



To: Oregon Circuit Court Presiding Judges
From: Office of Public Defense Services
Date: March 17, 2023
RE: Increased Hourly Rates for Cases with Unrepresented Persons

The Public Defense Services Commission (PDSC) has approved increased hourly rates for attorneys who agree to provide legal representation for persons who appear on the Oregon Judicial Department (OJD) Unrepresented Persons Dashboard. A case only qualifies for the increased rate if it appears on the OJD Unrepresented Persons Dashboard. We write to share information about this new rate structure and the related criteria and process,

Effective February 1, 2023, an attorney who accepts a case from the OJD Unrepresented Persons Dashboard is eligible for compensation according to case type regardless of whether the person is in custody or out of custody. The hourly rates are as follows:

- \$125 per hour for misdemeanor, contempt, and probation violation cases
- \$158 per hour for Class C felony and felony drug possession cases
- \$164 per hour for Class A and B felony, juvenile dependency, termination-of-parental-rights, juvenile delinquency, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases
- \$175 per hour for Ballot Measure 11 and felony sex offense cases; and
- \$200 per hour for murder and Jessica's Law cases (including cases subject to enhanced penalty under ORS 137.690, 137.719 and 137.725).

These rates are available *only* for cases that OPDS staff have confirmed appear on the OJD Unrepresented Persons Dashboard and approved at the applicable increased hourly rate according to the PDSC's Temporary Hourly Increase Policy. An attorney who accepts multiple cases for the same individual will be paid at the highest rate among those cases. As of March 15, 2023, OPDS has appointed counsel to 635 cases under the increased rate structure.

On March 16, 2023, PDSC modified its policy to make the above rates available to any qualified attorney willing to take cases on an hourly basis. This change allows full-time public defense attorneys who have fulfilled their Maximum Attorney Caseload (MAC) under their contract to take cases hourly. PDSC recognizes that the caseload limits in the current public defense services contracts, while a meaningful step toward more reasonable public defense caseloads, do not always align perfectly with an individual attorney's capacity to provide ethical representation to all their clients. PDSC believes that this change will add attorney



capacity back into the system while providing safeguards to continue to assure quality representation.

As such, any attorney currently under contract for a 1.0 MAC (300 misdemeanor cases or their weighted equivalent) will be required to submit an attestation to OPDS affirming that they:

1. have met their obligations and caseload limits under their existing contract with PDSC,
2. have considered their existing caseload and believe that they can ethically accept the new case at the time of appointment, and
3. believe they have time and capabilities to meet certain benchmarks of ethical representation on all their cases.

If, at any appearance, an individual is entitled to court-appointed counsel and there is not a public defense attorney available for appointment under their contract with PDSC:

- The court should appoint OPDS as a placeholder to cause the case to appear on the OJD Unrepresented Persons Dashboard. The Dashboard is updated by OJD every morning at 8:30.
- Once appointed as a placeholder in a particular case, OPDS will work to confirm the increased hourly rate for unrepresented persons applicable to the case and to identify qualified counsel who is ethically able and willing to accept assignment to the case. If the attorney provides public defense representation pursuant to a contract with PDSC, OPDS will verify that the attorney has reached their contract caseload limit or is on track to do so by the end of June 2023 and is therefore eligible for the increased hourly rate. OPDS is unable to honor increased hourly rates that are not approved prior to the attorney's appointment to the case.
- If an attorney is contracted for 1.0 MAC, they will need to confirm that they have reached their caseload limits under the contract prior to any case being assigned to them at the increased hourly rates for unrepresented persons.
- Prior to assignment in any case at the temporary increased hourly rates for unrepresented persons, the attorney must:
 - Submit an Attorney Qualification Form if they have not done so and been approved to provide public defense representation within the previous two years;
 - If they have not previously done so, submit a signed attorney agreement to provide public defense representation at hourly rates that, if they are



contracted for 1.0 MAC, includes a statement that they have reached their contract caseload limit and they believe they have ethical capacity to accept assignment to additional cases; and

- For each case, a certification, using the form designated by OPDS, that the attorney has sufficient time and ability to accept appointment to the client and case and continue to fulfill their specific responsibilities to all of their clients.
- Once an available attorney is approved to accept assignment to a case appearing on the OJD Unrepresented Persons Dashboard, OPDS will inform the court which attorney to appoint and will approve the payment rate as set out above. OPDS will not honor increased attorney rates without approval.

OPDS reviews the OJD Unrepresented Persons Dashboard every morning and is committed to making every effort to quickly identify qualified counsel who is able and willing to accept appointment in the case and to expedite the approval process. To that end, OPDS has dedicated a Program Analyst, [REDACTED] in its Trial Division to the Unrepresented Persons Crisis. Should you have questions or concerns regarding OPDS's process related to unrepresented persons or a particular case, you can reach [REDACTED]

Thank you for your continued support of public defense during this crisis.

Jessica Kampfe (*she/her*)

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