testimony and comments from the Commission’s local contractors, prosecutors, judges and other justice officials and interested citizens regarding the quality of the county’s public defense system and services, and (c) identify and analyze the issues that should be addressed in the Commission’s Service Delivery Plan for Klamath County.

The preliminary draft of this report was intended to provide a framework to guide the Commission’s discussions about the condition of Klamath County’s public defense system and services, and the range of policy options available to the Commission — from concluding that no changes are needed in the county to significantly restructuring the county’s delivery system. The preliminary draft also offered guidance to PDSC’s invited guests at its meeting in the county and the Commission’s contractors, public officials, justice professionals and other citizens interested in Klamath County’s criminal and juvenile justice systems about the kind of information and advice that would assist the Commission in improving the county’s public defense delivery system.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in Klamath County’s justice system may be the single most important factor contributing to the quality of the final version of this report and the Commission’s Service Delivery Plan for Klamath County. OPDS welcomes written comments from any interested public official or private citizen, which should be mailed no later than October 14, 2005, to:

Peter Ozanne
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Public Defense Services Commission
1320 Capital Street N.E., Suite 200
Salem, Oregon 97303

or e-mailed no later than October 17, 2005, to:

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A Demographic Snapshot of Klamath County⁴

Klamath County is located in south-central Oregon's high desert country east of the Cascades mountain range. The county is bounded on the south by California, on the east by Lake County, on the north by Deschutes County, and on the west by Jackson and Douglas Counties. Home of Crater Lake National Park, with a population of 70,000, Klamath County's land mass of 6,135 square miles makes it Oregon's fourth largest county. Klamath Falls is the county seat, with a population of 21,000 and a greater metropolitan area of 40,000 residents.

Created in 1882 from the western part of Lake County, Klamath County was named after the "Clammit" tribe of Indians. At the time, the Oregon Legislature designated Linkville as the county seat, which was renamed Klamath Falls in 1893.

Since the arrival of the railroad in the early 1900s and the start of the "Klamath Project," a federal reclamation project that drained the 128 square mile Lower Klamath Lake to provide 188,000 acres of irrigable land, Klamath County's economy was largely based on agriculture. Until recently, farming was a thriving industry in the county, in spite of the altitude, short growing season, low rainfall, and cold winters. Timber has also played a major role in the county's economy. Three-fourths of the county is forested and over half of it is publicly owned. Recognized for its diverse landscape, outdoor recreation and abundant wildlife, the county has geothermal wells that heat homes, businesses and the campus of Oregon Institute of Technology. As the county's agriculture and timber industries have declined, recreation has become the county's main attraction, holding the promise for the county's future prosperity.

The Klamath Indian Tribe and Reservation have also played major roles in the county's history. The Klamath Reservation was established in 1864 by treaty, covering fifty square miles east of Klamath Falls. A federal policy of termination and assimilation resulted in the tribe's demise in 1961. In 1975, a fully functioning tribal government was reestablished, and the Klamath Tribe was recognized by the federal government in 1986. The 1990 census reported a tribe consisting of 2,370 members.

In 2002, the per capita personal income in Klamath County was \$23,002, which represented an increase of 18.5 percent from 1997. This 2002 figure was 74 percent of the national per capita income of \$30,906.

Although Klamath County is the home of the Oregon Institute of Technology and Klamath Community College, the education level of its residents is relatively low,

⁴ The following information was taken from Klamath County's official website and from data compiled by Southern Oregon University's Southern Oregon Regional Services Institute, which is contained in the Institute's [Oregon: A Statistical Overview](#) (May 2002) and [Oregon: A Demographic Profile](#) (May 2003).

with only 10.6 percent of its adult population holding a Bachelor's Degree and 5.4 percent with a post-graduate degree (compared to respective statewide averages of 16.4 percent and 8.7 percent). The county also has a relatively small proportion of professionals, scientists and managers in its workforce (4.5 percent in 2000, compared to a state average of 8.9 percent). Seventy-five percent of the county's population of adults (25 years old or older) completed high school or received a GED, however, compared to 78.6 percent of all Oregonians.

In 2000, Klamath County had an unemployment rate of 8.1 percent compared to the statewide rate of 4.9 percent and ranked 27th in per capita income among Oregon's 36 counties. The percentage of Klamath County's residents living in poverty is the second highest in the state at 16.8, compared to 11.6 percent in Oregon and 12.4 percent in the United States. Klamath County has a teen pregnancy rate of 18.7 percent, compared to a statewide average of 16.7 percent.

The diversity of Klamath County's population is about average. Its non-white and Hispanic residents make up 15.9 percent of the county's population, compared to 16.5 percent for Oregon as a whole. With juveniles (18 years old or younger) making up 25.8 percent of its total population, the county's "at risk" population (which tends to commit more criminal and juvenile offenses) is only slightly larger than the entire state's at-risk population of 24.7 percent.

Despite some socio-economic factors that might suggest crime problems, Klamath County has relatively low crime rates. Its rate for serious crime is 31.7 "index crimes" per 1,000 residents, compared to a statewide index crime rate of 49.2.⁵ The public defense caseload in Klamath County is approximately four percent of Oregon's total caseload.

OPDS's Initial Findings in Klamath County

Public defense services, including defense services in criminal, juvenile and civil commitment cases are provided by one consortium of attorneys in Klamath County.⁶ Klamath Defender Services (KDS) is a consortium of 12 attorneys first established in 1984.⁷ Four of its founding members serve on KDS's Board of

⁵ "Index crimes" are those crimes reported by the Oregon State Police in the Oregon Uniform Crime Reports, including murder, rape and other sex offenses, robbery, aggravated assault, burglary, theft and arson. Oregon: A Statistical Overview at p. 122.

Crime rates in Klamath County have been dropping faster than the state as a whole. For example, from 1990 to 2000 the index crime rate in Klamath County dropped by 34 percent, while dropping just 14 percent across the state. Over the same time period, the county's crime rate for offenses against persons decreased by 31 percent, compared to a statewide decrease of 24.5 percent.

⁶ The same consortium provides those public defense services in Lake County.

⁷ For more detailed information about the consortium, see KDS's response to OPDS's Questionnaire for Consortium Administrators and Boards, which was developed by OPDS's Quality Assurance Task Force for use in its contractor site visit process, attached as Appendix A.

Directors. Richard Garbutt, who is one of KDS's founding members, serves as the consortium's "authorized representative" for the purposes of fielding complaints and representing KDS in the legal community. Dee Edson, who is not a lawyer, has served as KDS's Executive Director since its founding. She is responsible for the administrative and business operations of KDS, as well as functions frequently assigned to lawyer administrators in other consortia, such as overseeing the assignment of most cases to KDS's attorneys, the coordination of those attorneys' case assignments, and the consortium's administrative dealings with the Circuit Court, the District Attorneys Office and other justice agencies in the county.⁸ KDS also employs Adrienne Sheridan as its case coordinator and Kathy Eck as its receptionist and data entry clerk.

John Potter, a member of PDSC and Executive Director of the Oregon Criminal Defense Lawyers Association (OCDLA), and Peter Ozanne, Executive Director of OPDS, visited Klamath Falls on August 17, 18 and 19, 2005. They met with the management and members of KDS and numerous justice officials, including all of the judges of the Circuit Court, the District Attorney, Community Corrections managers and the staff and members of the local Citizens Review Boards (CRBs).⁹ They also attended two court proceedings in criminal and juvenile court.

Based upon this visit and consultations with OPDS's staff in its Contract and Business Services Division (CBS), OPDS in its Preliminary Draft of this report concluded, in general, that (a) Klamath County's service delivery system is operating effectively and cost-efficiently, (b) virtually all of the key justice officials and most stakeholders in the county are very satisfied with the services it delivers, (c) KDS is a generally well-managed group of experienced attorneys who are dedicated to the delivery of quality, cost-efficient services and who appear willing to consider changes and innovations that will continue to improve those services and (d) due in large part to the contributions and attitudes of KDS's lawyers, as well as the county's key justice officials, Klamath County enjoys unusually cooperative and functional relationships among its justice agencies and professionals.

The following reported perspectives on public defense service delivery in Klamath County and on the services provided by KDS are, except where

⁸ Several of KDS's lawyers commented to OPDS that "Dee really runs the place." They attribute much of consortium's success and effective administrative operations to Ms. Edson's skills and commitment. OPDS is also pleased with the quality of KDS's administrative services relating to its contract with PDSC. OPDS recommends that other consortia consider such an assignment of administrative and management responsibilities to a skilled, non-lawyer executive director, just as an increasing number of law firms are assigning such duties to professional, non-lawyer "firm administrators" or "administrative partners."

⁹ Because of other commitments, Mr. Potter was unable to join OPDS for its last meeting with KDS's management and some of its members on August 19. Peter Ozanne also spoke at length over the telephone in August with the head of the local office of the state Department of Human Services regarding KDS's services in juvenile dependency cases.

otherwise noted, based on OPDS's visit to Klamath Falls on August 16, 17 and 18. The full transcript of the public comments and discussions of the same subjects at PDSC's September 14 meeting in Klamath Falls is attached as Appendix B.

The Judicial Perspective. OPDS met with four of Klamath County's five Circuit Court Judges on August 16, and met with the fifth judge on August 18. All of the county's judges were very complimentary of KDS and its lawyers for their skill and experience and their willingness to cooperate with the Court and all other justice agencies in the county.

The county's judges expressed the belief that the unusually cooperative relationship between KDS and the District Attorney's Office, along with jail population pressures, has led to reasonable and timely dispositions in most cases and innovative approaches to the administration of justice like Drug Court. They singled out for particular praise the KDS's lawyers who handle Drug Court, as well as those attorneys in the consortium who regularly perform additional, uncompensated *pro bono* work for their clients and other individuals caught up in the justice system. The judges also seemed pleased with KDS's system of assigning specific attorneys to particular courtrooms, as well as the consortium's case assignment system at criminal arraignments and juvenile hearings that is administered by Dee Edson and Adrienne Sheridan.

Several judges expressed concern over the next generation of criminal defense lawyers and the likelihood that they will lack the necessary trial skills to litigate serious cases. From their perspective, Ballot Measure 11's threats of draconian sentences together with the county's efficient plea bargaining system have led to very few court or jury trials in Klamath County. They clearly felt that PDSC and OCDLA would be called upon to provide more "basic training" for new lawyers over the coming years.

All of the judges agreed that Klamath County's caseload includes an unusually high percentage of Failure to Appear cases, which could be due to the District Attorney's charging policies, the high number of hearings set by the Circuit Court, or a combination of these two factors. One judge estimated that Failure to Appear cases made up as much as 20 percent of the county's caseload.¹⁰ None of the judges could identify a cause or circumstance outside the justice system in Klamath County, such as culture or language barriers, that might explain this phenomenon.

The judges handling juvenile cases in the county noted that their process is much less adversarial than the processes in many other counties of the state. They complimented KDS's juvenile attorneys on their cooperation and reasonableness

¹⁰ Since OPDS interviewed the county's Circuit Court judges on August 18, KDS analyzed its public defense caseload over the preceding three months and found that Failure to Appear cases made up 15 percent of its caseload during that time.

and, in particular, on their ability to help parents see the “big picture,” thereby producing actions and changes that serve their children’s interests as well as their own. These juvenile judges recognized that their calendaring systems and the unusual high number of review hearings they set cause problems for KDS’s lawyers, particularly with regard to attending CRB hearings. They emphasized, however, that they take the CRB reviews very seriously and are willing to cooperate in any practical way to facilitate attorneys’ attendance at CRB hearings.¹¹ One judge requested OPDS to provide the Court with feedback about the impact on PDSC’s budget of the Court’s relatively high rate of juvenile review hearings. The judges handling juvenile matters also wondered whether KDS could assign the same attorney to clients who have pending juvenile and criminal cases.¹²

The District Attorney’s Perspective. In his August 17 meeting with OPDS, District Attorney Ed Caleb was equally complimentary of KDS and its attorneys in terms of their overall skill, experience, dedication to their clients’ interests and cooperation with his office. Mr. Caleb was particularly proud of the plea bargaining process that he developed in cooperation with KDS. He expressed the view that, in most cases, a just and appropriate result was more likely through this negotiation and settlement process than through the formal adversarial process in the courtroom. He also indicated that he makes himself available to any defense attorney who questions an initial plea offer by his office, sitting down with the attorney and his deputy assigned to the case to explore feasible options.

Acknowledging that anything he reports to OPDS or KDS should be weighed in light of his perspective as KDS’s courtroom adversary, he expressed concern about one KDS attorney’s approach to representing the consortium’s clients. From his perspective, this attorney’s approach sometimes prejudices the interests of the consortium’s clients. Although he has reported this concern to KDS’s management on a number of occasions, Mr. Caleb believes that KDS is unwilling or unable to initiate any remedial action against a colleague in the consortium.

Mr. Caleb indicated that he understands why individual judges, as a personal matter, prefer the kind of separate docketing and calendaring systems that prevail in Klamath County. Nevertheless, he believes that some kind of centralized docketing system would increase the efficiency of the county’s criminal and juvenile justice systems and reduce public defense costs, especially in light of the large number of court hearings that judges set in Klamath County.

¹¹ Because a CRB’s findings at its hearings are apparently binding on the juvenile court as a matter of statute, one judge wondered whether the failure of KDS’s attorneys to attend CRB hearings and object to findings adverse to their clients prejudiced those clients’ interests.

¹² KDS reports that it has tried this approach in the past and found it infeasible.

A Citizens' Perspective. OPDS also met with the staff and three members of Klamath County's CRBs on August 17. Two of those CRB members were adamant that KSD's juvenile attorneys were not earning the money they receive from the State of Oregon due to their failure to attend almost all of the CRB hearings in the county. They questioned OPDS about how these lawyers are paid and what systems are in place to hold them accountable for the work they do and for their failure to serve their clients.

All three CRB members and the staff person at the meeting emphasized how helpful it is to the CRBs when KSD's attorneys do attend CRB hearings. Those attorneys effectively challenge the positions taken by the Department of Human Services (DHS) and the testimony of witnesses at the hearings, explain the circumstances and positions of their clients to Board members, and thereby help the CRBs make accurate findings and useful recommendations in the cases before them.

One of the CRB members present at the meeting with OPDS, who had met with representatives of the Circuit Court and KDS on this subject, was more understanding about the time pressures and scheduling conflicts that prevent the consortium's juvenile lawyers from attending CRB hearings.¹³ However, he and the other two CRB members are convinced that KDS's attorneys frequently do not contact or communicate with their clients before CRB hearings or juvenile court proceedings. While they recognized that the statements of unrepresented clients who appear before the CRB cannot always be trusted, these CRB members have seen enough instances where credible clients report that they have never seen their attorneys to believe there is a serious problem. On the other hand, they did compliment KDS on its recent efforts to assign a paralegal to contact juvenile dependency clients and attend CRB hearings, even though it is a less desirable alternative to the presence of prepared and engaged attorneys.

Community Corrections' Perspective. On August 18, OPDS met with two experienced managers in Klamath County's Community Corrections Department. They indicated that they had surveyed the Department's parole and probation officers and other line staff regarding the county's public defense system and services in preparation for this meeting.

These county corrections managers and staff echoed the comments of the other justice officials in Klamath County. They reported that KDS's attorneys are skilled, experienced and cooperative and have developed effective working relationships with the county's Community Corrections staff, even though defense attorneys and parole and probation officers frequently take adverse positions in individual cases. Although the level of knowledge and commitment regarding sentencing and corrections issues varies among the consortium's

¹³ This CRB member expressed his opinion that, given the time pressures and workload of KDS's juvenile attorneys, the requirement in PDSC's contracts to contact clients within 72 hours may not be realistic, and that PDSC should consider changing it.

individual attorneys, all of KDS's attorneys appear willing to inform themselves of "evidenced-based" best practices in sentencing, corrections and treatment, and to work with the Community Corrections Department to further the interests of the vast majority of clients who face sentencing after conviction. Because Klamath County has very effective drug and alcohol and sex offender treatment programs, in particular, KDS's clients benefit from such knowledgeable legal representation during the sentencing phase of their cases.

Despite this generally positive assessment of KDS's attorneys, the Community Corrections Department's managers and staff also reported that the hostile approach of one of KDS's attorneys makes it difficult, if not impossible, to work with him in the course of trying to develop and negotiate dispositional alternatives. Such alternatives are often more likely to produce advantageous results for a defense attorney's clients than contested probation violation or sentencing hearings. The approach of this KDS attorney to the investigation, negotiation and litigation of cases is apparently so personal and antagonistic that Community Corrections Department's staff have restricted or terminated their communications with him. The Department apparently feels so strongly about the matter that its Director intends to file a formal complaint with the Oregon State Bar when the next hostile encounter occurs between this attorney and a member of his staff. According to the Director, his complaints to KDS regarding the matter have had no effect.

KDS's Perspective. OPDS met with KDS's management on one occasion and with four of KDS's members and Executive Director on another. During both meetings, KDS's representatives expressed pride in (a) the quality of their legal services, (b) the skill, experience, long-term commitment and collegiality of its members (c) the methods the consortium has developed over the years to operate its business, assign cases to its members, coordinate its members schedules and workloads and work with the Circuit Court and the District Attorney's Office to resolve cases fairly and expeditiously,¹⁴ and (d) the assignment of responsibility for managing most of its business and administrative operations to a full-time Executive Director with management skills and experience rather than a law degree. After being informed of the organization and methods KDS employs to manage conflicts of interest, assign cases and courtrooms to its attorneys and otherwise manage its caseload,¹⁵ OPDS concluded that other consortia in the state should consider adopting these or similar organizational structures and methods, recognizing that local conditions and circumstances will require adjustments and modifications.

In response to OPDS's contractor site visit questionnaire, KDS indicated that it does not have a formal evaluation system in place for its attorneys and relies upon the courts and other criminal justice agencies to comment on the quality of

¹⁴ See Appendix A, response to Question 29.

¹⁵ Id. at Questions 13-16, 20

the consortium's services and its problem-solving techniques.¹⁶ The consortium's Board of Directors addresses complaints and any problems with the performance or conduct of its attorneys at weekly board meetings.¹⁷ KDS does not have a formal mentoring system because the consortium "is small enough that if any newer attorney has a question, several attorneys are available [to] answer questions and give advice."¹⁸ It has a mix of highly experienced and relatively inexperienced attorneys, and prefers "FTE attorneys."¹⁹

During its meetings with OPDS as well as on other occasions, KDS indicated to OPDS that it has pursued a business strategy of striving to be one of the lowest cost public defense service providers in Oregon. The staff at CBS who have worked with KDS over the years are generally pleased with the quality of their business and administrative dealings with the consortium. They have not, however, detected such a strategy in the course of their contract negotiations with KDS or during the administration of the consortium's contracts. In any event, as OPDS observes below, KDS's operations and workload and the court practices, prosecutorial charging policies and juvenile and criminal caseloads in Klamath County may call for the Commission's review of KDS's rate structure and caseloads as part of its Service Delivery Plan for Klamath County.

KDS's representatives noted that four of the five members on its Board of Director are founding members of the consortium, and that the other Board member is also a consortium attorney. KDS initially had reservations about the appointment of an independent member to its Board on the grounds that no one in the outside community possesses the requisite skill and experience to help manage the consortium or the knowledge and interest to engage in the oversight of a legal service provider like KDS. Since OPDS's August visit to Klamath County, however, the consortium has taken steps to add an outside member to its Board who appears to possess this requisite skill, experience and interest.²⁰

The representatives of KDS appear to be committed to hiring new attorneys when the consortium's workload requires it and to developing a "succession plan" for the management and operation of the consortium. One of KDS's members, with support from the consortium, is currently recruiting an associate. He reported that he has identified six possible candidates for that position. Thus, it appears that current conditions in Klamath County do not call for the use of the strategies that PDSC has developed to attract new attorneys to "underserved" areas of the state.

¹⁶ Id. at Question 3.

¹⁷ Id. at Questions 22, 25.

¹⁸ Id. at Question 12; see also Question 21.

¹⁹ Id. at Question 6.

²⁰ Id. at Question 2.

KDS also appears committed to maintaining reliable methods of communicating with the Circuit Court, other justice agencies and its members and clients. The consortium employs a receptionist who answers all calls to its management and keeps a record of all calls, as well as the nature of important inquiries and complaints. KDS opposes the idea of replacing a live receptionist with an answering machine.

The members of KDS with whom OPDS spoke did not appear surprised over complaints about the approach to legal representation of one of its members. Apparently, because they regarded him as a skilled and experienced trial lawyer, they did not think that his attitude or conduct affected the interests of the consortium's clients. They also noted the difficulty of managing the performance or sanctioning the misconduct of a professional colleague and peer, as well as limitations on the consortium's ability to manage the performance or sanction the misconduct of its members due to provisions in KDS's bylaws and contracts with its members.

A Service Delivery Plan for Klamath County

Based upon the foregoing perspectives on the delivery of public defense services in Klamath County and the apparent performance of KDS, OPDS initially concluded in a preliminary draft of this report that, in general, Klamath County's public defense delivery system is operating effectively and that KDS is providing quality, cost-efficient legal services. As a result, OPDS recommended only four potential changes for consideration by the Commission.

In light of the comments and discussions at PDSC's September 14 meeting in Klamath Falls,²¹ which largely confirmed the OPDS report to the Commission on its August visit to Klamath County, OPDS's general conclusion and specific recommendations remained essentially the same. Based upon the comments of two Circuit Court judges and directions from the Commission at PDSC's September 14 meeting, however, OPDS amended this report to delete details concerning the alleged conduct of one of KDS's attorneys. This change reflects the fact that OPDS and the Commission are not in the best position to evaluate or address the specific conduct or performance of individual attorneys in the first instance. Instead, PDSC and OPDS are concerned with the existence of policies, practices and procedures that enable a contractor like KDS to evaluate the performance and address the misconduct of its attorneys and, as a result, directly improve the quality and cost-efficiency of its legal services.

Accordingly, at PDSC's October 21, 2005 meeting, OPDS recommended and PDSC adopted the following four components of a Service Delivery Plan for Klamath County:

²¹ See Appendix B.

1. KDS's representatives indicate that the consortium has for some time pursued the goal of being one of Oregon's lowest cost public defense service providers in Oregon. CBS and its predecessor agency, the Indigent Defense Services Division, on the other hand, have not perceived that to be the consortium's goal in the course of negotiating and administering contracts with KDS over the years.²² In any event, such a goal may lead to excessive caseloads for too few attorneys in a consortium's attempt to maintain a "living wage" for its members with a high volume law practice. That goal may also increase incentives already inherent in PDSC's contract rate structure and prevalent in many local justice systems to plea bargain cases that should be fully litigated.

There appear to be other circumstances in Klamath County that may tend to produce excessive caseloads for KDS's attorneys. For example, as noted above, the Circuit Court reports that charges for Failure to Appear constitute as much as 20 percent of Klamath County's criminal caseload. This may be due to the District Attorney's policy of filing such charges whenever possible, a higher incidence of judicial hearings in the county, or both. Furthermore, members of the Circuit Court acknowledge that a higher incidence of court hearings in juvenile cases increases public defense caseloads.

In light of these circumstances, CBS has undertaken to evaluate KDS's contract rate structure and caseloads with three considerations in mind: (a) how KDS's contract rates compare with other, similarly situated contractors, (b) whether KDS's rates tend to produce imbalances between the size of the consortium's caseload and the number of attorneys willing and able to handle the cases and (c) whether local court practices and charging decisions may be contributing to larger public defense caseloads and higher public defense costs in Klamath County. PDSC approves the use of administrative strategies consistent with the Commission's general directions to CBS to establish rational and fair contract rates across the state and the Commission's goal of promoting manageable public defense caseloads to promote the delivery of quality, cost-efficient legal services.

2. As KDS's members acknowledged in their conversations with OPDS during its August visit to Klamath County, perceptions of public defense services in less populous areas of the state like Klamath County have a significant and sometimes disproportionate impact on the state's public defense system for at least two reasons: (a) problems and the perception of problems in the delivery of public defense services tend to be more apparent to those outside the local justice system in these areas of the state and (b) such outside observers may include state and local officials who have significant influence over state budgets and policies directly affecting Oregon's public defense system. Therefore, PDSC

²² During the Commission's October 21, 2005 meeting, representatives of KDS explained that a threat of losing their contract to a low-priced (and apparently a lower quality) bidder several biennia ago had caused the consortium to propose lower contract rates than it would otherwise propose.

urges all of its contractors, and particularly contractors in less populous areas of the state like KDS, to assist the Commission in accomplishing its mission and to further their own interests by addressing local perceptions regarding the quality of their public defense operations and services. In the case of Klamath County, PDSC proposes two strategies for KDS's consideration:

- (A) that the consortium add at least one outside member to its Board of Directors who has the skill, experience and personal contacts to serve as KDS's emissary in Klamath County to promote the consortium's mission, operations and interests in the local community;²³ and
- (B) that KDS increase its efforts to communicate regularly concerning its mission and operations with local justice stakeholders like CRBs, with policy-making groups like the Local Public Safety Coordinating Council and local citizens' organizations like private service clubs and business associations.

3. The members and staff of Klamath County's CRBs apparently believe that KDS's juvenile lawyers fail to contact or communicate with their clients before juvenile court proceedings or CRB hearings on a regular basis. Such perceptions are not unique to Klamath County. They arise, at least in part, from large caseloads and resulting scheduling conflicts and workload pressures frequently associated with juvenile law practice across the state. If accurate, these perceptions raise serious ethical questions about the fulfillment of juvenile lawyers' duties to their clients. Whether accurate or not, they create negative impressions about the quality of public defense services provided by the Commission.²⁴ Such perceptions must be addressed by PDSC's contractors in

²³ But see text accompanying note 20, above.

²⁴ After noting these perceptions in another county, an OPDS site visit team outlined the ethical issues, in relevant part, as follows:

Visitation with child clients is essential to proper representation. Whether a child is verbal or not an attorney should be familiar with the child's physical condition, living situation, and general circumstances. For young children it is important for the attorney to work closely with the foster parents and the CASA to advocate for each child's special needs and for an outcome that meets those needs. For older children, the attorney has the obligation to carefully determine for each important decision in the case, the extent to which the client is capable of considered judgment. Such a determination cannot be made without a well-established attorney-client relationship. State Bar Performance Standards require that attorneys in dependency cases conduct an initial "interview" of the client within 72 hours of appointment and maintain regular contact with the client throughout the case (Standard 3.5). There is no exception for child clients. The PDSC contract requires that the contractor contact out-of-custody clients within 72 hours of appointment. [continued]

Parent clients also need to be seen promptly. They need to be seen [as soon as possible] in order that issues that were not raised at the initial shelter hearing relating to probable cause, removal and placement can be addressed immediately; in order that conflicts can be identified as soon as possible and new counsel appointed; and in order for the attorney to be prepared to advise the client as to how to proceed PDSC contracts require

the first instance in order to ensure continuing public and legislative support for Oregon's public defense system.

In KDS's case, the consortium is attempting to address the perceptions and concerns of the CRB members in Klamath County by assigning a paralegal to contact KDS's juvenile law clients and report to the CRBs at their hearings in an attorney's absence. The Commission requests KDS to report to OPDS no later than June 1, 2006 on its progress in implementing this strategy and the extent to which the strategy satisfies applicable contract, state law and ethical responsibilities.

4. The Commission urges KDS to establish more formal and effective policies and procedures to evaluate the performance of its attorneys on a regular basis and to address problems and complaints concerning the performance or conduct of those attorneys. In response to numerous reports to OPDS during its August visit to Klamath County regarding the conduct of one of KDS's members,²⁵ the consortium's management expressed the view that they were constrained from taking remedial action with regard to the performance or conduct of its members due to restrictions in KDS's bylaws or contracts with its attorneys. Such

contact within 72 hours of appointment. The new Oregon Rules of Professional Conduct require that lawyers keep clients reasonably informed about the status of cases and that they explain matters to the extent necessary to permit the client to make informed decisions. . . .

The Oregon Rules of Professional Conduct are also clearer on this issue than the former rules of professional responsibility. The old rules merely inferred a duty to communicate. The new rule (1.4) provides:

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Both of these rules obviously apply to representation of adults and children.

Finally, during PDSC's development of a statewide service delivery plan in 2006, the Commission should consider adopting as a "best practice" the attendance of public defense attorneys at shelter hearings in dependency cases. Attorneys' presence at these hearings solves a number of problems. Attorneys will meet with their parent clients at the earliest opportunity. Although children are rarely present for shelter hearings, attorneys for children nevertheless will be appointed at the earliest opportunity, have information on the case even before formal discovery is received, meet with the caseworker and obtain contact information about their clients. Beyond those advantages, however, is the more important benefit of having parties represented at this critically important hearing.

²⁵ Since PDSC held its monthly meeting in Klamath Falls on September 14, 2005, OPDS has received a variety of additional reports and complaints concerning this same attorney. Four of the complaints provided sufficient detail to trigger formal inquiries by OPDS in accordance with PDSC's Complaint Policy. To date, OPDS has not received a response to these inquiries from the attorney in question or KDS's management. OPDS also forwarded more general reports and complaints regarding this attorney to KDS for consideration during its review and revision of the consortium's policies and procedures governing the performance and conduct of its attorneys.

restrictions are not apparent from a review of those documents. For example, Section 6.1 of KDS's "Attorney Agreement," its form contract with its members, "may be terminated at any time and without cause during the first twelve (12) months of this Agreement." After that, KDS or its attorneys can, in accordance with Section 6.2.1, terminate their contracts "for any reason and without cause by giving 90 days' prior written notice to the other party." Furthermore, under Section 6.2.2 of the Attorney Agreement, KDS has the right to terminate its contract with a consortium attorney for cause including, "but not limited to," 11 separate reasons including, most notably, "continuing or repeated problems with Attorney's performance, appearance, appearance at court or conduct or Attorney's inattention to duties" and "Attorney's inability or refusal to adequately represent clients at a level to be expected in the profession in Klamath and Lake County."

In any event, PDSC requests that KDS reconsider the effect of its current policies and procedures on the consortium's ability to manage the conduct and performance of its attorneys, or consider developing new ones, in order to support the implementation of more systematic and effective quality assurance programs and strategies. PDSC further requests KDS to report back to the Commission on its progress in implementing such programs and strategies by June 1, 2006.

Appendix A

APPENDIX A

QUESTIONNAIRE FOR CONSORTIA ADMINISTRATORS AND BOARDS

1. Does your consortium have formal by-laws and a set of written operating policies and procedures? If so, please provide.

Yes, KDS has formal by-laws. We have an independent Attorney Agreement with each attorney and that redacted contract is enclosed.

2. Does the consortium have a board of directors? If so describe the role that your board plays. Who are the members? How often does it meet? What kinds of issues are directed to the board? Are there limits on how long a board member can serve or how long one member can chair the board? Are there seats designated for "lay" or "community" board members?

Yes, KDS has a board of directors made up of four of the contracting attorneys. These attorneys are Phil Studenberg (President), Thomas F. Della-Rose (Sec-Treasurer), Richard L. Garbutt (Authorized Representative), and Myron Gitnes. The board meets every Tuesday unless more than one member is not able to attend. All issues concerning KDS including service delivery, complaints, financial information, etc. is discussed by the board. There is no limit as to how long a board member will serve on the board. KDS currently does not have a "lay" person on the board, however, in the last two weeks we have recruited such a member. This member is Jeff Ball, retired city attorney for Klamath Falls, and current city manager.

3. How is the administrator of your consortium selected? Compensated? Evaluated? Are there formal qualifications to be the administrator? Does the consortium or its board of directors have a "plan for succession" to insure an orderly transition from one administrator to the next?

The KDS Administrator was selected as a non-attorney administrator because KDS believed that attorneys would better utilize their time in court representing clients. Dee Edson was selected because she was familiar with the legal system as she had worked as the administrative secretary in the District Attorney's Office, and had worked as a legal assistant for a private attorney for many years. Dee is an employee of KDS, as is our receptionist/data entry clerk, Kathy Eck, and our case coordinator, Adrienne Sheridan. KDS does not have a formal evaluation system in place and relies upon the courts and other criminal justice agencies to comment on our service delivery and problem solving techniques. Mrs. Edson will be employed as the administrator for at least another ten years. The board has discussed a transition period and the qualifications necessary and we would anticipate that a new administrator would preferably be trained as part of our organization for quite some time before stepping into the administrator position. We would require a new administrator to have accounting and business education and would also have experience working with the criminal justice system.

4. What percentage of the administrator's overall workload is related to consortium matters? Is there a formal limit to the percentage?

The administrator is an employee of KDS and therefore 100% of the work day is dedicated to KDS business. This includes administrative duties, such as financial planning and administration, case counting and reporting, HR issues, public relations with other criminal justice agencies, etc. Other duties include assignment of attorneys and coordinating dependency and delinquency juvenile cases, and attending court proceedings for those matters.

5. How are administrative problems and demands met when the administrator is in trial or otherwise unavailable? Is there a formal or informal back-up administrator?

This does not apply to KDS as Mrs. Edson is not an attorney.

6. What are the requirements for membership in the consortium?

Contract attorneys with KDS are expected (as set forth in the enclosed contract) to put forth their best efforts with regard to defense of their clients. We prefer FTE attorneys.

7. What is the process for membership in the consortium?

KDS has recruited newer attorneys as our budget allows. One of our contract attorneys is in the process of recruiting a new bar admittee to become an associate of his and participate as a contract attorney with KDS as well. KDS does not have a waiting list.

8. How long has each of the attorneys been a part of the consortium?

Phil Studenberg	21 years
Thomas F. Della-Rose	21 years
Richard L. Garbutt	21 years
Myron Gitnes	20 years
Robert Foltyn	17 years
Robert F. Nichols, Jr.	15 years
Peter J. Richard	13 years
EveLyn Merritt	7 years
Scott D. MacArthur	7 years
Ronald D. Howen	1 year
Stephen Hedlund	1 year
Bonnie Lam	1 year

9. To what extent do consortium attorneys specialize in criminal and juvenile defense? In public defense? Is there a limit on the percentage of an attorney's practice that can be consortium related?

Richard Garbutt, Myron Gitnes, Robert Foltyn and Bonnie Lam specialize in juvenile defense. All other contract attorneys specialize in criminal defense.

10. How do you insure that new attorneys can become part of the consortium?

As our budget allows, we always encourage new attorneys to apply with the consortium. In the past, we have posted openings with the Oregon law schools.

11. What materials and orientation are provided to new consortium members?
KDS attempts to provide any new contract attorney with current publications, such as “A Practical Guide to Oregon Criminal Procedure & Practice” by Paul J. DeMuniz, and current criminal and vehicles codes. KDS has a central library where criminal law forms, jury instructions, ethical opinions, etc. may be found. We strongly encourage all new attorneys to attend OCDLA seminars and CLEs. Also, mentoring by more experienced attorneys is very important.

12. Is there a procedure for insuring that less experienced attorneys have access to more experienced attorneys when they need advice? Do you have a formal mentoring system? Please describe your system.

KDS does not have a formal mentoring system. However, our group of attorneys is small enough that if any newer attorney has a question, several attorneys are available for answer questions and give advice. Every one of our attorneys is accessible by e-mail as is the administrator if questions need to be dealt with quickly. See # 13 below, also.

13. How are cases distributed among attorneys? Do you have a process for assigning cases based on the seriousness and complexity of the case? If so, how do attorneys progress from handling less serious and complex cases to handling more serious and complex cases?

Attorneys handling criminal cases are assigned to certain courts. The KDS case coordinator assigns cases at the initial arraignment based upon a random list of the assigned attorneys in each court. The assigned court is announced at arraignment and an attorney is assigned. The more complex Measure 11 cases are kept on a separate assignment list. Again, we attempt to assign an attorney in the court they normally would be assigned to. However, that is not always possible. Each attorney who is Measure 11 qualified is assigned an equal number of cases per month. Newer attorneys are assigned as co-counsel in two separate cases with two separate board members as mentors. The new attorney will follow the case through trial, or negotiation with the more experienced attorney until the attorney and the board is confident the attorney is comfortable with the more complex cases. Attorneys handling juvenile cases are all highly qualified attorneys and are assigned in each of the four juvenile courts equally.

14. How soon are attorneys notified of appointment to a case? Do attorneys routinely meet with clients within the timeframes set forth in the contract with PDSC?

Attorneys are notified of new appointments the same afternoon or the next day after arraignment. For instance, if a bail hearing is scheduled for the day following arraignment, the KDS receptionist will notify by phone the new attorney of the hearing. Otherwise, the paperwork advising the attorney of a new appointment is delivered to the attorney. KDS has an attorney at arraignment time each day. The assigned attorney will schedule an appointment with the client as soon as possible when the client calls for an appointment.

15. Does your system provide continuity of representation when possible? If a client has been represented by a consortium member in the past are future cases involving that client generally assigned to the same attorney?

If a client has been represented by one attorney in the past, we generally try to assign the same attorney to avoid conflicts.

16. Does your organization have a standardized procedure for identifying conflicts or does each attorney or law firm have its own procedure? When are conflict checks conducted? How soon is a case reassigned after a conflict is identified?

Our case coordinator uses a lap top computer every day at arraignment to check for conflicts at arraignment. When the data is entered into our database, our receptionist/data entry clerk will check conflicts again at that time. If the police report is available at the time of arraignment, our receptionist/data entry clerk will check the police report for witnesses and/or victims to check for conflicts, also. I believe the individual law firms also check for conflicts at the time they receive police reports and information from the client. If a case must be reassigned because of a conflict, it is sent back to the main KDS office with a memo to the new attorney outlining the conflict, setting out approaching court dates and informing the new attorney of important information. The file will usually be reassigned within two working days from receipt at the KDS office.

17. Do consortium members meet regularly as a group? If so, how frequently? The consortium members usually meet quarterly to discuss current cases and policies in the criminal justice system.

18. Is there a mechanism for regular communication among consortium members such as a newsletter, e-mail list, website, regular mailing?

The KDS administrator will distribute any news or cases via e-mail. Each KDS attorney has an e-mail address and current lists are made available to all attorneys.

19. Is there a mechanism for sharing research or forms?

Again, information is sent to the administrator who distributes the information via e-mail, or photocopies of information will be sent directly to each attorney.

20. What system do you use to monitor the volume of cases assigned to each attorney or law firm? How do you insure that attorneys are not handling too many cases?

The KDS attorneys are assigned to only an agreed upon number of courts. For each court, there is a list of attorneys to be used when cases are assigned which controls the number of cases. Also, at the end of each month, cases are printed by attorney. The KDS administrator keeps a total of cases assigned for each attorney to insure that no one is receiving too many cases.

21. How do you insure that attorneys are providing quality representation? Are there regular evaluations of attorneys? If so, how and by whom are they performed? Are there other mechanisms in place to insure that consortium attorneys are providing quality representation?

KDS contracts with attorneys whom they feel will provide quality representation of clients. KDS does not evaluate the attorneys on a regular basis. If there is a complaint or a question about representation presented by the courts, the DA, or other criminal justice agencies, KDS takes the steps to insure an investigation into the matter.

22. How do you address problems of underperformance by attorneys?

KDS brings the attorney to a board meeting and advises the attorney of complaint. The attorney is given the opportunity to give their side of the story. The board addresses the problem and hopefully resolves it.

23. Do you provide training or access to training for consortium lawyers? Please describe. Do you require a minimum number of criminal, juvenile or civil commitment law- or trial practice-related CLE credits per year.

KDS does not provide training for our contract attorneys. We require the same minimum of CLE credits as the Oregon State Bar. We do encourage all of our attorneys to attend OCDLA seminars and CLEs.

24. Are attorneys required to report disciplinary actions by the bar? How many consortium attorneys have been disciplined by the bar? What were the circumstances?

No, attorneys are not required to report disciplinary actions by the bar at this time. However, this is an area where KDS will change its policy about reporting actions. Because of our small community, KDS is usually aware of any action taken.

25. What is the consortium's process for handling complaints from judges? From clients? From others? Is there a designated contact person for complaints? Is that person's identity generally known in the criminal and juvenile justice community?

The KDS Board of Directors discusses and answers all complaints made by the judges and/or any other person in the justice community. Clients usually make their complaints in writing to the court and if the Judge allows the attorney to withdraw, a new attorney is assigned at that time. Richard Garbutt is our authorized representative and everyone in the justice community knows how to contact board members if needed.

26. What steps have you taken to address issues related to cultural competence such as the need for interpreters, training regarding cultural biases, culturally appropriate staffing, awareness of immigration consequences?

KDS uses the court interpreter for office appointments and any hearings or trials where a Spanish interpreter is needed. Several of the individual offices have staff who speak Spanish to help with interpretation. KDS attorneys have attended Diversity Training through our local courts which was especially geared with the Hispanic population and the tribe in mind.

27. Do you have a system in place which allows clients to evaluate the quality of services received from consortium attorneys?

No, we do not.

28. Are consortium attorneys and the administrator active participants in policy-making bodies of your criminal and juvenile justice systems?

KDS has a representative on the courthouse security committee and they have had a representative on the Local Public Safety Coordinating Council. KDS attorneys also regularly attend bench-bar meetings.

29. What are some of the things your consortium does especially well? Please describe.

KDS is especially proud of the fact that our assignment of attorneys is efficient and timely. We believe that cases will be processed much more effectively if they get off on the right track from the beginning. It is very frustrating for everyone involved if a conflict is discovered late in the case and it is necessary to reassign the case. We are also proud of our organizational structure and management. KDS tends to retain our attorneys over the long haul. We have good continuity in the courts and deliver consistently good service.

30. Are there any areas in which you think improvement is needed? Please describe.

KDS is currently working on a way to formalize complaints by judges, etc., concerning a contract attorney. At the present, complaints are verbal only. We will require complaints to be in writing so we may deal with them more efficiently. The Citizens Review Board is neglected because of conflicting court schedules. We have instituted a plan to allow the attorneys to be represented at the CRB with credible information for the Board. We are hoping that this will solve the problem of conflicting priorities.

Appendix B

Appendix B

PUBLIC DEFENSE SERVICES COMMISSION

MEETING MINUTES

September 14, 2005 Meeting of the Commission

Klamath County Courthouse
316 Main Street
Klamath Falls, Oregon

MEMBERS PRESENT: Barnes Ellis, Chair
Shaun McCrea
John Potter
Jim Brown
Mike Greenfield
Janet Stevens

STAFF PRESENT: Peter Ozanne
Kathryn Aylward
Ingrid Swenson
Peter Gartlan
Rebecca Duncan

The meeting was called to order by the Chair at 11:00 a.m.

Agenda Item No. 1 The Commission approved the minutes of its August 11, 2005 meeting.

Agenda Item No. 2 **Review of Klamath County's Public Defense Delivery System**

The Commission received comments and discussed the state of public defense services and the services delivery system in Klamath County with Presiding Circuit Court Judge Cameron Wogan, Circuit Court Judges , Rodger Isaacson, Roxanne Osborne, Marci Adkisson and Richard Rambo, District Attorney Ed Caleb, Denise Rowan from the Department of Human Services and Dick Garbutt from Klamath Defender Services.

In light of these comments and discussion, the Commission directed OPDS to revise its report and proposed Service Delivery Plan for Klamath County and submit a revised report and plan to the Commission at its next monthly meeting.

Agenda Item No. 3 **Qualification Standards for Court-Appointed Counsel**

After discussing the details of the proposed Qualification Standards and considering a proposal by Jim Hennings to exempt public defenders offices from application of the standards, the Commission refused to amend the standards to exempt public defenders offices and directed OPDS to revise the Qualification

Standards and resubmit them for the Commission's adoption at its next monthly meeting.

Agenda Item No. 4 OPDS's Monthly Status Report

In light of the time remaining, and because the Commission will be holding its Annual Retreat tomorrow, OPDS agreed to defer its Monthly Status Report until the Commission's next meeting.

The meeting was adjourned at 4:15 p.m.