



## Office of Public Defense Services

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OPDS Teleconference with Oregon Public Defense Providers  
August 25<sup>th</sup>, 2020 10:30am – 11:30am PST

### Teleconference Recap

Questions? Please send them to [Kaysea.R.Dahlstrom@opds.state.or.us](mailto:Kaysea.R.Dahlstrom@opds.state.or.us).

### Greeting & Welcome (Kimberly McCullough & Lane Borg)

- Thank you for joining us on this biweekly check-in. We appreciate all the work that you are doing.

### Department of Corrections (“DOC”) Phone Calls (Kimberly McCullough)

- The phone policy for attorneys setting up client calls has changed. In the past, there have been limited options for arranging confidential phone calls and it depended a lot on which facility you were coordinating with. Leaning on the inmate phone call system is problematic because: 1) other individuals could be within earshot, meaning it’s not a safe or confidential way to have a phone call, 2) the client would have to pay for the phone call themselves, and 3) it may put them in a situation where they are forced to choose between calling their attorney or a family member during the allotted time for inmate phone calls.
- When the DOC posted their intention to change their phone policy last year, they received a lot of comments and concerns. There was especially concern around only being eligible to arrange phone calls if the client had an upcoming hearing or court deadline and the call was scheduled within 60 days of that date. Recently, when the DOC was getting set to rollout this new policy, we heard from attorneys that they had essentially already rolled out the policy in all facilities.
- You may have seen the [OPB news article](#) about it, and Mae Lee Browning at OCDLA conducted lot of outreach (thanks, Mae Lee!). We’re happy to report that they have now decided to suspend implementation of any new rule and plan to go back to permissively arranging attorney client phone calls at all facilities, including OSP and Coffee Creek. They’re looking to us for guidance on priorities, though, as they want to ensure slots don’t fill up to a point where urgent calls can’t occur. If you have any ideas about that issue – or if you continue to have difficulties in setting up phone calls – please reach out to [Mae Lee](#) or [Kimberly](#).

### Caseload Check-in (Kimberly McCullough)

- Meetings have been set with OJD, ODAA, OCDLA, and OSB to discuss increasing caseloads. The first conversation was productive and focused on what OJD has been doing to get courts back up and running, including increasing access to remote hearings. Some courts have rented extra spaces in hopes to get trials going. Next, questions will go out to ODAA regarding attorneys and changing practices to slow the flow of cases coming into the system. We’re talking to OJD to get better data in order to understand where the caseloads are getting really bad in the state as well as track changes and get a better picture of what’s happening overall. I encourage you to continue to reach out to us with what’s going on with your caseloads. If you anticipate that you might not be able to take on more cases, please let us know.

- We spoke with the Chief Justice and Nancy Cozine last week. Please let us know (via your analyst, [Kimberly](#), [Alan](#), or [Kaysea](#)):
  - o Whether or not your offices are open?
  - o Do you have protocol in place to meet with clients? And, if not, is there a barrier we can try to address?
  - o What's going on in your jurisdiction?
- (Lane Borg) There's a growing narrative that the current backlog is due to defense attorneys shutting down offices and not engaging with clients. I know that this isn't the case statewide, but in order to get a handle on it we need good information. We'd like to know more about what you're seeing and dealing with. I know that different jurisdictions have set up ways to interact with the court (i.e. Webex, Microsoft Teams, video platforms, phone hearings, etc.). We've heard that Marion County is doing very well in that respect, and Jessica Kampfe has said that MCAD is doing something similar. Are you doing something similar? Are your clients using technology to communicate and engage with courts remotely? I'm not being critical of the Chief Justice, but I believe her perception is that there are no actual barriers to do all processes (pleas, arraignments, PVS, non-jury trials) in court with the exception of unevenness in out-of-custody jury trials. The Chief Justice is aware that all parties need to come to the table for this discussion, including DAS. We'd like to hear from you on the following:
  - o What's causing slowdowns?
  - o What are you doing to stay in contact with clients?
  - o What challenges are you facing in the work you do for your clients?

The better information we have, the more complete story we can tell and the better we can advocate for you all.

#### A/P Update (Kimberly McCullough)

- There is currently a delay in payments due to some changes, and A/P staff worked over the weekend to get caught up back to our target 30-day window. We understand that this caused folks frustrations and we share them.

#### Open Q&A with Providers (Kimberly McCullough & Lane Borg)

- **Q:** What are we going to do moving forward? I am not interested in another 6-month extension and would, instead, prefer a one-year extension through 2021.
  - o **A:** We had an educational retreat with commissioners last Thursday. The bulk of meeting was educating them about contracts, the history of contracts, where they're at right now, and presenting commissioners with different options on how to move forward. The next PDSC meeting is scheduled for September 29<sup>th</sup> to present these options to the commission for voting.
  - o **A:** We don't see any hope of new money, but there are discussions if there's an appetite for a reallocation of the PSA or perhaps some bold moves (such as not paying for discovery). We don't anticipate a 6-month extension. We'd like to settle on a full-year solution.
- **Q:** What did you mean when you said that the Chief Justice is referring to no barriers?
  - o **A:** I was referring to her orders. She believes there is no legal barrier in preventing people from doing their jobs.

- **A:** Regarding the slowdown of actual trials, the pressure of a trial makes a big difference. We need to explain that simply having remote hearings and access to a settlement conference doesn't solve the problem of the backlog of cases.
- **A:** We are steadfast in our advocacy that no solution can be dependent on defense attorneys misrepresenting information to their clients. There is no COVID exception to our ethical obligations to our clients; we need to give honest answers.
- **Comment** from Bob Hovak: More filings and fewer trials does not help incentive to settle these cases if clients are out of custody. In Lane County, there aren't enough court staff or judges to settle. I will follow up via email.
- **Comment** from Olcott Thompson: Courts have cut back on their capacity to do anything; in Marion County we are seeing two trials per day. There's a murder trial in Portland on hold because it's a codefendant trial and there is no courtroom with that space. Also, the notification system for COVID positive cases has dissolved in Marion County due to pressure from other jurisdictions.
  - **A:** Kimberly is in conversation with Mae Lee and OCDLA about this. Attorneys gave advice that there might be HIPAA privacy violations in such notifications, but we would really like to see that policy come back.
- **Q:** What information does OPDS need to constitute a complex case?
  - Seems like a PCR question. Feel free to contact [Keren Farkas](#).
- **Comment** from Steve Gorham: If you have client in Marion County Jail, there are secure phones available. Call 503-871-9061 to contact clients in MCJ.

#### Closing Comments (Lane Borg & Kimberly McCullough)

- Shout out to Jessica Kampfe who recently looked into using a theater to hold trials with adequate space for social distancing. We're looking forward to hearing about more innovative solutions like this.
- The next PDSC meeting is scheduled for Tuesday, September 29<sup>th</sup>, 2020.
- Our next teleconference with providers is scheduled for Tuesday, September 8<sup>th</sup>, at 10:30am.