

Members

Barnes H. Ellis, Chair
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Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

PUBLIC DEFENSE SERVICES COMMISSION MEETING

Thursday, June 14, 2012
9:00 a.m. – 12:30 p.m.
Seventh Mountain Resort,
18575 SW Century Drive
Bend, Oregon 97702

AGENDA

- | | |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------|
| 1. Action Item: Approval of minutes - PDSC meeting on May 10, 2012 (<i>Attachment 1</i>) | Chair Ellis |
| 2. October PDSC Meeting – Discussion | Chair Ellis |
| 3. Action Item: Approval of Lincoln County Contract (<i>Attachment 2</i>) | Kathryn Aylward |
| 4. Clackamas Indigent Defense Consortium Update (<i>Attachment 3</i>) | Caroline Meyer
Ron Gray |
| 5. Yamhill County Update (<i>Attachment 4</i>) | Shelley Winn
Robert Selander |
| 6. Non-Routine Expense Requests and <i>State v. West</i> (<i>Attachment 5</i>) | Paul Levy |
| 7. 2013-15 CSL Budget and Policy Option Packages; Provider Recommendations (<i>Attachment 6</i>) | Kathryn Aylward
All Providers Are Invited to Comment |
| 8. OPDS Monthly Report <ul style="list-style-type: none"> • Juvenile Delinquency - Waiver of Counsel Update • Appellate Division • NLADA Advisory Committee | OPDS Management Team |

Please note: Lunch will be provided for Commission members at 12:00 p.m.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349. Next meeting: August 16, 2012, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Please note that meeting dates, times, and locations are subject to change. Future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, May 10, 2012

9:00 a.m. – 2:00 p.m.

Roseburg City Council Chambers, City Hall,
900 SE Douglas Avenue, Roseburg, OR 97470

MEMBERS PRESENT:

Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Janet Stevens
Hon. Elizabeth Welch

STAFF PRESENT:

Nancy Cozine
Kathryn Aylward
Paul Levy
Amy Jackson
Billy Strehlow

The meeting was called to order at 9:00 a.m.

Agenda Item No. 1

Approval of the Minutes of PDSC's March 20, 2012, meeting

Chair Ellis requested additions or corrections to the minutes from the meeting of March 20. Hearing none, the Chair entertained a motion.

MOTION: John Potter moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Agenda Item No. 2

Waiver of Counsel in Juvenile Delinquency Cases; PDSC authority to Adopt Policies, Rules, Procedures and Guidelines for Juvenile Delinquency Cases

Paul Levy provided an overview of his memorandum regarding the Commission's authority to make changes to the Application Contribution Program (ACP), as applied to juvenile delinquency cases. Mr. Levy explained that the Commission has broad authority to adopt policies and procedures, and that though it is expected that the Commission will take substantial steps in directing courts, broad authority is not unlimited authority. He suggested that the policies and procedures the Commission adopts, including in the juvenile area, should reflect its statutory charge to provide cost efficient public defense services consistent with the state and national constitutions and standards of justice. He pointed out that the Commission has done exactly that in the death penalty area, and that very recently, the Oregon Supreme Court recognized that those standards appropriately reflect the standards of the American Bar Association for capital defense. Mr. Levy further explained that national standards of justice, with respect to the appointment of counsel in delinquency cases, are tending towards, if not firmly planted with, the concept that except for extraordinary circumstances, all youth in delinquency matters should be represented by counsel.

Mr. Levy went on to note that the Commission is also required to operate within the balance of the statutory scheme in which this question has arisen. Mr. Levy discussed the principle statute, ORS 419C.200, which reflects the basic concept that a youth gets a lawyer if he or she asks for one, is financially qualified, and faces an allegation that would be a crime if charged against an adult. He also noted the right to counsel established in *In re Gault* applies if the youth is financially eligible for appointed counsel.

Mr. Levy noted particular circumstances in which the court currently has authority to forgo the financial eligibility determination under Chapter 8 of the ACP manual, which suggests that the Commission does have authority to provide for some flexibility. He suggested that the Commission could streamline the process for determining financial eligibility. Mr. Levy also mentioned the efforts of Washington, Ohio, and Florida, where they adopted rules requiring appointment of counsel, but did so only after engaging in a long process of working with system partners.

Nancy Cozine explained that she and Kathryn Aylward met with representatives from the Oregon Judicial Department (OJD), including Leola McKenzie, OJD's juvenile programs director, Mike Livingston, OJD's juvenile law staff counsel, and Norma Alexander, OJD's ACP analyst. As a group, they discussed the ACP contribution program and waiver of counsel issues. She explained that the Judicial Department agrees that the system would benefit from revising chapter 8 of the ACP manual because the staff time required to complete verification work in juvenile delinquency cases exceeds the amount they believe is actually collected. They also suggested that dependency procedures should be considered, because it is also complex.

Kathryn Aylward shared that OJD's collection amount, in juvenile dependency and delinquency cases, was \$86,000, statewide, in 2010.

Ms. Cozine went on to explain that there was consensus around the need for change, and that OJD's juvenile law staff counsel believes it may be necessary to revise the statute. Ms. Cozine indicated that she also met with other system partners regarding possible legislative changes, and that while there is interest in the topic, there is not necessarily anyone ready to champion the issue in 2013.

Chair Ellis pointed out the language in 419C.200, which says: "whenever requested to do so the court shall appoint counsel." He asked whether the request could come from PDSC, and noted that, at least in delinquency cases, he would like to see a standing request from this Commission for appointment of counsel with the most minimal verification of assets.

Mr. Levy noted that, under 419C.200, there is always discretion to appoint without any specific request, but agreed that this was not dispositive in determining whether the requestor could be PDSC. Commissioner Lazenby noted that the statute begins talking about a request from the youth, the parent, or the guardian, then says the court must look at the financial eligibility piece, and then if qualified, the court may appoint. He also noted that the court can make the appointment without a request. He noted, however, that PDSC is specifically mentioned in statute as just setting up the guidelines for appointment, as opposed to directing that appointment be made. Ms. Cozine agreed that some authority rests with the court, and some authority rests with the Commission, and suggested that it would be worth continuing to explore possibilities through a collaborative process with the Judicial Department.

Commissioner Welch provided an historical perspective regarding courts' attitudes toward appointment of counsel in juvenile delinquency cases over the years. She suggested that, for many years, the statutes weren't followed. Commissioner Welch then summarized her experience speaking to judges at a Presiding Judges meeting in April of this year, where Chief Justice De Muniz provided an introduction. Commissioner Welch shared that while most judges were very supportive, one questioned the approach, concerned that if courts adopt the

view that kids aren't competent to waive counsel, the court will have a hard time considering them as competent to proceed with other processes, like plea. Judge Welch indicated that the average age of kids in juvenile court is now 12 or 13 years old, because of Measure 11, and that they don't understand. When asked, she assured judges that if they appoint counsel, PDSC will pay for the appointment.

Chair Ellis requested thoughts from Commission members about whether we are at a point where the Commission can simply remove juvenile delinquency from ACP, noting that the economics are ridiculous, and it seems to have a chilling effect on families' willingness to request counsel. Judge Welch commented on the statute's requirement that the court examine a family's "collective ability to pay," and the lack of compliance with this provision. She also suggested that the chances of collecting in dependency cases are minuscule.

Commissioner Lazenby asked about the costs that could be associated with increased appointment. Ms. Aylward explained that, statewide, there were lawyers retained or appointed in 95% of the felonies, and 84% of the misdemeanors, and that if you took out the small handful of counties that bring the stats down, then you would be up to 99%. She also noted in juvenile dependency and delinquency cases, only 20 counties actually appear to use ACP; the other 16 counties order nothing, collect nothing, and are clearly not doing ACP. Of those 20 counties, half of what is collected came from two counties. In those counties, one has 100 percent appointment of counsel and the other has something lower, around 80 percent. Ms. Aylward suggested that eliminating ACP will not fix the problem, and that politically and statutorily, there may be something less draconian or severe. Commissioner Lazenby suggested that through the looking glass of politics, it is important to order, and try to collect, something. Judge Welch agreed.

Ms. Cozine commented that budget concerns cannot be ignored, but offered two thoughts regarding costs. First, the Judicial Department's indication that ACP is costing more than it is collected. Second, the Washington study provided to the Commission (by George Yeannakis) back in January of 2010. It was a pilot project where, before counsel could be waived, the court had to allow the youth to consult with an attorney. The court started appointing counsel in every case, and ultimately the number of delinquency petitions filed by the district attorney's office declined dramatically, presumably because they reviewed the cases more thoroughly before filing the petition, knowing that a defense attorney would be looking at the charging instrument and at the police reports. Ms. Cozine noted that though we don't know that this would be the outcome in Oregon, it is a possibility. Ms. Cozine also noted the possibility of working with the courts to create uniform practices, and of having PDSC contractors available to provide consultation regarding the risks of waiving counsel.

Chair Ellis summarized the options: (1) continue negotiating and discussing with the Judicial Department ways to improve the processes for appointment of counsel in juvenile delinquency cases, which could include the potential of statutory amendments; (2) dispensing with ACP – where there is division of opinion - Kathryn says that the data probably doesn't support the argument that that will materially change the percent of cases where lawyers get involved, and two commissioners say that it is politically risky.

Commissioner Stevens expressed concern about a situation in which an affluent family's child gets a court appointed attorney, and suggested that in Eastern Oregon, kids would be expected to pay for the costs of counsel. Commission members weighed the pros and cons of different approaches. Ms. Cozine suggested that OPDS could work with the Judicial Department to simplify the ACP program, so that it doesn't cost as much to administer. Commission members agreed to have OPDS continue working with the Judicial Department and other system partners to create better processes, and explore the possibility of future legislative changes. Chair Ellis requested a progress report at the June meeting.

Nancy Cozine provided a brief summary of the Report Regarding Service Delivery in Douglas County.

Richard Cremer, a practitioner in Douglas County for almost 37 years and a former OCDLA president who served on the OCDLA board for almost eight years, began his testimony by describing the impact that reduced drug and alcohol services is having in Douglas County, noting the large number of probation violations involving continued use of substances when abstinence is a condition of probation. Mr. Cremer devotes about 85% of his practice to contract work, and 15% to retained work; 90-95% of his overall caseload is criminal law, everything but murder, and the other portion is domestic relations. He has one associate whose practice is almost 100% contract work - 85 to 90% criminal, and the balance dependency.

Chair Ellis asked about the coordination between the three contract providers, and Mr. Cremer indicated that the current system, with UVPD attending arraignments and assigning cases, is working very well. Commissioner Welch asked about motions for “no reasonable efforts” findings in juvenile dependency cases. Mr. Cremer indicated that his associate does make those motions, and also clarified that his comments about lack of treatment resources were limited to the criminal context. Chair Ellis asked whether there were adequate resources to handle conflict cases in Douglas County. Mr. Cremer said that the elimination of the MASH Consortium did make it more difficult because counsel must sometimes be appointed from outside the county. He also noted that there are three lawyers in Roseburg who have expressed a willingness to accept appointments on an hourly basis, but one of those lawyers is not very experienced - he has some concern about that, as he is not sure that lawyer would be able to handle serious felony cases, or maybe not even felonies at all. He said that there are another two lawyers who are more experienced, but they are still relatively inexperienced, which also causes some concern. Chair Ellis asked whether Mr. Cremer was concerned about a shortage of felony qualified attorneys, and he indicated that he was, to some extent. Mr. Cremer’s suggestion for the Commission was to consider the formation of a new consortium to handle conflict cases. Commissioner Potter asked about regular meetings with the defense bar, and Mr. Cremer explained that there are monthly meetings where they discuss issues of common interest, and there are often speakers from various agencies that are involved in criminal justice. Commissioner Potter asked whether it would be helpful to have regular Criminal Justice Advisory Committee meetings, or something similar, to get members of the criminal justice community together to discuss issues on a regular basis. Mr. Cremer said that he thought it might have value, but that he hadn’t given it much thought.

Dan Bouck, the Executive Director of UVPD, started by noting that he had read the report, and that he felt the Sheriff’s Office should have been included in the report, as they run the jail. The Chair asked whether there was a problem with access to clients. Mr. Bouck indicated that only four attorneys can visit at one time, but they are usually able to work it out. He went on to note that he is not concerned about eCourt, but would rather see the attention go to fixing OJIN because it is a horribly written program that they need to access constantly, and the data being put into OJIN is not valid. Mr. Bouck went on to explain that he doesn’t have any shortage of felony qualified attorneys right at the moment – he has two new attorneys that have been there about six months. They are doing misdemeanor work – and he has one that just started doing felony work. His recent postings have generated a significant amount of interest. He hires people who do not have experience because that allows him to move some of the other people up, and he can “teach [the new attorneys] our way of doing things.” UVPD has pretty good retention – losing about one person per year. They just hired because they expanded the size of the firm’s contract - they now handle about 60% of the caseload, an increase from about 225 cases to around 300. Mr. Bouck will delay further hires until more is known about cuts to the DA’s office. UVPD just lost two attorneys who went into private practice (mentioned earlier by Mr. Cremer), and Mr. Bouck would like to see them be a part of a consortium; he notes that they are both Measure 11 qualified. It is harder

for Mr. Bouck to find people who can do dependency work. Mr. Bouck noted that in civil commitments, the pre-commitment investigator is doing a better job, which has reduced filings (as opposed to increasing dismissals), and those that are filed have a more reasonable basis. They are using the civil commitment diversion procedure a bit more often, which is good, but it can be challenging because of the short deadline for submission of signed paperwork. Mr. Bouck explained that the biggest problem in civil commitments is that following the closure of Mercy Health, clients who aren't in the VA could be anywhere in the state. Typically they are in Medford, although UVPD staff travel as far as Portland to see their clients. Mr. Bouck also explained UVPD's compliance with contacting out of custody clients within 72 hours, and future plans to explore automated electronic reminders for clients. They will hold off on implementing anything until eCourt is installed to ensure that any new UVPD computer systems can interface with the new court system.

Chair Ellis asked about UVPD's board. Mr. Bouck explained that it includes two attorneys who are in private practice, a businessman who just became a minister, and a government employee who helps manage a VA facility. Mr. Bouck inherited all but one of them from Mr. Tower (the former UVPD Director). Mr. Bouck recruited one of the attorneys - he had been in the DA's office and then went into private practice. The Board meets quarterly, and all but one are good about attending regularly. The Board is aware of the affidavit issue. Mr. Bouck provided additional detail regarding the situation, specific concerns, and current attempts to resolve the issues. He noted that the Commission's visit has been very helpful in moving the conversation forward. Chair Ellis asked some additional clarifying questions, and noted that the Commission would like to see the matter addressed, and that it will continue to monitor the situation until it is resolved.

Mr. Bouck provided information regarding UVPD's training and supervision. New attorneys are given new cases, and a more senior attorney is assigned as a mentor. Mr. Bouck and mentors meet with the attorneys every other week, go over specific cases with them, and review what they are doing. In opposite weeks the attorneys all meet as a whole. New attorneys start with the most routine misdemeanor cases and work up to more complex cases. Mr. Bouck meets monthly with more senior attorneys. The day before, he pulls a whole bunch of their files and asks what they are doing in the cases. Mr. Bouck also completes quarterly reviews, where he solicits input from the court, the DAs, and court staff. He ensures that attorneys meet qualifications before handling more serious cases, and noted that different attorneys progress at different paces.

Mr. Bouck explained the case assignment procedure, and noted that he would like to see a new consortium, as it would just be a bit easier in assigning out cases for conflicts. Right now, with three, there are cases with four or five parties, and UVPD must spend a lot of time trying to find someone to take those cases.

Commissioner Potter asked whether there would be value in having something like a Criminal Justice Coordinating Counsel. Mr. Bouck responded that it would be helpful because, though everyone talks now, it is not with everyone in the same room.

Mr. Arneson provided information regarding collaborative efforts headed by the court to bring juvenile dependency and delinquency system partners together for quarterly meetings. He also noted that Mr. Bouck has been good about organizing meetings for the defense bar. Chair Ellis asked about Mr. Arneson's practice of soliciting client feedback. Mr. Arneson indicated that twice a year - April and October - a questionnaire is sent to the client in every case that is closed that month. He explained that he would like to do it more frequently because it really is good feedback for lawyers. The information is generally very, very positive. The feedback also helps them identify any areas of weakness in a lawyer's communication.

Mr. Arneson has four associates, and has had significant turnover recently for a variety of generic reasons. The quality of applicants has been very high, and Mr. Arneson plans to hire two of four very qualified finalists. Mr. Arneson shared that he plans to retire in the three to four year range, and has therefore been clear with candidates that he is looking for people who are interested in putting their roots down in Roseburg and staying with the law firm long term, and hopes that with quality folks in the office at that point, they would be able to negotiate a contract with PDSC.

When asked what PDSC could do better, Mr. Arneson commended the very swift service provided by OPDS, and emphasized the need for increased rates for Measure 11 cases in Douglas County. He explained that in Douglas County, unlike other jurisdictions, the cases typically do not have more than one Measure 11 charge, and are therefore worth only one credit.

Mr. Potter asked whether PDSC should add a consortium in Douglas County. Mr. Arneson guessed that it could make case assignment easier for the PD's office, but noted he had not seen anything either locally, or in his experience as Chair of the Quality Assurance Committee, indicating that consortia are a more effective way of delivering quality services. Chair Ellis echoed Mr. Arneson's observation, noting that effective training and mentoring in a consortium is rare.

Judge Garrison provided an update regarding the affidavit issue, and noted that everyone is committed to doing their best to resolve the situation. Chair Ellis asked what Judge Garrison thought about the current service delivery model in Douglas County. Judge Garrison indicated that the court would like to see more providers, not less, and that his understanding is that there are lawyers willing to enter into contracts with PDSC when that opportunity becomes available.

Chair Ellis inquired of the court's practice regarding waiver of counsel in juvenile cases. Judge Garrison explained that he heard Judge Welch's report at the presiding judges meeting, and that in Douglas County the debate is really eaten up by the practice, where 99% of the cases have appointed counsel. Judge Garrison indicated that for the most part, without exception, competent counsel is appointed in all case types, and that there is a wonderful group of public defenders that are a part of the community. The public defender's office is energetic and very competent. The same can be said for Mr. Arneson and Mr. Cremer's office; both highly competent attorneys - the best in that regard.

Commissioner Potter asked whether there is a need for quarterly meetings organized of criminal and juvenile law providers and support folks. Judge Garrison said that he is not opposed to the idea, but that no one wants to have a meeting for the sake of having a meeting, offering that perhaps one time per year would be a sufficient schedule. Commissioner Welch asked about the portion of the report indicating that "most cases resolve at the first detention review" hearing. Judge Garrison and others offered the view that kids often want out of custody, and the first detention review hearing is a time that many cases resolve, with credit for time served. Mr. Cremer said this is accurate, but also noted that part of what they do is find acceptable resources for the child to go to while the case is pending.

Jesse Larner, the Trial Court Administrator in Douglas County since 2003, offered information about court staff shortages, explaining that with the last reductions court staff has gone from 50 to 36. She commented that sometimes it is hard to find counsel for civil commitment cases, especially now that individuals are held in facilities outside of Douglas County, and noted the efforts of Billy Strehlow in addressing those situations.

Commission members discussed the lack of a consortium for conflict cases in Douglas County, and the possibility of establishing one. Billy Strehlow explained that OPDS is only using a handful of out-of-county lawyers, and appointing them to multiple cases, so that they

can cover more than one case when coming to Douglas County, and estimated that it is only happening five or six times per year. Commissioner Lazenby questioned the need for a consortium if there are so few cases handled by out-of-county lawyers each year. Commissioner Stevens noted the advantage of channelling money into a struggling county if PDSC can use in-county providers. Commissioner Potter noted that if any changes were made, he would want to see the local providers very involved in the process. Chair Ellis noted the cooperative nature of the current providers, and their ability to work together without fighting over the caseload. Kathryn Aylward noted that during the last contract negotiations serious effort and consideration was put into the possible formation of a consortium, but in the end, no one wanted to have the administrative responsibilities. Commission members expressed an interest in letting the current system build for a bit longer, with further consideration in the future.

Agenda Item No. 5

Lincoln County Service Delivery Update

Amy Jackson began by summarizing the Commission's past discussions about, and requests of, the Lincoln County consortium. She indicated that Lincoln County was on the Commission's agenda several times last year, including March, May, June and September. During those meetings, PDSC requested specific changes. When OPDS staff briefed the Commission on contracting options in Lincoln County for the 2012-13 contract cycle, Ms. Aylward advised the Commission that Mr. Greco hadn't yet confirmed outside board members, and still needed the board to make decisions on membership agreements. The Commission decided to extend the existing contract for six months, with an understanding that if the changes were not made, OPDS would not continue to contract with the consortium in Lincoln County. At that time, Mr. Greco, the consortium administrator, said that the current group of providers would organize a non-profit corporation, would have written agreements with each lawyer accepting cases under the contract, and that the corporation would be governed by a board with two outside members appointed by the Lincoln County Bar Association. The board would have the authority to terminate its agreement with any attorney, even if the attorney were an associate in a law firm. The agreement would not prohibit a law firm associate who handled public defense cases from leaving the law firm. Ms. Jackson told that Commission that since that time, the consortium has made several significant changes, and offered Mr. Greco an opportunity to summarize those changes.

Guy Greco provided a summary of his efforts to bring the Lincoln County consortium into compliance with the Commission's directives. After reviewing materials provided by OPDS, Mr. Greco drafted new bylaws and communicated with others in the consortium the expectations regarding training, mentoring, and supervision. He established an outside board, and the Lincoln County Bar Association agreed to assist in the selection of board members. The consortium member lawyers identified four possible board members - a local accountant, a former mayor of Newport, a former pro-tem judge who is now back in self-practice, and a retired grocer. The Bar selected Mr. Grady, the retired grocer, and Mr. Adams, the local accountant. He reported that having Mr. Adams has been helpful in getting their accounting in order.

Mr. Greco went on to describe the challenges associated with acquiring board insurance. Though a difficult process, they did end up getting coverage with a \$10,000 deductible and premiums of \$3,800 a year. The first board meeting was December 13, and though bylaws only required meeting every other month, they met every month to get the ball rolling. Once the board insurance was in place, the board decided how much was going to be awarded to each lawyer. The Ouderkirk firm imploded because the partners didn't want to do the work. The consortium now includes 10 lawyers. Some lawyers moved firms, but everything is in place for now, and is working well. Mr. Greco went on to describe the documents he provided, which provide detailed information regarding how cases are distributed. He also discussed how he ensures that Measure 11 cases go to only those providers who are qualified

to handle those cases, and offered information about the mentoring and feedback opportunities that are now in place.

The Chair thanked Mr. Greco for making the changes, indicating that Mr. Greco had addressed and resolved an issue that was troublesome, where the associates were doing all the work, without guidance or mentoring. Amy Jackson concluded by summarizing and quoting positive feedback provided by Lincoln County judges, who feel that the changes made have had a tremendously positive impact, with one judge stating: "It is great for the legal community and the defendants. The quality of representation has improved drastically, as well as the administration. Thank you."

Ms. Aylward advised the Commission that, at this point, OPDS would need to extend the existing contract, or execute a new contract – either one would terminate on December 31, 2012. Chair Ellis indicated a preference for approving a new contract at the June meeting.

Agenda Item No. 8

OPDS Monthly Report

Nancy Cozine provided information regarding OPDS's invitation to participate in an advisory committee established by the National Legal Aid and Defender Association. The advisory committee will focus on using data to improve the quality of public defense. Ms. Cozine also invited Commission members to attend the OPDS MayDaze CLE focusing on parole appeals that will be held on May 24, 2012, at 9:00 a.m.

Kathryn Aylward provided a budget update, explaining the process established for submitting next biennium's budget, including current service level and policy option packages. She noted that it would be on the Commission's agenda for discussion next month, and that the final numbers have to go in the system by August 31, with the budget binder prepared around Thanksgiving, or even December. Ms. Aylward also alerted the Commission to changes at Legislative Fiscal Office; OPDS will now be working with Steve Bender, who has been there since 1996 or 97, rather than John Borden. There were also changes at the Budget and Management (BAM) Division in DAS; OPDS is now working with Blake Johnson rather than Linda Gilbert. Ms. Aylward also noted that OPDS will need to go to the September Emergency Board to request the funding that was reserved in the special purpose appropriation.

Nancy Cozine noted that they are still in the process of making adjustments to the Quality Assurance Task Force and the Contractor Advisory Group, with the thought of establishing just one entity that will be called "Policy and Procedures Advisory Group," or something along those lines.

Agenda Item No. 4

Approval of Strategic Plan

Chair Ellis requested comments on the proposed strategic plan, and after discussion the Commission requested changes: (1) On page 9, under Strategy 3, change the words "public lawyer" to "publicly funded" lawyer; (2) add to the current summary on page 8 more detail regarding the extraordinary experience in 2003, of five special sessions, each having to cut budgets state wide which led to defense being so underfunded that it couldn't cover the caseload.

MOTION: Hon. Elizabeth Welch moved to approve the strategic plan and adopt it with the described revisions; John Potter seconded the motion: hearing no objection, the motion carried: **VOTE: 6-0**

Agenda Item No. 3

Approval Adjustment to ACP Contribution Amounts

Kathryn Aylward described the proposed modifications to ACP contribution amounts.

MOTION: Shaun McCrea moved to approve the proposed ACP schedule; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

MOTION: John Potter moved to adjourn the meeting, Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, May 10, 2012

9:00 a.m. – 2:00 p.m.

Roseburg City Council Chambers, City Hall,
900 SE Douglas Avenue, Roseburg, OR 97470

MEMBERS PRESENT: Barnes Ellis
Shaun McCrea
Chip Lazenby
John Potter
Janet Stevens
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Paul Levy
Amy Jackson
Billy Strehlow

The meeting was called to order at 9:00 a.m.

Agenda Item No. 1 Approval of the Minutes of PDSC's March 20, 2012, meeting

0:10 Chair Ellis The first action item is the approval of the minutes from the meeting of March 20. Are there any additions or corrections to the minutes? If not, I would entertain a motion to approve the minutes.
MOTION: John Potter moved to approve the minutes; Chip Lazenby seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

0:32 Chair Ellis I do want to commend the way the minutes are being prepared. I think they are extremely helpful and accurate. Very good.

Agenda Item No. 2 Waiver of Counsel in Juvenile Delinquency Cases; PDSC authority to Adopt Policies, Rules, Procedures and Guidelines for Juvenile Delinquency Cases

1:00 Chair Ellis Alright, item no. 2 is continuing the discussion on waiver of counsel in juvenile delinquency cases. And Paul I take it you are the one who has been involved, Paul and Nancy. When we left off there was a motion made to eliminate ACP in juvenile cases. That was tabled pending review of our authority and to take a more careful look at it. Paul has authored a memorandum dated May 10. Do you want to summarize that?

1:33 P. Levy Yes. I will start by talking about the memo and the issues raised there. This is an issue really that Kathryn and Nancy have been most involved with. We will all three participate. I put together, in the memo, a response to the specific request regarding the Commission's authority in this area. I will talk briefly about that question. The memo says, of course, that

with respect to directing how courts select and appoint lawyers for cases, the Commission has broad authority to adopt policies and procedures and it is expected that the Commission will take substantial steps in telling courts how they should go about doing that. Broad authority is not unlimited authority, but what the memo suggests and tries to illustrate is the policies and procedures the Commission adopts, including in this area - reviewing youth or their families for eligibility for appointed counsel, and providing for the contribution from youth, parents or guardians to the cost of the counsel. The Commission's policies and procedures should reflect its statutory charge, which is to provide cost efficient public defense services consistent with the state and national constitutions and state and national standards of justice. In the memo I point out that you have done exactly that in the death penalty area. Very recently, the Oregon Supreme Court acknowledged that you had done so, and recognized that those standards reflect the standards of the American Bar Association for capital defense. I suggest in the memo that the National Standards of Justice, with respect to the appointment of counsel in delinquency cases, now are tending towards, if not firmly planted with the concept that except for extraordinary circumstances, all youth in delinquency matters should be represented by counsel. To the extent that the Commission has the authority to structure its policies and procedures to reflect that national standard of justice, you should do so. But with that context you are also limited and required to operate within the balance of the statutory scheme in which this question has arisen. Therein lies a little bit of a rub. The principle statute, and these are provided at the back of my memo, that governs the appointment of counsel in delinquency cases is ORS 419C.200. That statute has been around essentially in that form since at least 1959. It reflects the basic concept that a youth gets a lawyer if he or she asks for one in a case that involves a matter that would be a crime if charged against an adult. The language has always been there, and is reflected as well, in the later case of *In re Gault* - if the youth is financially eligible for appointed counsel. There is an understanding that there will be some determination of financial eligibility. The statutes reflect that. The case law reflects that. The statutes also reflect the notion that the court may, in the wording of the statute, may order the youth if able, the parents if able, or guardian if able, to contribute to the cost of counsel. That is the statute. That is essentially the statutory scheme. If you have had a chance to look at what is provided in the materials for chapter 8 of the ACP manual, the section on delinquency cases, it is very interesting because we have tried to highlight some language that is either outdated or in need of updating for one reason or another. The current manual does go so far as to say you can dispense with the financial eligibility determination if either you believe it is in the best interest of the youth given the circumstances of the case, or in specific circumstances where the parents are not cooperating. Or, if you think that the parents will not provide counsel for the youth. The current policy goes beyond what the statutes are requiring. That is the scheme right now. The Commission could streamline the process for determining financial eligibility and focus it more, but inevitably we will run into it and Kathryn and Nancy can talk more about this - the views of the Judicial Department and others, that the statutes still require some financial eligibility determination of the youth, at least, and perhaps arguably also the parents. In the memo I have mentioned the efforts of Washington, Ohio, and Florida who have changed this process through rule making. In those states and others it has been a long process of working with system partners to change the rules because some partners do not come to this easily. Nancy and Kathryn will talk about this. We have begun those discussions with the Judicial Department. That is the statutory framework. Questions?

09:26 Chair Ellis

Okay. Nancy?

09:26 N. Cozine

Chair Ellis and members of the Commission, I should have included Kathryn on this agenda item because she and I did do quite a bit of work between the last meeting and this meeting on this topic. She and I together met with the Oregon Judicial Department. That meeting included Leola McKenzie, OJD's juvenile programs director, Mike Livingston, OJD's juvenile law staff counsel, and Norma Alexander, OJD's ACP analyst. We discussed both the ACP contribution amounts and the waiver of counsel issues. The Judicial Department, as represented by those individuals, agree that we would benefit from reviewing chapter 8 of the

ACP manual, and making adjustments. They offered the information that the staff time it takes to do the verification work in juvenile delinquency cases exceeds the amount they believe we actually collect in ACP contribution and in recoupment amounts because of the complex structure of that scheme. They also suggested that when we look at delinquency, we might want to look at dependency as well, because it is complex as well. When we talked to them about the numbers, the contribution collection that is \$70,000 per year – that is correct, right?

11:01 K. Aylward

Close enough. I have actual figures. I had the Judicial Department also run the figures because sometimes there are administrative cases that I might not be catching. Their figure was \$86,000 collected.

11:16 Chair Ellis

Statewide?

11:18 N. Cozine

Statewide.

11:19 K. Aylward

In calendar 2010.

11:21 N. Cozine

And that is both delinquency and dependency.

11:26 Chair Ellis

I am guessing the system cost to do that is much higher.

11:34 N. Cozine

They think it is. We are in a situation where there is clearly a problem and we need to continue the conversation. Because of the way the statutes are currently written, Michael Livingston, juvenile law staff counsel, pointed out very quickly a few problems from his prospective. ORS 419C.200 includes language that the court shall appoint counsel whenever requested to do so. From his vantage point there is a requirement that there be a request for counsel prior to the court appointing. That was one hurdle. The second hurdle is the language requiring verification in juvenile delinquency cases - in the statutory scheme. Everyone seemed to acknowledge pretty quickly that that verification process could be simplified dramatically, and it is simplified dramatically in many courts. To the extent that in some counties they are appointing counsel and actually doing an oral inquiry of the defendant or the youth about what their financial assets are, and making the determination very quickly on the record. We discussed the need for further conversation about making changes, both within ACP and legislatively. I also met with Bill Taylor who is staff counsel to the Judiciary Committee, Susan Grabe, with the Oregon State Bar, and attorneys and the director for Youth Rights and Justice, on the waiver counsel issue, to talk about moving legislation in the 2013 session. Everyone is interested in the topic. Everyone thinks it is a worthy topic. We haven't necessarily identified a champion. Those conversations need to continue. OJD feels that they have some good avenues for having the conversation with judges statewide and other system partners, so that we can potentially start crafting some ideas. I am not sure that it will be ready for 2013, but it is a direction that we certainly can head in and I think the door is wide open for that.

13:46 Chair Ellis

I am very curious about this language in 419C.200. It says. "Whenever requested to do so the court shall appoint counsel." My question is who is it that they contemplate would make that request? My second question is that I don't know that that language requires that it be a request from either the youth or the parent of the youth, why can't it be us? Where I would really like to see us go at least in delinquency cases – you know more about the dependency piece – but at least in delinquency cases, with the most minimal verification of assets, that we make a standing request from this Commission that courts appoint counsel. Why doesn't that meet the statutory language and why isn't that good policy? As I keep listening to this I say to myself, here you have got young people who by definition are vulnerable. They are in a very difficult circumstance. I think they can't rely on the parents to be doing what is necessarily best for the youth. If the parents feel that they are personally liable financial, they are very likely to support the idea of waiving counsel, which is one more influence on that. I

think there are courts that much prefer to deal with it without counsel. I don't want to criticize everybody but I think DHS is probably more comfortable without counsel. I think counsel ought to be there. What I would really like to hear is, do we have the authority to make a standing request that in all delinquency cases the court should appoint counsel where this minimal verification has occurred. Then if the lawyer and the youth and the family go through this, and they decide to waive, I suppose that is a knowing waiver, but without counsel involved in that, with the high percentage in some counties of waiver of counsel in juvenile delinquency cases, to me it is what we are here for. We ought not to have that happen.

16:44 N. Cozine

Chair Ellis I think that it is certainly very possible that we could explore and be successful with that approach. I am not sure that they would object. I think that counsel Levy has something to offer on that topic. I also want to mention, and I should have mentioned it earlier, that following our last meeting the Chief Justice reached out to Judge Welch and asked her to present to the presiding judges at their meeting on this very topic. I am sure that she would have some very interesting commentary on how that meeting went, and perhaps on some of the views that were expressed, that might further illustrate your suggestion about simplification of the process.

17:44 P. Levy

I just want to make one comment about 419C.200. I don't share Michael Livingston's concern about this statute. The way the statute is structured is, it begins by saying with a financially eligible youth the court may appoint and doesn't require a request. That is in any delinquency matter which includes matters that would not be criminal if filed against an adult. Then it says that with those matters that would be criminal filed against an adult, when the youth requests, then the court shall appoint. There is always discretion to appoint without any specific request, and when this statute was initially enacted in 1959, the intent was exactly that, and there conveniently was a well reviewed article from 1960 that talked about this revision. It said that when requested the court is required to appoint counsel for the youth. The commentary says that the court may at any time appoint an attorney to represent children, as they were called then, if the court believes it desirable.

19:09 Chair Ellis

Does it shed any light on who is the requester?

19:20 P. Levy

No. It doesn't. Other than the ones who are identified in the statute, but the court can always appoint counsel without a request. That was the structure of the statute.

19:32 C. Lazenby

Paul, that doesn't get us to the question of whether or not we can by rule set up a structure that would require the court to appoint. I am reading the statute and that is what my sidebar with the vice-chair was about. I pulled the statute up and was looking at it, and it begins talking about the youth, the parent, or the guardian making the request, and then the statute says you have look at the financial eligibility piece, and then if the court finds that they are requested by, the youth, the guardian, or the parent requesting appointment of counsel, then the court may appoint. You are right the court can do it anyway. We are specifically mentioned in the statute just as setting up the guidelines for appointment as opposed to us sort of directing that appointment be made. Am I right, Nancy?

20:37 N. Cozine

I think that you are correct in that analysis. What is interesting about the way the 419C statutes are written is that some authority, as you would expect, rests with the court, and some authority rests with the Commission. Now that we have really looked at ACP chapter 8 and the statutes, I think it is worth continuing to explore possibilities through a collaborative process with the Judicial Department. I think between the authority granted to each entity, we can probably come up with something even given the current statutory scheme that would be an improvement in some counties to their current practices. Kathryn will be able to speak a little bit more to what the data has revealed as we continue to look at that. Ultimately would a legislative change be the ideal? Probably yes, because as the research has unfolded in other states we see that when there is a statutory requirement for colloquy on the record prior to the

waiver of counsel there are better outcomes. That is information that we can get in front of the legislature. If we can't accomplish a legislative change in 2013, there is still progress that can be made given the authority that is granted to the court and to the Commission. Does that answer your question?

22:13 C. Lazenby It answers my question. This is a nonverbal skeptical look.

22:24 Chair Ellis Judge Welch?

22:27 Hon. Elizabeth Welch

I want to talk about a couple of things before I report on these meetings. In 1959 Justice Holman's criminal code provision was absolutely not followed for the 10 years before the decision of the United States Supreme Court. There were no lawyers in the juvenile court on either side of the case for many, many years after that statute was adopted. Juvenile codes are interesting and maybe it is true of other things. People don't feel obliged to follow. Judges do not feel obliged to follow. I think that the language - your "child" is the operative language. I like your theory, but I think the history is very clear that was the way it worked. There is a provision in the domestic relations court for the appointment of counsel for children in domestic relations cases. It says exactly the same thing. Let me give you a report on this experience because I - it has been about a month ago, I think, when that meeting was held in Salem. I felt a little bit like a Daniel in the lion's den. It was very well attended; a regular presiding judge's meeting. Chief Justice introduced me. I launched into my very well prepared presentation. I worked really hard on it. I want to report on a few things. The main thing I want to report on was the only genuinely negative reaction that I got, and I did this in a way that I was hoping - I hope I didn't stir anybody up - and a judge, whom I will not name and am not personally familiar with, a member of my generation. Was very dismissive and basically what he said was well if we do what you say, if kids can't waive lawyers then how can they waive trial? How can they waive their right to remain silent with the police? He looked at me like he actually wanted me to answer that question. I sort of gave him a nice long silent look and then I said, "Is that an "open the flood gate" argument. The reality here is, and I want to say this to you all, and I hope you hear me, people have chosen to not see what is in front of their faces for the whole time that I have been practicing law on this subject. You are dealing with people who are not capable of making these kinds of choices. They can't do it. The average age now is about 12 or 13 years old because of Measure 11. They can't understand. Ask your children. Ask your grandchildren. I asked one of my granddaughters: "if the police arrest you, and the policeman says to you, 'you have a right to remain silent,' what does that mean?" And Alicia said it means "don't be sassy." Kids don't understand. They don't get it. The basic point that this judge made is a good point, and that is, we have lulled ourselves into a series of practices in dealing with children in the juvenile system that is based on ignorance and denial of reality. If we pull this one piece out, what is going to happen to the rest of it? We sit there as judges and let kids waive trial because they have a lawyer, and so it is okay. The lawyer has done an absolute excellent job and has prepared the kid for his choices. The basic reaction at this meeting was, and there was a lot of speaking - I got some support from unexpected department people - the basic reaction that I got was "you are from the Commission, right?" Are you telling us - judges from some of the smaller jurisdictions - are you telling us that if we appoint counsel for every kid that you will pay us? The moment of truth. I couldn't take that one under advisement. I had to answer the question and I said, "Yes." That is what I am saying. I had judges come up to me afterwards and tell me that they were going to start appointing attorneys for all kids. I don't know what will actually happen. They weren't going to get anything from me. It wasn't a public statement. It was a private statement to me from, I would say, four judges. Based on the most recent information from the staff, we are down to just a few jurisdictions where this practice is a problem. We may be almost there.

29:20 Chair Ellis Aren't we at a point that, we did everything, it seems, at least to the point of removing ACP. The way I would look at it is, first of all, the economics are ridiculous, as we have already

said, but more than that, I have to believe that parents and guardians that are there, and the issue is do you want a lawyer or not - they fear that they are going to end up having to pay for it. They are going to come down on the side of saying, "let's waive that." As a policy matter, that is just terrible in my mind. Are we at a point that at least this Commission has the power to do that?

30:04 Hon. Elizabeth
Welch

There is another thing that you may not remember. I am looking at page four of chapter of 8. In the first paragraph on that page it says, "To determine their collective ability to pay." This is absolutely fascinating, because it is one of the issues that I have bitched and moaned about for a long time, and that is when mama brings kiddo in to see a juvenile court counselor at the front end of the case, the man she was never married to in the first place, but from whom she is separated, is not there. His finances are not taken into consideration. There is no compliance with this anywhere, and never has been has been. If you are really serious about collecting, you don't collect from mom, you collect from dad. Let me tell you something else about dependency. Multnomah County never followed the procedures. I don't think that it is even important to do. The potential collection from the kind of people whose children get taken away from them to pay anything back for their lawyer or for their child's lawyer, their own lawyer, is so minuscule - the decision was made that we are not going to do it. To the extent that the state is paying money, any kind of verification costs, and it would be really interesting to find that out, just isolate the question, and ask again who is actually going through this process with parents. That has got to be sort of a zero collection situation.

32:24 C. Lazenby

A couple of things. You said that you think there are only a few problem areas left. I don't know if that is being borne out. One of our responsibilities as well, as we go into this, is to have an answer to that question of how much money is that going to end up costing. I don't know if we have gotten those certain numbers out of LFO, or somebody. I guess my questions are, is it really true that there is an increase of appointment of counsel in these juvenile cases across the state. Is it what we are currently doing? Do we expect more if we are to move down the line toward this policy change, and do we have an idea how much more money that is going to cost?

33:12 K. Aylward

I do have some information about the data. We did continue to look up individual cases to confirm the appointment rate. Statewide 95% of the felonies had counsel appointed or retained, and 84% of the misdemeanors did. We are not naming particular counties but it is pretty clear that if you took out the small handful of counties that bring the stats down, then you would be up to 99%, but what is even more telling is when you look at where application contribution funds are coming from. There are only 20 counties that actually appear to be doing it. The other 16 counties you see nothing ordered, nothing taken in, they are clearly not doing ACP.

34:01 Chair Ellis

Are you talking just juvenile delinquency on these?

34:05 K. Aylward

No. You can't separate delinquency from dependency.

34:08 Chair Ellis

Both? Is it juvenile matters?

34:17 K. Aylward

I am just talking about juvenile. Not adult criminal. Of those 20 counties, half of what is collected came from two counties. In those counties one of them has 100% appointment of counsel and the other one has something lower, 80% or something. Whether or not you collect ACP doesn't correlate to whether counsel is appointed. What is happening in some courts is, the judge is saying, "I am going to appoint counsel. I may or may not collect ACP, but I am going to appoint counsel." That is the sole determining factor. If you say we are going to do away with ACP, you are only going to hit two counties. One of them has a 100% appointment rate anyway. I don't think you are fixing the problem by just getting rid of ACP. I think that politically and statutorily there maybe something less draconian or severe. I could

see why you could say that, as a matter of policy, it is presumed that a youth has no money unless you find out otherwise. Our policy could say that. We could effectively eliminate a lot of work. We could still collect the money in counties where they are happy and willing and able to collect it without making a statement that we don't think there should be any contribution. And actually recoupment at the end is even a more extreme picture. Only 13 counties order any recoupment and a collection of recoupment is \$30,000 a year. It is nothing.

36:17 C. Lazenby

I understand what you are saying. Politics are not always practical. The options of having a policy that says that we are not even going to try is pretty difficult. I think it makes a lot of the other more principled things that we are saying here more difficult to accomplish to the extent that we want to move ahead and to make sure that these services are provided. Even though that may be a reality, I think that through the looking glass of politics of this, we still need to at least have a mechanism that allows us to pursue that. But I am just one vote.

37:05 Hon. Elizabeth
Welch

I am with you.

37:05 C. Lazenby

I now have two votes.

37:05 N. Cozine

Chair, if I may give a comment on the budget concerns? Judge Welch shared with me the question that was posed to her about whether or not it would be a budget constraint for PDSC to appoint counsel in all juvenile delinquency cases. That is something we have to manage given the current budget environment. The judicial branch will not be the only entity asking that question. The reality is that we do have a good answer. We don't have numbers, but what we do have is the knowledge that the judicial branch has indicated that ACP is costing them more than they are collecting. We also have the Washington study that was provided, by George Yeannakis back in January of 2010, to this Commission and I could re-circulate it again. They did a pilot project in a Washington State county where, before counsel could be waived, the court had to allow the youth to consult with an attorney. What they found in that county was that it was so onerous, that the court simply started appointing counsel in every case. What I think is the more interesting outcome was that the number of delinquency petitions filed by the district attorney's office declined dramatically. That was because they started legal sufficiency reviews in every case - they knew that a defense attorney would be looking at the charging instrument and at the police reports. We can't say that that would be the outcome in Oregon, but I think we can look to that study to say that it is a possibility. In addition to working with the judicial branch to try and create a uniform understanding among the different counties about appointment of counsel in juvenile delinquency cases, we could look at our contracting to ensure the presence of an attorney in the room at the time of the detention hearing. That it is part of the education process with the judicial branch, and we could ask that the court have the youth consult with an attorney prior to waiving counsel. That is another approach that we could take. We could make attorneys available for those consultations. As you have heard, the number statewide as a percentage is fairly low. So what the cost we be, we can't put a number on it, but we have some indicators that it may not be so significant.

39:56 Chair Ellis

State that again what you are proposing.

40:03 N. Cozine

The contracting piece or the collaboration with OJD piece?

40:05 Chair Ellis

Both.

40:05 N. Cozine

Alright. When we met with the judicial department, and I should say that, of course, we all spoke with the Chief Justice and I also spoke with Kingsley Click, the state court administrator, and she was invited to this meeting and indicated that with the individuals she had attending she trusted their judgment. I feel like we have had very good communication

and we are all on the same page. There was an offer to convene a group of judges to discuss waiver of counsel and to create new provisions within chapter 8, and to make a presentation at the next juvenile court improvement program to judges about how they are administering ACP in juvenile cases, so we have some open doors. As part of that conversation we could talk about asking the court to have youth consult with a lawyer prior to waiving counsel. That could be part of the contract for our providers. It is harder in some of these smaller counties where providers are stretched very thin and have a hard time getting to court every time there is a delinquency detention hearing, but it is now something we could try.

- 41:25 Chair Ellis Any thoughts on that?
- 41:32 C. Lazenby So I am sitting in an anonymous smaller county
- 41:37 J. Stevens Think of Lake.
- 41:45 C. Lazenby My question kind of goes to where you have got folks kind of coming through. So what this looks like on the ground is you have got a lawyer under a contract from us who sits there, reviews police reports and whatever other information is available and provides some cursory initial advice to the youth and/or the youth's parents about the vitality of the charges that are against them. Having been through a couple of things. I am getting this image of Charlie Chaplin and the wedding cakes coming down the line. I am wondering about the effectiveness of this.
- 42:29 N. Cozine I think that the conversation is more focused on the risks of waiving counsel and everything that the youth would be giving up by waiving counsel. Kathryn described the numbers. She described a county where there is clear evidence that ACP is not hindering appointment of counsel. You have a big collection rate and 100% appointment. But what we also know anecdotally is that there are counties where ACP is being described in a way, and perhaps not by a judicial entity, in such a way that youth and their parents are scared away from asking for a lawyer because they are afraid of the costs. If we can ensure that the person providing the information at the front end about the risks of proceeding without counsel - somebody who is going to be talking about it from a non-financial aspect it, might have some effect.
- 43:30 Chair Ellis But isn't that lawyer going to have to say that I have to also tell you that chapter 8 provides that they may come after you and try to get a judgment against you as a parent for all this cost?
- 43:47 N. Cozine Yes, depending on the county.
- 43:49 K. Aylward But you would still have recoupment as a threat. My concern is that if we say let's get rid of ACP that argument of a counselor or even an attorney advising on waiver of counsel can say, "Oh, yeah, if you have counsel appointed the court can order at the end of a case for you to pay." That chill is there as a potential dissuasion even if you throw ACP out.
- 44:25 Hon. Elizabeth Welch Back to Commissioner Lazenby's comments, let's go back to the 12 and 13 year old receptors here. A kid is in a detention hearing - in many, many counties in this state, a kid doesn't have a detention hearing. There are counties where a lot of kids land in detention, but there are counties where there aren't. So that piece of it would only address a very small percentage of the kids coming into the system. In other words - I am disagreeing with our executive director. I don't see the point of detention hearing being the critical step. A kid may not come before the court and enter a plea or appear *pro se* and have a trial. I guess there is one in a million of those without having had contact with an attorney and an in depth discussion of the dangers, etc., of waiver of counsel. I just don't see a detention hearing being the appropriate focus of this discussion.

45:41 N. Cozine And I don't disagree.

45:56 Chair Ellis I think I am hearing kind of two tracks here. One is you are actually negotiating and discussing with the Judicial Department ways to end up with the outcome that I think we all want, which is a lawyer involved at the time of any waiver. That includes the potential of amendments to the statute. Then I am hearing kind of a division of opinion on the proposal that was considered at our last meeting of dispensing with ACP. What I am hearing there is Kathryn says that the data probably doesn't support the argument that that will materially change the percent of cases where lawyers get involved. I am hearing two commissioners saying that politically you are opening us to a criticism that some affluent family will end up with a court appointed attorney and somebody will make a big thing about that.

47:11 J. Stevens I think it is not just some affluent family will get a court appointed attorney who will be the idea, at least in eastern Oregon that people shouldn't be able to get away, get a lawyer and do all that and not have any financial consequences. I think that the idea that the state wants to collect money is a very big seller east of the mountains. In reality, whether we collect it or not is not the issue. The issue is that we have asked and tried.

47:39 Chair Ellis Help me out. If we went the route of eliminating ACP that doesn't eliminate recoupment does it?

47:52 K. Aylward That is correct and, in fact, it should increase recoupment. In theory we are asking for total cost of representation let's say \$500, so please contribute \$200 and we order the remaining \$300 at the end. If you dispense with the contribution amount, you get to the end of the case and they order the full \$500.

48:13 J. Stevens I think it just doesn't sell as well, personally.

48:27 Chair Ellis Should we be driven by the politics or should we be driven by what we think is right?

48:40 J. Stevens I would personally say what is right. On the other hand if it creates political problems down the road that you can foresee now you ought to think about it.

48:48 Chair Ellis I have read chapter 8 and I have found myself saying you know, it is probably with all good intent that that is written with so much of a focus on the system getting money and so little focus on what I am more interested in is a vulnerable population that is under pressure from both courts and DHS and parents to just get it over with. Just say yes. Just do it. With the level of unsophistication that just has to be there, it just bothers the heck out of me.

49:27 J. Stevens Barnes, I absolutely get it. I have a 25-year-old who, if she ever got arrested, would answer anything and tell you anything, if that is what you wanted to hear. I really do understand. The problem is if you go to John Day, what you have turned that county into is the courts into a welfare state for people with bad kids.

49:55 Chair Ellis Just because a lawyer gets involved doesn't mean that the youth goes free. The system is going ...

49:58 J. Stevens I absolutely agree with you.

50:07 C. Lazenby My thought is that - I know Mr. Chair that you remember this very well when the whole concept of indigent defense was a bipartisan political football that everyone enjoyed kicking around. It was taxpayer supported lawyers for people that we know are guilty. Now there have been a lot of changes that the Commission has been a part of it. I think the BRAC and things like that have created an institutional memory that indigent defense is an important part of a solid justice system. Something that people need to support, but I think the public that supports it wants to see that there is some effort to make the people who have at least been

accused of committing these crimes, that there is an avenue where we are avidly trying to get them to put money back into the system that saves these other pieces that we have gained over time. Otherwise we face going back upstream against this sort of natural reaction against providing public subsidies for guilty people.

- 51:16 Chair Ellis The tension point is this ACP piece, which is an effort to make that collection at the very front end.
- 51:30 J. Stevens I don't disagree with you at all. I just I wonder what the political fallout from it would be. I just really do. I wonder if ultimately you do more damage either to just the juveniles, or to whole system, by doing that. I don't know.
- 51:57 C. Lazenby The court has the ability, if somebody says we don't really have the money to do this, to say we will appoint counsel and figure out the cost. I think it is a small price to pay for the legitimacy of the system to still keep that in place up front. It can be waived in appropriate circumstances. If we are going to move to the state where we had, more routinely, counsel available to talk about pros and cons and waiving counsel and all of these other kinds of pieces as well as what happens with the cost, then that gets explained too. I guess my disconnect was with what you said, Kathryn. I don't see how waiving the up front piece results in us getting more money at the back end. My experience, and granted it is very dated, is that at the end of the case when a person has been convicted that is not really going to be very easy to get any money at all.
- 52:48 K. Aylward Right. What I meant was that the amount a person will be ordered to pay, so whether you are saying to them if you get an attorney it is going to cost you It is going to be \$500 whether you pay \$200 up front and \$300 at the end, or \$500 altogether, or whether you pay it or not, you are going to be ordered to pay it. I am just saying that I don't think that ACP, in and of itself, is the disincentive. Having to pay money is, but unless you get rid of both ACP and recoupment you are not going to eliminate that. You are simply going to take money - and again the money is so small it is not a big issue, but all you are doing is moving it from our ability to spend it and sending it back into the general fund, and making it harder to collect because, as you say, up front people are still hopeful or employed, or whatever it is. It is easier to contribute up front. I am just saying that you are not fixing a problem in my view if you get rid of this.
- 53:47 Chair Ellis Are we at least thinking about that we are spending more to implement this chapter 8 - ACP piece than we collect in ACP.
- 54:04 K. Aylward I think sometimes if it's good public policy, it doesn't always have to pay for itself in dollars.
- 54:11 N. Cozine If I may, there may be ways, and I think that is part of the conversation with OJD, there may be ways that we can actually change ACP so that we make it into a system that isn't as onerous for the courts, that results in a higher appointment rate, but without the significant work load that it currently requires.
- 54:26 Chair Ellis And how can you do that?
- 54:27 N. Cozine What we talked about briefly in our meeting was moving toward a model that is more of a discussion on the record instead of this detailed verification process where the youth, the mother, the father, are filling out paperwork and then that paperwork is given to a verification individual who starts running credit checks, housing checks, employment checks - that is the piece for them that is very time consuming and in so many cases yields nothing. There are courts that have moved towards a model where there is some financial information collected. That information is given to the judge in the courtroom. The judge does a brief oral inquiry, and I believe the person has the understanding that they are in court and that they have to be honest or they could be prosecuted if they aren't. So moving towards a model where there is

less paperwork and less investigation could put us in a position where there isn't as much employee time spent.

55:52 Hon. Elizabeth
Welch

There is another little issue. The fellow who made the open the flood gate arguments earlier also stated that he makes the kids pay. I would be curious if there is some way to find out, probably there isn't, but if there is some way to find out to what extent that money that is being collected is being collected from the kids themselves. Again, what we have, and the criminal lawyers know this, we have a restitution system that ceased being based on the ability to pay many years ago, and that applies to the juvenile courts as well as to adult. In other words a child has been, and can be, ordered to pay tens of thousands of dollars in restitution when they are 14 or 15 years old. Obviously they're serious crimes and serious damage was done, but it is an increasing question what is it that the judges that are ordering recoupment at the end, who are they ordering to pay it and what is the potential for collecting money from a 12 year old. Sooner or later that kid is going to be able to pay that off if it becomes a judgment.

57:38 Chair Ellis

So procedurally at the end of the last meeting and discussion of this subject, there was a motion made by Commissioner Ozanne and seconded by Commissioner Welch to eliminate ACP in juvenile cases. That got amended by Commissioner Lazenby to have the kind of report and review analysis that we just had. So my question is is there still a desire to have a motion to eliminate ACP in delinquency cases?

58:25 Hon. Elizabeth
Welch

Personally I think that we should wait and let the things that Nancy and Kathryn talked about play out a little bit. Maybe just keep it on the books so to speak. See if there is something less than a poke in the eye approach that will get us the same result.

59:00 Chair Ellis

I am not hearing a motion.

59:00 Hon. Elizabeth
Welch

I move that we table it.

59:03 Chair Ellis

There is no motion pending so unless a motion is made we won't go there. Is there a desire to instruct the executive director and whoever else she wants to involve, to review chapter 8 along the lines that she discussed.

59:27 C. Lazenby

With the other players and report back to this Commission.

59:44 Chair Ellis

That doesn't require a motion but it is the sense of the Commission that we want to continue that. I am sure you do hear, because I don't think I am a voice alone in this, we really want lawyers involved at the point of these waivers. To me that is just what we are here for. I am just trying to find a way to get from here to there without stepping in something.

1:00:16 Hon. Elizabeth
Welch

I don't mean any disrespect to the Judicial Department but it would really be good if there was someone involved in this discussion who knows how this process actually works.

1:00:41 N. Cozine

I think that was why in our conversation we did discuss putting together a work group that would include judges and trial court administrators. It is a system issue.

1:01:04 Chair Ellis

I personally would like to have a report back at the June meeting. That is not very far off, but I want to keep this subject on our agenda. I want to keep looking at it because I hear everything, but I really want the system to end up with lawyers before waivers.

1:01:30 N. Cozine

It will be done.

1:01:31 Chair Ellis Anything else on that subject? Are there people here from Douglas County? Step forward sir if you would like. Why don't we move to the Douglas County piece and I want to get people who came to share thoughts with us on.

Agenda Item No. 6 Introduction of Preliminary Report Regarding Service Delivery in Douglas County.

1:02:08 Chair Ellis Wait just a second and we will let the executive director introduce the subject with a summary of the report. Then we will look forward to your testimony.

1:02:15 N. Cozine Mr. Chair and members of the Commission, on April 5 and 6, Commissioner Potter, Billy Strehlow, the analyst assigned to Douglas County, and I made a visit to Roseburg and met with the system partners regarding the provision of public defense services in Douglas County. Through the course of those two days we met with all of the judges in the county, and the trial court administrator. We met with our contractors, Dan Bouck, who is in the room and is the Director of Umpqua Valley Public Defender. Jim Arneson, who is not yet here. We also met later over the phone with Richard Cremer, who is present in the room. We met with criminal justice entities, Rick Wesenberg, the district attorney and Allen Boice, from parole and probation. We also met with juvenile justice partners Aric Fromdahl, from the Juvenile Department, Susan Knight, from CASA, and Darline D'Angelo, from DHS. All of the system partners were very gracious in sharing their time and thoughts with us. They were very consistent in reporting the challenges in the community. The challenges seem to be the lack of resources available, and the continuing decline of resources that are available, which attacks both the criminal system and the juvenile system and the changes that the county is experiencing. They have many new lawyers and a lack of felony qualified lawyers. They have a relatively new presiding judge and several new judges to the bench, as well as new department directors. The providers in this county - I have named the three - there used to also be the MASH Consortium, but that entity was eliminated when we began the 2012 contract cycle. UVPD is the primary provider. They are present in the courtroom for every arraignment, shelter hearings and detention hearings. They get the client's contact information from the court's verification paperwork. They also provide to the client, at that time, a sheet of information instructing them to contact UVPD to find out which lawyer has been assigned to their case. I assume you will want more details from the providers themselves. We understand that caseloads are a little high right now, and that is partially because of the lack of felony qualified lawyers, and also part of the budget concerns that are happening within the county. Within adult criminal cases, drug and property crimes represent the majority of crimes. That is true in juvenile as well. The probation department and the district attorney report a very good working relationship with our contract providers. Our providers are reported to be very strong advocates for their clients. In delinquency and dependency, again, there are very positive working relationships among the all entities. Attorneys are reported to be providing quality representation. There was some question about the practice of filing motions and the extent of investigation done in both juvenile delinquency and dependency cases. The recommendations in the report included some inquiry into the structural changes. We are in the process of rebuilding a supply of attorneys in Douglas County after the elimination of the MASH contract. To look into the practice of investigating and filing motions in dependency cases, and to perhaps inquire of the system partners what their efforts are in regular collaborative communication. There seem to be some very positive regular meetings happening in juvenile delinquency and dependency. If they have a LPSCC, as is reported, they meet relatively infrequently - when there is something that arises that requires a meeting. Everyone reports a very strong open door policy with good working relationships and the ability to resolve issues. With that...

1:06:29 Chair Ellis You are Richard Cremer?

1:06:27 R. Cremer I am.

1:06:32 Chair Ellis Thank you for coming. Why don't you go ahead and give us your thoughts.

1:06:40 R. Cremer I think that Nancy addressed my concerns fairly well. We really have a shortage of alcohol and drug treatment programs in Roseburg. Currently the probation department does not have a contract to provide alcohol and drug counselling to any of their clients. Typically what I am finding with my clients who are placed on probation with A & D issues is that they don't receive any services. That then gives rise to probation violations because they tend to use when they are not supposed to and they end up in jail. It is really sort of a very sad revolving door and I know that that is really not something that the Commission is tasked with dealing with, but it does impact how the resources for indigent defense are used. We see a large number of probation violations involving continued use of substances when it is a condition of probation not to do that.

1:07:47 Chair Ellis Can I get a little background? You have been a lawyer for how long?

1:07:53 R. Cremer Thirty-six years going on 37.

1:07:56 Chair Ellis All of it here?

1:07:56 R. Cremer Since March of 1976, in Roseburg.

1:07:56 S. McCrea He is the past president of OCDLA. He served on the board for how many years?

1:08:05 R. Cremer Eight years, I think.

1:08:09 Chair Ellis And you have one associate in the firm?

1:08:09 R. Cremer I have one associate.

1:08:14 Chair Ellis What percentage of your practice is criminal?

1:08:17 R. Cremer Personally about 85%. Actually more is criminal. Eight-five percent of my practice is devoted to contract work and about 15% to retained work.

1:08:37 Chair Ellis So is 100% of your practice in the criminal or juvenile area?

1:08:40 R. Cremer No. I do have some domestic relation cases. Probably 90 to 95% is criminal.

1:08:53 Chair Ellis Is the same percentage true of the associate that you have?

1:08:59 R. Cremer His is almost 100% contract work. He handles dependency cases. I haven't really looked at the figure to say what the percentage is, but I would say he is probably 85 to 90% criminal and the balance dependency.

1:09:17 Chair Ellis Within the criminal area do you tend to specialize?

1:09:23 R. Cremer I take pretty much everything other than murder cases. It has been a lot of years since I have done a murder case. They are excluded from our contract and there aren't too many people who are going to retain an attorney on a murder case.

1:09:41 Chair Ellis You are probably aware of this issue that is ongoing of the public defender office filing affidavits against one judge.

1:09:55 R. Cremer I am.

1:09:55 Chair Ellis What is your observation as to how that is affecting criminal practice in the community?

1:10:09 R. Cremer It seems to be affecting it in terms of the impact upon the judges who are receiving additional cases. I can't say that it has impacted my practice in any way.

1:10:27 Chair Ellis Do you file affidavits against that particular judge?

1:10:31 R. Cremer I do not.

1:10:37 Chair Ellis And your experience with that judge is it is working all right?

1:10:34 R. Cremer It has been satisfactory for me, yes.

1:10:43 Chair Ellis What coordination is there between the three providers? There is you and the Arneson firm and the PD. Do you all communicate in any way? How does that work?

1:10:58 R. Cremer I think the main coordination is the system that we put in place back in the mid-90's, where the assigned cases would be distributed according to a formula through the public defender office, so that we would each get the numbers of cases that we have contracted to handle during the biennium.

1:11:31 Chair Ellis Is that still in effect?

1:11:39 R. Cremer Yes.

1:11:36 Chair Ellis The PD office acts as sort of the distributor?

1:1:41 R. Cremer Correct.

1:11:43 Chair Ellis And is that working?

1:11:44 R. Cremer It is very satisfactory. Prior to reaching that agreement we found that the judges were making case assignments and not necessarily in a way which allowed each of us to meet our obligations under our contracts. Some people would have more work and some people would have less, and you were scrambling to get cases. Billy talks with Mary in the public defender's office and makes sure that the cases are being distributed to meet our contract needs.

1:12:23 Chair Ellis How do you provide for someone to be in the courtroom at the very inception of the case? How does that work?

1:12:32 R. Cremer The public defender's office handles that. They appear at arraignments. The out of custody arraignments generally take place at 8:30 in the morning. They have a lawyer present for those arraignments and then the in custody arraignments are either 1:15 or 1:30 by video and they have a lawyer present for those.

1:13:02 Chair Ellis Any other questions that commissioners want to ask?

1:13:07 Hon. Elizabeth Welch I am curious about something on page 18. In the final paragraph prior to representation of children there is a comment here that attorneys are rarely asking the court to make 'no reasonable efforts' findings despite the fact that appropriate services are often not available to parents. I am just curious and am not going to ask you a lot of penetrating questions. I am just curious what your reaction is?

1:13:50 R. Cremer Based upon what I talked to my associate about who handles the dependency cases in our office, he makes those arguments when appropriate.

1:14:09 Hon. Elizabeth Welch I guess I will ask the more penetrating question. He does termination of parental right cases, right?

1:14:10 R. Cremer Yes he does.

1:14:10 Hon. Elizabeth Welch How do people get their parental rights terminated in Douglas County?

1:14:17 R. Cremer Do they?

1:14:;19 Hon. Elizabeth Welch Assuming that, as in the case throughout the rest of the United States, that in Douglas County something like 75 to 85% of the parents in termination cases have drug and alcohol problems. I don't understand. If people's rights are being terminated, but there are reasonable efforts findings by your associate. That doesn't work. If you can't get drug treatment in Douglas County, how can you terminate parental rights of a parent with a drug problem.

1:15:05 R. Cremer The comments that I made related to the criminal system. The DHS and CWP have the availability to send their clients to drug treatment. The state probation office, the local probation office, does not.

1:15:30 Hon. Elizabeth Welch So it is just for adult offenders?

1:15:33 R. Cremer Yes.

1:15:31 Chair Ellis So I was interested as I read the report that of the three providers here, there are two private firms and one PD. They are all subject to the bar's unit rule for conflicts.

1:15:54 R. Cremer Correct.

1:15:42 Chair Ellis And there is no consortium which is the way we solve the conflict problem in some other areas. Do you find that that is a problem? That each of you has been active for a long time and you have a base of former representation and the attribution rules apply. Are you finding it difficult to get conflict free representation for some clients?

1:16:30 R. Cremer I think there is some difficulty in doing that. One of the concerns that I have is the elimination of the MASH Consortium. Not necessarily that consortium, but any consortium, that might be brought into existence in Douglas County. I think we have a real need for that kind of a service to be provided.

1:16:53 Chair Ellis So help me out historically. There was a consortium and now there is not?

1:16:55 R. Cremer Correct.

1:16:56 Chair Ellis When did that change?

1:17:00 R. Cremer It changed at the beginning of this year.

1:17:06 Chair Ellis So we are in the early period of a transition. The issue I identified may be a problem but it hasn't really shown up yet?

1:17:18 R. Cremer Well it has been something of a problem in that I am aware that counsel has had to be appointed from outside the county because there were no local lawyers to handle the number

of conflicts that sometimes exist. Right now if there are more than three co-defendants, for example, they have to go somewhere else. I do understand that there are, I believe, three lawyers in Roseburg who have expressed a willingness to accept appointments on an hourly basis. One of those lawyers is not very experienced. I have some concern about that. I don't know that that lawyer would be able to handle serious felony cases or maybe not even felonies at all. The other two lawyers are more experienced, but they are still relatively inexperienced. They are in five to six year range in their practices. I have some concerns.

- 1:18:29 Chair Ellis Probably aren't getting experience in criminal practice because they are not contractors.
- 1:18:42 R. Cremer They are in private practice and limiting their practice to criminal defense, but they are probably not getting the volume cases that say someone in the public defender office gets and with the experience that comes with handling large numbers of cases. Although I have to be fair and say that they both did work in the public defender office prior to going into private practice.
- 1:19:07 Chair Ellis The report commented a couple of places that there seems to be a shortage of felony qualified defense lawyers. Do you share that view?
- 1:19:24 R. Cremer I do, to an extent. I can't really tell you how great that shortage is. I know that Mr. Arneson's firm has brought some people on board who are becoming felony experienced. I don't know what the numbers are in the public defender's office. They have a number of new lawyers and maybe Mr. Bouck would be the better person to ask that question.
- 1:19:48 Chair Ellis Is your associate felony qualified?
- 1:19:50 R. Cremer Yes.
- 1:19:55 Chair Ellis Is your associate from out of the PD?
- 1:20:00 R. Cremer No. He was in private practice here in Roseburg and I hired him 10 years ago or so. He has substantial experience.
- 1:20:12 Chair Ellis Anything you want to suggest to us. We are here to understand the community and try to do our job. Any thoughts or suggestions or comments you would like to pass on to the Commission.
- 1:20:30 R. Cremer I think that the main suggestion that I have is for the Office of Public Defense Services to explore a potential contract with a consortium. I know that there is some interest amongst those lawyers who were part of the MASH consortium to reform in a slightly different structure with a different personality. I think that would be healthy for the provision of services within Douglas County.
- 1:21:07 Chair Ellis And the three private lawyers that you mentioned are they candidates in that?
- 1:21:14 R. Cremer Two of them are.
- 1:21:19 C. Lazenby The lack of local funding - kind of just not having the funds to do it? Is it just not funds allocated to the system?
- 1:21:30 R. Cremer I understand it to be a lack of funding.
- 1:21:32 C. Lazenby The county funding?
- 1:21:32 R. Cremer I have to confess that I am not fully conversant with how the local probation office is funded, but it probably has to do with county level. We do spend a tremendous amount of resources

on drug court, which in my opinion does not impact the greatest number of people. I think there are some within the legal community who feel that that money could be better spent if it were allocated to the general probation population as opposed to the limited number of people who participate in drug court and I share that feeling.

- 1:22:19 Chair Ellis Any other questions for Mr. Cremer?
- 1:22:22 J. Potter The chair asked how you communicated with the defense bar, and you said that it doles out cases and there is some communication there. Are there regular meeting with the defense bar?
- 1:22:33 R. Cremer There are and I meant to mention that but we got off topic a little bit. We have monthly meetings of the criminal defense bar where we discuss issues that we might have in common. We often have speakers from various agencies that are involved in criminal justice. We do stay in touch with one another on a regular basis.
- 1:23:00 J. Potter You heard Nancy say that there is no Criminal Justice Advisory Committee, but there is a LPSCC that meets infrequently. One of the issues that seems to be of some concern is that there are policy matters that may affect the whole criminal justice system, but there is no real mechanism to have those discussed amongst all the players. So if the DA's office is going to reduce the number of attorneys, or the budget cuts are going to affect other aspects of the system, there is not a group that gets together on some regular basis to form strategies. Is there any value in trying to create that and if there is who leads it?
- 1:23:59 R. Cremer I think there is value. I don't know who would lead it. I really haven't given that much thought.
- 1:24:10 Chair Ellis Other questions for Richard? Thank you very much. We appreciate you coming. Is Dan Bouck here? I have been told that there is a desire to break for about five minutes.
- (Break)
- 1:37:41 Chair Ellis So, Dan, thank you for coming. Do you want to give us some comments on the report as you reviewed it?
- 1:37:49 D. Bouck Yes. I went over the report and just starting from it. It listed who you met with. The only player that I think that got missed was the sheriff's office. They are part of how we operate. Even though we have a lot of different police agencies in this county I think they are the primary one. Plus they run the jail. I am not sure if you are familiar with Washington County, it is having a big problem right at the moment with allowing contact with clients and such. In the future, I would include them in how things are operated.
- 1:38:26 Chair Ellis When you say that, is there a particular issue with them?
- 1:38:26 D. Bouck We work with them on just being able to see our clients when they bring them out and just procedurally how we operate. They have a lot of contact with our attorneys. We are doing a good job and are able to work with them. So they would be a good person in the future to talk with.
- 1:38:48 J. Potter Before you move on you have opened the door a little bit. Is there an access to client issue in this county?
- 1:39:00 D. Bouck No. The biggest obstacle is, we need some more space but we work around it. The facility can only allow four people to be seen at a time. Sometimes six of us show up to see somebody and we just can't do it. They ask us not to visit at certain times, but they will make exceptions if we talk to them, so there is some give and take. As long as we are talking, it has

worked out pretty good. There have been some issues as to juveniles being brought over to court in shackles, but Mr. Arneson has been dealing with that issue. You mentioned having a firm date for eCourt sometime this year. Really we are not that concerned about eCourt. We would rather see the attention go to fixing OJIN. It is a horribly written program that we need to access constantly and the data being put into it OJIN is not valid. We are constantly having to go over and - I brought it to Billy's attention. I brought it to the presiding court judge. I have taken it to my court administrator, and some of the staff, when something happens, they erase information from OJIN. When we get a brand new case, our staff prints out whatever is in OJIN at that time. We have looked two weeks later and it has been changed. The stuff we have no longer exists. So OJIN is not accurate at least in this county, oftentimes. Hopefully when you rewrite the program it can be set up such that they can't alter any entries in the program. We would like to see some of those changes. I don't have any shortage of felony qualified attorneys right at the moment. I have got two new attorneys that have been there about six months. They are just doing misdemeanor work. I have got one that has just started doing felony work.

1:40:55 Chair Ellis

Where do you find your new attorneys?

1:40:55 D. Bouck

We typically just post to the local law schools. Years ago we would get very few applicants. The last time that I just hired two I was flooded with applicants. I spoke to some people up in Portland and there is just a glut of unemployed attorneys right at the moment.

1:41:17 Chair Ellis

Did you get ones with experience in the criminal area?

1:41:14 D. Bouck

Almost everyone is new. It is hard to get somebody that has experience that wants to move down here to start out. Usually I want to start with new people. That allows me to move some of the other people up and start somebody lower down and I can start their training the way we want it. How they practice in say Lane County is different. We want to teach them our way of doing things.

1:41:40 Chair Ellis

Do you have a lot of turnover, or is your retention...

1:41:45 D. Bouck

We have pretty good retention. The reason we just hired is that we expanded the size of the firm's contract so I needed more people. Otherwise we lose maybe a person a year, so it has not been bad. We had two gentlemen who went out in private practice recently, but we knew that was going to happen sometime. We thought they would go to Lane County but they wound up down here. They are the ones that you have heard mentioned. We would really like to see them be a part of a consortium. They are both Measure 11 qualified. The problem is getting people who can do dependency. That is the harder one to recruit. The qualifications for a dependency attorney is probably equal to a Measure 11 attorney. I just have one person. It is about a three year training process so that I can have somebody doing dependency work. I need a year or so for them to just start doing standard work and now I have got them learning how to do the dependency. Hopefully by the end of this year he will be dependency qualified because I know I am going to lose one of my dependency attorneys in a few years. That is where it is a lot harder and that is where the county needs more people. Normally we take one of the parents. The Arneson group typically takes the child and Mr. Cremer takes the other parent. But we get a lot of cases where there are more players than that. There might be two or three dads involved and such. There aren't too many people in town that will do it. The two attorneys who were in my firm they don't do dependency work as far as I am aware of. It is typically my staff that has to call up Billy and say, "Hey we have got two more dads here, who do you have." There was some comment about civil commitments - more being dismissed. There aren't more being dismissed. What has changed, I think, is the pre-commitment investigator is doing a better job. For awhile we were getting cases that should have never been filed. So now when they are filing them there is a much more reasonable basis for us to be involved. They are using the civil commitment diversion procedure a bit more often, which is a little harder on us because the time frame on

that, I believe, says 24 hours that they have to sign the paperwork. The problem is that a couple of years ago Mercy Health shut down and so now our clients with civil commitments, if they aren't in the VA, they could be anywhere in the state. Typically they are down in Medford, although we have had to go as far as Portland to see them. We will get a call at 2:00 in the afternoon and we have just been contacted about a civil commitment. We have to go see them but we are talking about a three or four hour block of time. That is just a challenge. That is a money issue. If we could come up with a lot of money down here we could reopen Mercy. There is a question about our client contact within 72 hours as the guidelines. Procedurally what works now is we have an attorney at what we called morning arraignments, out of custody arraignments, and at that point if they qualify for an attorney they are given a piece of paper that tells them to call my office on the next day to find out who we have assigned it to and at that time schedule an appointment. We then, the next day, typically send them a letter telling them here is your attorney, call and make an appointment. We don't follow up and call them and make an appointment. I think about 50% of the clients call and make appointments. The attorneys on their own get sort of frustrated before status check and they will oftentimes try to call the client. The other clients who haven't made appointments, I would say at least 50% of those their phone numbers aren't even valid. We have no way of reaching them. There is just a trickle down procedure but we make the effort on the front end and go from there. In custody we just go across the street and see them the next day. I have talked with our rep about – what do you call it, robocalling - having our computer call people to remind them about court dates. It is something we are going to have to talk to the reps about. There is some data entry in our phone system. Quite frankly we want to wait until eCourt comes on board before we do much more upgrading of our computer system. Whatever eCourt ends up being we want to make sure what we have is compatible. We want to sit on anymore electronics, but that would probably be our one solution, assuming they have valid phone numbers. We have looked at potentially doing email, but, again, we are waiting on some more technology to be able to do it without being really labor intensive. Overall I would say that the public defender's office is actually really doing well. The last six months though have been really challenging. We expanded our contract last year that started in June.

1:46:59 Chair Ellis

By my math you are about 60% of the caseload?

1:47:03 D. Bouck

Yeah. We handle about 60%. Roughly we went from about 225 cases to around 300. So we ended up hiring more investigators and more attorneys. We had to build more space within our office. All that was happening and then we had a flood in the end of February, which caused us to be without half of our office for over a month. What was nice as I look back on it, even despite all those events, other than cancelling appointments that one afternoon, we didn't miss anything. It was a mess for a long time. We were literally working in the hallways and trading offices when clients came in, but despite that, all court appointments were made and everything kept running and we are happy about that. We are doing, I think, well. I hope to hire a law clerk next week that will be full-time through the summer. At that point we are going to decide whether we want to convert it to an attorney or keep a law clerk. We are right on the edge, where I could use another attorney, but because of the budget cuts we are not sure if the state, the DA, is going to have to do any reduction. We are right at the point where, if things stay the same I can justify another person, but if anything slows down I am going to be overstaffed and we don't want to have to let anyone go. We don't want to be in position that occurred years ago in BRAC where we had to back off on people. We are just on that edge where if I get an assurance that there is going to be enough cases for the coming year I would hire right now, but I think waiting until fall will actually work out well. Then I will have two attorneys that will be doing what I call "major misdemeanors." I can have a brand new attorney that will be doing all the low end misdemeanor work. I will have a variety of people. I don't want to have all experienced attorneys because that gets very expensive.

1:49:01 Chair Ellis

Who do you have on your board?

1:49:01 D. Bouck I have two attorneys that are in private practice. I have a businessman. Well he is now a minister -he just changed positions, and a government employee who helps manage a VA facility.

1:49:18 Chair Ellis And how were they appointed?

1:49:20 D. Bouck I inherited all but one of them from Mr. Tower. I am not sure how he got them. I recruited one of the attorneys. He had been in the DA's office and gone into private practice. I wanted somebody who understood the nature of our practice.

1:49:45 Chair Ellis Are some or all them appointed by outside sources, or are they self-perpetuating?

1:49:46 D. Bouck They are self-perpetuating. They talk amongst themselves. I had suggested, "why don't we have this person on board?" They said, "Well, go talk to them." They approved it after I suggested who. We have had talk about getting somebody from the banking community on board, but we would have to expand the board or somebody would have to step down.

1:50:05 Chair Ellis How often do they meet?

1:50:07 D. Bouck Quarterly. I have my next board meeting next week.

1:50:15 Chair Ellis Are they pretty good at coming and attending?

1:50:18 D. Bouck Excuse me?

1:50:18 Chair Ellis Are they regular in their attendance or spotty?

1:50:19 D. Bouck All but one. That is the one that we have been talking about that he might step down. That would be the one we would replace with someone from the financial field.

1:50:27 Chair Ellis Have you communicated with your board on this issue that the report discusses about filing affidavits?

1:50:38 D. Bouck They knew we were having problems with this judge for awhile. We went a year before doing it. At the last board meeting I told them that this was pretty much our only option.

1:50:53 Chair Ellis Why is that?

1:50:59 D. Bouck Nothing else was getting done. I went to a plan B judge and said here is the problem. They knew all the players and their advice was that we needed to do a judicial ethics, but my concern was that if I did that, being as vindictive as the person is that, unless he was taken off the bench permanently, I would never be able to take any clients in that courtroom. We looked at some options of how we could resolve it without interfering with the rest of the courts. It use to be you could affidavit always into the case. Our county got too large and now we have to affidavit within 24 hours. Before we know anything we have to affidavit. We just had a meeting. Ironically, having you guys come down here has suddenly sparked an interest in the court in trying to resolve the problem. For six months....

1:51:50 Chair Ellis That is one reason we come.

1:51:50 D. Bouck Yeah. For six months the court didn't care, and they didn't want to talk with me. Then suddenly they wanted to ask, "how can we resolve this?" They are willing to discuss the problem, even though we had mentioned there was a problem. So we got a bunch of ideas on the table - that is going to get presented to our presiding judge here shortly. I think we have

an idea or two that might work out. We are still getting some cases that we refuse to take in front of him, but I think it will reduce down significantly how often it happens.

1:52:22 Chair Ellis

At the moment do you have a blanket policy?

1:52:22 D. Bouck

Yes. We won't take any cases in front of that judge at this point.

1:52:23 Chair Ellis

So even if you have one of your lawyers that is responsible for a case and is comfortable.

1:52:37 D. Bouck

The problem is how they get assigned. If we have somebody at morning arraignments and they say at morning arraignments that it is assigned to this judge. We have 24 hours at that point to affidavit them. The assigning attorney won't probably get the file until the next morning and there won't be enough time for them to evaluate the case and decide this is one that shouldn't be before this judge. That is one of the things that we are presenting to the court is that we need to go back to the procedure we had before Douglas County got over 100,000, where we had a chance to review and decide, is this one of the cases that this judge should not be allowed to touch?

1:53:12 Chair Ellis

So, if I hear you, you are talking about a means of getting a longer period to evaluate a case before locking into an affidavit.

1:53:23 D. Bouck

I think the presiding judge will agree to give us a bit more time. He did that for awhile. One of our other newer judges, when she got on the bench, she came from the DA's office and her husband was the chief of police. We were a little concerned about conflicts and problems. We had worked out a temporary agreement of how we would do that. For the first several months he gave us a lot of leeway. He didn't enforce the 24 hour rule. It is no longer an issue, and has gone away. I know there is some flexibility of doing it.

1:53:37 Chair Ellis

Is there a procedure to undo an affidavit once it is filed?

1:54:03 D. Bouck

Yes. We have to file another affidavit with the presiding judge to allow it to go back to that judge.

1:54:13 Chair Ellis

Have you done that?

1:54:13 D. Bouck

Once or twice. It is a real rarity.

1:54:19 Chair Ellis

If I understand the logic of the blanket policy it is driven by this 24 hour rule.

1:54:30 D. Bouck

Right.

1:54:30 Chair Ellis

To be honest it doesn't sound right to have a blanket policy and then you have individual lawyers who feel they don't share that.

1:54:42 D. Bouck

I don't really have any of my attorneys who really disagree with not being in front of him. Because of some of the issues, it is more severe with some attorneys than with others. To be fair, since I don't know who I am going to assign the case to, we just had to be equal across the board. We didn't want to sound like we were judge shopping. We just know that he can't handle certain things or certain types of people.

1:55:11 Chair Ellis

We had Mr. Cremer here a little bit ago.

1:55:12 D. Bouck

Right. The problem we have, and I have talked to some of the other attorneys who have been around for awhile, the issue isn't so much for some of us. It is especially for newer attorneys, or female attorneys, is where the problem comes up. To be fair, Mr. Cremer won't take any cases in front of one of our other judges automatically. We have 300 cases to - I am not sure

of his number. His refusing to appear in front of one of the judges isn't having the same impact.

- 1:55:50 Chair Ellis We were also told that Mr. Arneson is okay with trying cases before that judge.
- 1:55:52 D. Bouck I think he is because he is still acting as training wheels with all his new attorneys. The problem doesn't surface when Mr. Cremer is there. I thought the problem would surface with some of the senior attorneys in town. If I am not there watching he will do things that cause problems.
- 1:56:21 Chair Ellis Do you believe this current situation is sustainable. Here you are with 60% of the caseload and that obviously has a huge impact where there are only five judges in the county and you are refusing to appear before one of them.
- 1:56:41 D. Bouck There are options. The judges have some flexibility also. I haven't heard the civil bar complaining that they are unable to appear in front of him. The judges have some ability to be flexible too. We have individual dockets and none of the judges are willing to trade what they are doing, so it does fall on the others. The problem is, whether I am doing it or whoever, when I file the affidavit the fact that it is going to be a burden on the court that we won't go in front of that judge doesn't waive the factor of whether my client can be treated fairly in that courtroom. We are looking at a way that won't burden the judge, but my primary goal is representing the client. If I know that judge, whether it's because of the attorney involved is going to be impartial or because of the client is going to be impartial, we have got to get out of that courtroom.
- 1:57:37 Chair Ellis You have said there are some lawyers in the PD.....
- 1:57:37 D. Bouck Part of the problem is, it isn't uniform.
- 1:57:44 Chair Ellis You also have a duty to their client. They are saying they think it would work with their clients.
- 1:57:50 D. Bouck He can with certain people. I would have to undo the affidavit afterwards. If I know that I am assigning to myself, for the most I know that the problems and the behaviors don't surface. But I know if it is being given to this other attorney, I know that it is impossible for that client to get a fair chance in that courtroom. We have been trying to come up with a way of when we have that we can file the affidavit, but instead of doing it automatically per current rule that says you must do it within 24 hours, give us enough time to determine if it is one of those cases that fall in a category that we know just can't fit. I think it breaks it down to a pretty small percentage. There are not going to be as many anymore. Some things I don't think will never change, but if we can do it, that is basically going to be cases where he has a chance to evaluate our client for bench trials. It is just certain types of motions to suppress in bench trials which will reduce down and eliminate, I think, probably 80% of the affidavits.
- 1:58:58 Chair Ellis I have been interested in public defense for a long, long time. I only know of one other circumstance where a PD office did what you are doing. It involved a judge in Multnomah County so there you have 25, although back then it was not that high. I can't think of any other situation besides that one, and that was 30 years ago.
- 1:59:32 D. Bouck We have had issues before where we have affidavits against a judge; he is now retired. Everybody was affidaviting him on a specific type of case, but back then you didn't have the 24 hour rule. They ended up decriminalizing the issue, and it sort of went away. You didn't have to worry about appearing on that type of case in his courtroom. We were affidaviting a different judge for a period of time for about six months on a certain type of case. We eventually had a meeting. It was a very uncomfortable meeting, but we explained to him what he was doing and why we had so many problems with it. He changed, and the problem

went away. But it had to come to a head before they were willing to sit down and talk to us and make the changes. Up until you guys showed here, there was no incentive for anyone to sit down and make the changes.

- 2:00:27 Chair Ellis I was told about this issue some before we met. I have some background. We are sitting here trying to do our job, which is to be sure that clients have competent counsel and that the system functions. I would have to say that I react badly to having this situation. I can't take sides about it, but I am really not very happy to hear in a smaller county, only five judges, 60% of the caseload with a PD, blanket order of affidavit. I have been trying to think through in my mind, "what is the best way to try to get people to communicate in a way that resolves that issue?" It does seem to me that your board ought to play a very active role. That is who you report to. That is who makes the decision are you the right person being the ED of the PD. I am uncomfortable having us
- 2:01:55 D. Bouck We actually have a procedure set up now where we actually have a possible resolution and some meetings set up. I think there are going to be some changes. We haven't had a bench bar meeting in maybe 10 years since we lost a lot of our judges. It sounds like we are going to get back to doing that now. The LPSCC has only met once in the last three years. I think some of the things that would have prevented it from getting as bad as it has gotten are probably going to start up again, but it is going to take time to redevelop that trust.
- 2:02:33 Chair Ellis I would add that we are seeing this report and a push to bring in a fourth provider. There has been talk. I could see that this situation as it exists today might well push us in that direction.
- 2:02:58 D. Bouck That could happen. By the time the next contracts come around this issue will be gone, but if it continues this way it is going to be a problem. If nothing changes this time two years from now when it is contract time, it is going to be a worse situation, and in which case, I assume judicial ethics will get involved and the whole county is going to be a mess. The whole justice system here is going to be mess. The attorneys all know. They all have been trying to be politically polite about the dealing with the problem. We all know; my board members who know the judge and have a very low opinion of him; four employees have a very low opinion of him. But we are trying to find a way that will resolve it without making it worse. I think we have a few ideas. Affidaviting was probably the less harmful way of doing it. I think that was going to cause the least amount of political fallout and left the door open for some resolutions.
- 2:04:03 Chair Ellis Other comments from commissioners? I would very much like to see this situation addressed. Part of what troubled us is it looked like it got to the point it is at and then just sat there for quite awhile. It is the kind of thing that if at all possible we would like to see worked out at the community level, but I would have to say that given the numbers, your percentage of cases, and the number of judges and just the overall circumstances, I don't think we can sit still very long just letting it be where it is.
- 2:04:53 D. Bouck I think if you don't make your presence known it will vanish again. Your being here caused a lot of people suddenly to want to talk about the problem that everybody realized. It helps having your presence here. It is causing everyone to talk that didn't want to. You may not have authority over them, but just knowing you are out there watching is going to cause everyone to sit at the table and come up with an answer.
- 2:05:27 Chair Ellis I think it is a fair statement that we are watching and frankly I am very concerned. I don't think we can afford to sit here for a sustained period of time and just let it continue where it is.
- 2:05:40 J. Potter Mr. Chair, if I may, I have mentioned to you that I am playing some role in this, wearing the Commission hat of sorts. I got wind of your concerns. I have met with Dan and his staff and we are meeting with the judges. We are putting together a plan - the "we" is the parties involved. I absolutely agree that we need to keep a close eye on this. It is a big issue, but I

think there is some progress being made. If Dan's board is also - which hasn't been involved in our discussions to date, but I think it is a great idea to have them plugged into this as well. We should not let it die and it won't die, but by the next Commission meeting which is in June, I think we are going to be able to report one way or another whether these behind the scenes negotiations are fruitful or not.

2:06:49 Chair Ellis

I would very much encourage that. Can you describe to us your training and supervision work within your PD?

2:07:02 D. Bouck

What we do is, when we bring in new attorneys, they are assigned a more senior attorney to act basically as a mentor. We start all new attorneys with brand new cases, so we don't give them other people's cases. They start all cases fresh. We just monitor what they are doing. Every other week we meet with the attorneys and go over specific cases with them, and review what they are doing. Then in opposite weeks the attorneys all meet as a whole to go over what is happening. They will start with the most routine misdemeanor cases and then once they understand that I give them more complex cases and we just check to see what they are doing. The more senior attorneys, I have monthly meetings with each attorney. The day before, I pull a whole bunch of their files and ask what they are doing in the cases. Why are you doing this? Just to see what is happening. There are quarterly reviews where I go and talk to the court, talk with some of the DAs, the judges, and court staff, because they usually know what is really going on, and I can get a feeling where we are at. That is sort of how we monitor. The rules say what training an attorney has to have before they can get certain types of cases - you have to have so much time doing misdemeanors, and two trials. Then they have to do so many felonies, second chair. We follow that, but it is also sometimes just a feeling. I have one attorney that I had to slow him down. He wants to do more and more. He is above the curve on learning how to do trial work. Another one, I think it is going to take him a little bit longer to feel comfortable - he is doing well, but just a little bit different. We have your guidelines on what we are required to do, but we have adjusted things on their skill level.

2:09:00 Chair Ellis

Mr. Cremer says your office plays the role of being the point person when cases get started and then you hand them out.

2:09:09 D. Bouck

Yes. What happens is, I have somebody in court, whether it be out of custody arraignments in the morning and jail in the afternoon. We get a list of who is there and who has been qualified for counsel. We then run them through a list of names for any obvious conflicts. So if we get 10 people we will go through and we should take a certain percentage of them. We first try to get ones that there are not obvious conflicts. Then my staff will call Mr. Cremer or Mr. Arneson and say, "we have these people who need attorneys." Do you have conflicts? It's sort of a filter down procedure, but that is the basic procedure. We are trying to look for conflicts before they go out, but that is usually the delay - we want to ask them, "can you take this person or not?"

2:09:59 Chair Ellis

You heard my question to him. In this county you have three providers. All of them are subject to the unit rule of conflicts. There is no consortium which is the method that in other counties

2:10:16 D. Bouck

We had a consortium about 20 years ago. There was the public defender's office and the consortium. They dissolved the consortium that resulted in some of the current contractors and MASH and such. I would like to see us go back to having the PD and a large consortium. It is a problem when we have more than three defendants for conflicts. Once the other two providers can't take the case my staff spends a lot of time on the phone calling up these other people asking if they can take the case.

2:10:58 Chair Ellis

You said it was dissolved 20 years ago. I thought it just ended a year ago.

- 2:11:02 D. Bouck No. There use to be the public defender back when we were in the courthouse, and a group called "the consortium." It was about 10 attorneys in that. But MASH didn't get created...MASH came about after the consortium. There was MASH, Richard Cremer ended up with a contract, Arneson. We created a bunch of different ones, and we just lost MASH this last year. I would like to see us, and just one consortium with Mr. Arneson and Richard and two other attorneys that we have mentioned. It would just be a bit easier in assigning out cases for conflicts. Right now with three, there are cases where we have four or five, and have to spend a lot of time trying to find someone to take those cases.
- 2:12:02 Chair Ellis We have had sort of a mixed experience with law firms being members of a consortium. Then you end up with sort of a curious set of relationships. Typically the consortiums will be individual practitioners. You happen to be in a county where there are two very well regarded law firms that have been functioning pretty well as contractors. Other questions for Dan?
- 2:12:35 J. Potter You were in the room when I asked Richard about communications amongst the players in the justice system. There is no Criminal Justice Coordinating Counsel of any kind necessarily. Is there a value in trying to set one up?
- 2:13:01 D. Bouck Yes there is a value. It would be nice to have something. I would like to say the presiding court judge would lead it, but I am not sure if he is willing, or has a strong enough leadership to do it. It has been pointed out to me by multiple people that I need to step up and maybe take that role. So, but yeah, we need to be doing something. At the moment there is communication but it is indirect. Everyone talks, just not in the same room at the same time.
- 2:13:39 J. Potter You mentioned that our presence here is having an impact on the affidavit issue and that people are all of a sudden chatting about it. Does our presence here at all have any impact on setting up a group?
- 2:13:52 D. Bouck Well, yeah. Among the reasons is because of the problem we have where you could go to the table and say, "Gosh, how about these things too?" We've thrown in some of those other ideas. I don't know where we have lost a lot of the things. We lost a lot of our judges that were here forever. When I started, we had the same five judges for almost 20 years. All but one of them are gone now. For awhile we had the same attorneys for a long time. We have lost a lot of the intermediate people. The DA lost a lot of people. Procedures seem to get lost - the bench bar meetings, and various things like that. Like I said, it has been pointed out to me that I need to step up and start running some of those things. I was fortunate. When I came on board I had three OCDLA presidents within 100 yards of my office to learn from. We haven't had an OCDLA president for awhile. I think the last one from our county was Greg Hazarabedian. We have lost some of the leadership. That is probably my error but we will work on it.
- 2:15:07 Chair Ellis One reason we like to come to the communities is to ask the providers and the system participants, and those that are interested, any thoughts or suggestions they have how we could do our job better. So I want to invite you to comment if you have any thoughts or suggestions how we could do better. We would appreciate it.
- 2:15:43 D. Bouck I will admit, it was my ignorance. I didn't know, but until I was having a meeting with part of you, that I was even asked to be here. There is a lot of lack of communication. Some of the contractors that have been doing it for awhile understood. But until I had that meeting and was told you will appear at the Commission. I didn't know I needed to be here. I am just used to dealing directly with Billy. It would be helpful to know what is going on. I had a lot of people ask - the presiding court judge, Judge Garrison say, "Oh, do you need me there? Do they want me here?" It would be nice to know what you need so we could have had those people here if you wanted to hear from anyone.
- 2:16:28 Chair Elis Okay.

2:16:19 D. Bouck The agenda wasn't posted very much in advance. I went online and a lot of the people need a lot more notice than a couple of days.

2:16:37 Chair Ellis Billy is your assigned analyst?

2:16:38 D. Bouck Yeah.

2:16:39 Chair Ellis Everything going okay? Do you feel like you're getting good communication?

2:16:44 D. Bouck Yeah. He probably gets tired of hearing from us at times. He gets back with us real fast and tells us what is going on, and resolves the issues. I have had some meetings outside of this setting. I have gone up to Salem just to talk with him and get some ideas of what we should be doing or why he is doing what he is doing that have been really helpful for me.

2:17:07 Chair Ellis The extraordinary expense approval process working okay?

2:17:22 D. Bouck He was explaining to me, why it is working the way it is, so I could explain to my staff, what you need to do and why it is this way. That was really helpful.

2:17:23 Chair Ellis I should know this but how long have you been the PD?

2:17:29 D. Bouck I think 22 years now. I think Shaun McCrea was just stepping down as OCDLA president when I came on board.

2:17:41 S. McCrea Has it been that long?

2:17:41 D. Bouck When I came on board here there was this really big gap for a long time. There was all these very experienced good attorneys, and then there was me and then there were sort of waves of change. I sort of got lucky although we still have a lot of those attorneys. There are a lot of them looking at retiring and sort of a new generation is stepping up.

2:18:12 S. McCrea Do you have a caseload?

2:18:18 D. Bouck What I am supposed to be doing is a third of my time is drug court. A third of my time is my share of the Measure 11 cases or a few cases, and then the rest of the time is supposed to be supervising. One of my attorneys is on medical leave. She should be back here the end of the month, so I have had to cover a lot of her stuff. My board has already pointed out that I am doing too many cases. That is why I need to drop that back so I have time to do some stuff.

2:18:50 S. McCrea But you have described a lot of things that you are also doing.

2:18:54 D. Bouck I just did a trial that was a never ending trial. I even foresee an eight day trial. It has been spread out over several months.

2:19:05 Chair Ellis Other questions or comments? Thank you. We appreciate it. I would like to shift because I know Mr. Greco is here from Lincoln County. He probably wants to head back to Newport.

Agenda Item No. 5 Lincoln County Service Delivery Update

2:19:24 N. Cozine Mr. Chair, I think Amy Jackson was planning on giving an overview.

2:19:37 G. Greco Good morning, folks. Mr. Lazenby, I have never met you but I think I introduced myself to Ms. Stevens. I have never seen Shaun so quiet in my life.

2:19:47 Chair Ellis This is actually Commissioner Spumoni.

2:19:55 G. Greco Okay. Just before we get started on the Lincoln County thing, I was in and out of day dreaming, and I was listening to what you were doing, if the Commission would like to deputize me - I am serious - to perhaps try to mediate this situation you are having with this affidaviting of the judge, I would be happy to look into it. I have 13 years as a mediator and I honestly cannot imagine the kind of scenario that is going on here where you are affidaviting the judge. I don't know who the judge is. I don't know what the particular issues are, but I would be happy to volunteer my time, if you paid me mileage, to talk to the judge and to talk to the people involved. I have no hesitation in talking to judges and say, "Hey, they are affidaviting you all the time. Maybe we need to work on this."

2:20:42 Chair Ellis I appreciate that offer. We've got another process that we are working right now, but we will certainly keep that in mind.

2:20:55 G. Greco Keep it on the back burner. I would be happy to volunteer. It sounds like something that should be rectified.

2:21:02 Chair Ellis How do you want to proceed?

2:21:02 G. Greco I don't necessarily like all of my trial judges but that is why they invented the Court of Appeals.

2:21:14 A. Jackson Good morning. Mr. Chair and members of the Commission, I would like to begin this morning by briefly recapping where the Commission left off with regard to Lincoln County. After that Mr. Greco will provide you with an update. Then I will share with you some of the comments I received when I recently visited Newport. As you will recall, Lincoln County was on the agenda several times last year, including March, May, June and September. At the May 2011 meeting, Mr. Greco updated the Commission on some changes. He reported that he had completed the attorney performance review and had met with the judges to discuss information that they had provided. He indicated that, in response to the upcoming RFP, the current group of providers would organize the non-profit corporation that would have written agreements with each lawyer accepting cases under the contract and that it would not be contracting with the firms. The corporation would be governed by a board with two outside members appointed by the Lincoln County Bar Association. The board would have the authority to terminate its agreement with any attorney, even if the attorney were an associate in a law firm. The agreement would not prohibit a law firm associate who handled public defense cases from leaving the law firm. Mr. Greco indicated that monthly lunch meetings had been instituted and would be mandatory in the future. The Commission continued to express concerns regarding law firm members when the firm partners do not participate in the work.

2:22:43 Chair Ellis This was the Hollen firm? I remember that.

2:22:46 A. Jackson That is correct. However, the Commission was encouraged by what the consortium was doing. The service delivery report was finalized and approved at the June 2011 meeting and it was decided at that time that we revisit Lincoln County in May of 2012. Lincoln County was again briefly updated in September during contract negotiations following a conversation Ms. Aylward had with Mr. Greco. At that point the consortium hadn't yet confirmed their outside board members and they needed the board to make decisions on membership agreements. It was decided at that time to extend their contract for six months to give them enough time to finish getting things into place. Since that time the consortium has made several significant changes, some of which have just occurred pretty recently. At this point, I would like the Commission to hear from Mr. Greco about those changes.

2:23:42 G. Greco If you will bear with me I will try to go chronologically as to what the process was. I think the Commission recognized that I understood the kind of structure that you wanted and I did

think that I perceived how you wanted the consortium to be managed and organized. There were a series of meetings that I held during the summer with Mr. Pridgeon, Mr. Ouderkirk, and Mr. Hollen, primarily because they controlled an overwhelming majority of the contract and the new, shall we say paradigm, was going to impact them because of your concerns about how firms work. I basically made it clear to them at that time how it was going to be. I told them that if you wish to retain associates in your firms, you had better make them happy. In other words you better compensate them fairly. You better give the kind of mentoring that they need because the new regime of the new arrangement is going to allow them to, basically, independently go wherever they want to. They are going to be answering to a board of directors, and not the partners in your firm. So then Paul Levy gave me a whole series of materials. I am not an original writer but I took some of the best practices documentation, both the bylaws and the contractor agreements, and reviewed them. I spent quite a bit of time trying to carve them into the unique types of practice that we have in Lincoln County. Not one size fits all. So I worked that out. Then the next thing to do is, we of course, were well aware after May about the mandate about having lay board members. We had to undertake that task before we could get the board of directors in place. We had to secure our lay members. Now I will tell you about the selection process and how it worked. Obviously we didn't want to select them. We needed to get an outside agency. I tried the county commissioners. They declined to do that, but the Lincoln County Bar Association agreed to perform that function for us. We did identify four individuals; the lawyers at the consortium. One was a local accountant. One was a former mayor of Newport. Another, Fred Bennett, was a pro-tem judge for about 12 or 13 years doing juvenile work and now is back in self-practice, and then Raymond Grady who is a retired grocer. He basically built and owned the only big full-time grocery store in Waldport. We prepared a little brief bio of all four individuals and gave that to the bar association. I think they met in executive committee and they selected two of the four. They selected Mr. Grady and they selected Mr. Adams. Having Mr. Adams has been helpful because we were getting our accounting in order. How we are going to report the money going back and forth. Mr. Grady is retired and is probably 75. He has been a long time businessman.

2:26:50 Chair Ellis

A young guy.

2:26:50 G. Greco

Yeah, and he has all the wisdom that you bring to the table. The thing that was interesting was all four candidates before we ever got started, all four candidates said, "I will be happy to serve on your board as a volunteer but you have to insure me. We have got to have board of directors insurance or we will not serve. I don't need to get sued and then go and have to pay a lawyer for something that happened, whether it was meritorious or not." So around the beginning of November I contacted the former mayor of Newport, who by the way is also an insurance agent, and said "get us some insurance." I waited and waited, and waited some more. Thought he forgot about me. He did call me after a couple weeks and said "I've been rejected six times and I can't find any markets for you." So I had to do some fishing around. I talked to Paul Lipscomb from Marion County. He gave me some direction as to what he was using for insurance. Two months went by and we never got a nibble on a policy. Mr. Grady, his son happens to be an insurance agent in Waldport, and so we tried that avenue and asked him to do it. Ultimately, I got connected to a Wells Fargo out of Portland and it looked like they would write something, but right around the same time, Mr. Grady - he was rejected 11 times, but found two companies that would pick us up. The coverage with no deductible was about \$7,500 a year premium. We opted to get coverage that has a \$10,000 deductible and that is \$3,800 a year. We had to write a check for \$3,800 to insure the board. That is the really the only thing that slowed us down. We commenced having board meetings. Mr. Adams and Mr. Grady agreed to serve on the board sort of ex officio so long as we weren't actually doing business. So we are having board meetings, but we are not contracting with PDSC yet, so they felt that they were okay. I think the first board meeting was December 13, and although our bylaws say to have every other month meetings, to get the ball rolling we met every month. I had a draft of the bylaws. A draft of the attorney agreements, but the board of directors had to go over them and approve them, and so on and so forth. We waited

and we waited and we waited. We didn't get coverage until the end of March. I think it was about March 15 that we actually got a binder and were covered. The funny thing was that at one point when Mr. Grady found out how much the premiums were he resigned from the board. He didn't think that we were going to pay the money for the insurances. He actually submitted his resignation. I got him to unresign. The board with the lay people got together and decided how much was going to be awarded to each lawyer and then the fun started. Of course the fun was going on all from the summer through April. Basically the Ouderkirk firm imploded, okay, they imploded. As soon as one of their associates became aware that you were going to do this model with the attorney groups, he was out the door.

2:30:34 Chair Ellis

Is that the same firm as Hollen?

2:30:35 G. Greco

Hollen and Ouderkirk. You will remember Mr. Hollen because of his dad. But I knew as early as last September that that associate was walking. I had to keep my mouth shut, but he was going to walk. As soon as the ink was dry with the contract he was out the door. The other associate in the firm has a family issue and wants to move to Portland so he wasn't going to sign up. Then Ouderkirk and Hollen basically said they don't do the work. They tried to make the associate who was walking an independent contractor but he wasn't going to stick around. So they basically went out of play. That did give us some cases to divide. Because of Mr. Biedermann - I don't count Ouderkirk or Hollen as being lawyers who were providing services because they were so minimal. But we had one lawyer basically drop out so we are at 10 lawyers right now. There was negotiation going back and forth as to what the caseloads would be. Just before the thing converted over, one of the Pridgeon associates came to visit me one day. Everybody thinks I know everything. She sits and she says, "How can you help me get the biggest amount of money for my contract, because I am walking. I don't want to be there anymore. I can't stand it. They don't mentor me; it is chaos. They are just unfair and I don't want to work for them anymore." I said, "I have a vacant unit next door to my office. We could punch a hole in the wall if you want to come work for me?" Her jaw dropped. She didn't come to me to look for work. She wanted out. A week later we were in negotiations. So, one of Mr. Pridgeon's associates is now coming into association with me. She has her own contract. She is expected to fulfil what her contract is. If she doesn't like me after six months or two months or two years she can go out the door and she takes her contract with her. This happened about a month before we started working, but I had to keep my lid on it because I didn't want Mr. Pridgeon to know. It was the day that OPDS consented to the assignment from Lincoln Defense Consortium to Lincoln Defenders that that became public. It has had a real effect on how people are organizing themselves. It remains to be seen but I think it will be good. One of the things that I want to let you know - obviously case assignments are relatively random. We can't show with any precision how many units we are going to get, or what kind of units, but what I endeavour to do and I don't know that Amy shared that with you, but as an appendix on each attorney agreement in a case matrix. I hope you are familiar with the case matrix when we have a contract it says how many A felonies, B felonies, Measure 11, and so on or forth. It pencilled out what the anticipated numbers are and so on and so forth. Each lawyer has a matrix that is attached to their agreement. In attempting to do the math what I attempted to do is completely divide every case that OPDS has given us and make sure that they are given out to the other lawyers. Now I have a point to make here that is this: I, as an administrator, arbitrarily decide who is going to get to do what. This was my chance to assert some control over the Measure 11 problem, okay. I got nothing but raving feedback, good feedback from the judges about this. One of our problem children was Mr. Biedermann, and he didn't sign a contract. We had three people that the judges had the most concern about. They don't get to do Measure 11 cases. Their matrixes do not include that. One of them is Measure 11 and A felonies - the other one is no Measure 11 cases. They weren't happy. They were a little embarrassed by it but that is the way it was. Then a week after we went into effect, I got myself in front of the judges that there would be a meeting and I past out the matrix. I redacted out the minor part, but I showed what the case balances were for everybody. I told them to use those as cheat sheets because I am going to show you in a minute how we operate. You may have Mr. A on call doing your in custody

arraignments, and he is going to do an arraignment on a Measure 11 case. Your heads up is, this person is not going to be appointed to that case. He will tell you that Mr. Greco is going to take that case. Or Ms. Benson is going to take that case. So the judges know because they have seen the matrix. They know who does and does not do those cases. On the good side about Measure 11, it looks like our younger attorneys are getting real close to being Measure 11 qualified. I just got a very complimentary email from Judge Littlehales about a trial that one of the new people, Mr. Beal, did and he was asking if they are Measure 11 qualified yet. They are getting close. When the judges think they are ready then we will be filing the paperwork. Then Judge Branford made a mistake and last week appointed Ms. Kale, who is now working with me, to a Measure 11. She is not yet qualified. So I sent an email telling him he was now dealing with me. I am going to give you folks some stuff.

2:35:29 Chair Ellis

Yes, you can approach the bench.

2:35:38 G. Greco

I just wanted to give you some overview of what we are doing. On the first sheet - you have it - is a calendar that we put together. This has all got to be user friendly for our judges. They want to know what group is available on a given week. I just give them the calendar and they know who to call. What we do is, our out of custody arraignments are once a week on Mondays. We do in custody every afternoon. So they know who is supposed to be there. Then you will see another thing there which is juvenile oriented. Judge Sanders, the juvenile judge, she was having trouble getting people who could show up immediately for a detention hearing or shelter hearing. It is that day and they have to find a person. What we have tried to concoct there is all the people who do juvenile work, we have a rotating list. At the top of the list are the lawyers who are actually on call. She has timelines for DHS and the juvenile departments so that the lawyers can actually read the paperwork, have a chance to see the client, and then still cover the hearing. What we have done is at the top of each list, and every week, is the firm that is on call. Then do these shelter hearings right after in custody arraignments. So, one of those lawyers is going to be in the building. They will just go down the hall and do the shelter hearing. You have multiple cases and multiple conflicts, so that is a pecking order. So call the person who is number one. Call the person that is number two. Go to number three. Go to number four. Go to number five. It rotates. That is one of the services that we provide. The other thing that you are going to see there is we have conflict protocol. We have used that for years, but, again, it is just road map for the courts when they have conflict cases. They can appoint anybody that they want but the preferred methodology for the conflict is listed on the chart that they have. Then finally what I have given you is - this is only really unique to my office - is when Greco, Reynoldson, and Kale - we bunch on call in a given week - I every Friday or Thursday write a letter to the courts. It actually goes to the judicial assistants telling them who of those three they can expect to see at the noon custody hearing on any given day. Or that is the person who is going to be taking the shelter or detention hearings. Now I cannot control what the other lawyers do, but this I have done for 10 years. They love it. They just want to know who is going to be there, and where. A couple of points, we are brand new in the sense that we went into business on April 6. We had one board meeting after that. Already some of the lay board members, Mr. Grady in particular, has wanted to have a subcommittee for evaluation and performance. We are going to be working on that this year. We are dealing with a new group and a new organization; different people working in different places. We do have the monthly mandatory lunches where a lot of mentoring goes on. I find that I am doing most of the talking. One example - I caught a lawyer waiving the 60 days to get out of custody because he was waiting for a crime lab report. I made a big stink about that in the lunches. You don't waive 60 days when the district attorney doesn't give you the discovery. You go there on day 55 and get your client out of jail. Those are the kind of practice tips that we share at those luncheon meetings. Is there anything else on your checklist, or did I cover it well?

2:40:37 A. Jackson

You have done very well.

2:40:45 G. Greco

Any questions?

2:40:42 Chair Ellis First of all I am grateful. I feel like you have really been responsive to a lot of the thoughts that we shared with you.

2:40:54 G. Greco I already told you last May it was your way or the highway. I am going to do it your way.

2:40:55 Chair Ellis We like to think that we are a little bit more sensitive than that. I am sorry about the insurance because I didn't realize that would be that significant of a problem for you. I know MPD has had coverage for years. Maybe they are larger and that makes it easier. Maybe there is a difference between a consortium getting coverage and a MPD getting coverage.

2:41:29 G. Greco I sent a batch email to every consortium in the state. I went to the OCDLA directory and I sent an email to everybody asking where do you get insurance? There was about 23 recipients. I got two responses and both of them said, "What insurance? We don't buy insurance."

2:41:48 Chair Ellis I think what may have happened is the consortium model is one that the standard carrier group and the non-profit sector isn't use to. Sorry about that, but I am glad that that worked out. I did read your article bylaws document and it did respond to our concerns. Thank you for that.

2:42:23 G. Greco I can't really give you any kind of feedback at this point as to how it will operate. We have had meetings and all of the lawyers have been coming to the meetings, and not just the members of the board. We were so focused on organizational issues, so I am not at a point right now where I can say how it is going to be.

2:42:44 Chair Ellis And you have addressed and resolved an issue that was troublesome, where you had the associates doing all the work - the partners not being providers, and that for us very anomalous and I am glad that has been worked out.

2:43:01 G. Greco Even the Pridgeon firm, Pridgeon and Crum, but they have contracts and they are expected to fulfil them as far the amount of work they do.

2:43:18 Chair Ellis So good report both of you. Any other comments.

2:43:23 A. Jackson I do have one final comment. I actually went to Lincoln County on May 3 and 4 and I visited with the trial court administrator, Judge Littlehales, Judge Bachart, Judge Branford, and Judge Sanders and I wanted to share with you some of their comments. Judge Littlehales is very pleased with the improvements that the group has made and he asked that I convey his gratitude to both Mr. Greco and the Commission for addressing the court's concerns and making the necessary changes. Judge Bachart and Judge Branford both echo those same sentiments. They agree that the structure now lends itself to continued improvements amongst the attorneys. They both commented that they have seen attorneys coming into court to watch other attorneys during trials and they are just thrilled to see happening. They are also pleased that only the people that are qualified to handle Measure 11 cases are the ones actually handling them. Judge Branford said and I quoted him here, "It is great for the legal community and the defendants. The quality of representation has improved drastically, as well as the administration. Thank you."

2:44:27 G. Greco Again, one other point that escaped me. It segues to your discussion that you had about juvenile appointments this morning, working with Amy has been marvellous. She has only been our analyst since January and it has been really a pleasure. She did go to Lincoln County last week and she happened to be sitting in juvenile court when some MPI cases were coming up. She noticed that our juvenile judge wasn't even advising the juveniles that they could apply for court appointed counsel. Then she came back and we talked and unbeknownst to all of us, we did not know that there was actually a provision in the contract

for appointments on those cases. It is a JUDO credit. We have never been appointed on those cases in Lincoln County. I took a look at the statute and then I took a look at the contract. We are not adverse to having our numbers go up. I sent an email to Judge Sanders and all the other judges that I would like you know that the contract provides that we can have appointments in these cases. At least with regards to the soon to be presiding judge, Judge Branford, getting a little bit of friction there like they don't want to do it. I don't know if you can give me any guidance on how I could approach the judges - I am not shy, as you well know - to kind of encourage them to start doing that. The minor in possession cases, in particular the alcohol ones, I have gotten retained on a few. Many, many times these kids are getting arrested and their in a tent on the beach. The officer has no reasonable suspicion to even go in the tent. When I get these cases I get them thrown out. There is a license suspension and there is all kinds of consequences to these children. They are cases where representation would help. If you have any way of perhaps giving me some guidance on how I could get the judiciary to go along with that. I think Judge Sanders would be in favor. She is our juvenile judge. In January Judge Branford is going to become the presiding judge and he was very skeptical. He didn't want to waste the taxpayers on money on it. I don't know if you have any thoughts on that.

- 2:47:02 Chair Ellis Back to the insurance thing, it sticks in my memory that NLADA either has an arrangement with a carrier or some connection there.
- 2:47:15 G. Hazarabedian Mr. Chair, I know NLADA provides reduced malpractice insurance for non-profit institutions. What I would speak to the liability coverage for the board is that institutional defenders we are non-profits. So it is insuring the same coverage for any non-profit board. Insurance companies are very familiar with that kind of coverage. The consortia model is not a non-profit, usually, as I understand it.
- 2:47:43 G. Greco No. We are a non-profit.
- 2:47:45 Chair Ellis The entity is a non-profit.
- 2:47:50 G. Greco We incorporated and made it a non-profit, members only corporation. The vetting process is such that we have to explain in detail to them what the services are and what we are providing. It was criminal defendants being represented that spooked a lot of people.
- 2:48:11 Chair Ellis You have got coverage for a year. You might connect with NLADA.
- 2:48:17 G. Greco It is a thought. I know about the malpractice insurance.
- 2:48:25 Chair Ellis Any other thoughts for Guy or Amy. Thank you both. Very positive input.
- 2:48:38 K. Aylward So I have a question. We did a six month extension of the previous contract and I can, if you want, bring to the June meeting an actual contract for approval. We can either extend the current one 18 months, or we can start a new two year one and back date it to January 1. As a model, there are lots of different ways we can do it, but I need an indication that you would like me to do that.
- 2:49:07 G. Greco Can I tell you what I did because it is on that point of two years versus a year and a half. Just on the assumption that the cycle would be such that it end on 12/31/13, my attorney agreements are prorated out 21 months. We started in April. We could modify them all but we could make the assumption that it would be another year and a half.
- 2:49:26 K. Aylward Right. We would definitely put them to end on the same cycle with everybody else, but whether the contract document itself were effective January 1 or July 1. We have done it both ways before.

2:49:40 Chair Ellis I think we would like to approve the contract at the June meeting. I would be inclined to let you figure that out.

2:49:48 G. Greco Thank you.

2:49:53 Chair Ellis I don't see any...

2:49:55 K. Aylward It is here. Did you mean lunch?

2:49:56 Chair Ellis I did see the lunch. Any other Douglas County people?

2:50:11 N. Cozine Yes. Mr. Arneson was here but he had to go back to court.

2:50:15 Chair Ellis Why don't we go ahead and have the OPDS Monthly Report while we are eating lunch. Then I understood the presiding judge was going to come and Mr. Arneson.

Agenda Item No. 8 OPDS Monthly Report

2:56:27 N. Cozine North Carolina started their work on identifying data points that could be helpful in measuring quality of a public defense provider system. Because of funding shortages they were unable to complete the project. The NLADA became very interested and hired Nancy Gist, who is the former Director of the USDOJ Bureau of Justice Assistance, and who also, prior to that, ran a public defender office. There will be about four meetings per year, they are estimating. Two of them will be in person meetings in Washington D.C. They cover the expense of that trip. We will have a meeting on May 22, and I will fly to D.C. for that meeting. We had one teleconference - it was a very brief overview and introduction of the committee members. The May 22 meeting will a much better opportunity to delve into the work of this advisory committee. I anticipate that it will be very interesting, and I will bring back a report for this Commission. I will have a better idea of how we can involve our contractors in the conversation once we have had that meeting. The timing of that meeting is somewhat unfortunate because it is also legislative days here in Oregon. So, I will miss the May 21 through 23 legislative days. We will make sure that we are closely monitoring what is happening, but I will not have that time available to meet with legislators in the capital during their visit, which is something that I had on my calendar, that I would have done had I not needed to head east. Peter Gartlan is not here today to give you the appellate update. He did ask me to invite all of you to the MayDaze CLE that will be held on May 24 at 9:00 a.m. This time it will focus on parole appeals. Kathryn is here to give us a budget update.

2:58:48 K. Aylward As far as the budget process goes, there are a couple of differences from the last few times, and the timeline is a little bit different. One of the main differences is that, in terms of budgeting for our operating costs, our personnel, what they have always done in the past is they would give you enough money for a single step increase during the two year period for anyone who still had steps to go. Apparently way back when, like 20 years ago, they would give both steps that an agency was supposed to have. At some point they realized that it really makes a difference where in the cycle an employee gets that step. So if they get it July 1, you are going to have to pay that higher step the whole of the first year, and then the next higher step the whole of the second one. That makes it expensive. That would be, like, the most need of that money. But for most employees, they are going to fall somewhere else in the year, so you don't really need the full two steps because you didn't have to pay it to this guy until practically May. They have been saying we will give you one step, and it would just all even out. Well for this budget cycle they are providing in base budget one step increase for employees who still have steps to move to, and a second step they are calculating it and putting it aside in what they often call the salary pot. Now, you may recall last time, two years ago and four years ago, the salary pot contained additional money in case the health benefits were more than were anticipated. I think it included some additional money that was dependent on the outcome of union negotiations. So they've always tried to have some sort of

salary pot. Then usually part way through the biennium that money can be distributed if it still is needed and still exists. That is a little bit of good news. The calculations, again, for current service level budget include a 2.4% inflationary increase on services and supplies - that is pencils and paper - and a 2.8% increase on what they call "non-state employee personal services costs." So, technically what we are buying are personal services, lawyer time, non-state employee and the costs for those people would go up, and they are assuming and allowing 2.8% increase in the budget. Now that is the thing that we usually look at and say that 2.8% isn't going to touch it. They have all kinds of insurance. They have this that went up. Gas prices went up and investigators spend a lot of time on the road. There are other things that we bring into the mix that are unique to what this agency faces. Our current service level budget is due June 30. So, at the June meeting, we will be bringing you what is the basic budget - in other words, what you had last time, how much more do you need, and then there is mandated caseload which, for us, is the big one. I take a look at how caseloads are going and how much we have been spending and I use my crystal ball and say, "Okay. I am going to need 15 million, or 20 million, or 40 million more." Whatever the figure is, it is based on let's assume that nothing changes and we continue to provide the service that we are. That isn't usually something the Commission weighs in on. It is more of a calculation or estimate - an educated guess, but at the June meeting I will be bringing options to you for policy option packages. I think what I did in the past was to show you all the things we have ever chosen to do and then you can take a look and decide which ones you want to bring forward. I don't generally work up the exact cost of a policy option package, so you tell me if that is something that you want to include. If you want it as a matter of policy, it shouldn't make a whole lot of difference whether it is \$700,000 or \$720,000, if you want it. You will see from last year's costs you will get a ballpark figure, whether you are talking a few hundred thousand or a few million on some of these things. Hopefully at the June meeting you will send us away with a decision of which policy option packages you would like us to include. Then, at the August meeting, we should bring you a draft narrative of pretty much the final budget binder. It doesn't change a great deal from biennium to biennium. Then, our final numbers have to go in the system by August 31 - September 1. The actual notebook itself - we usually don't prepare until sometime around Thanksgiving or even December. That is the budget update. That is all I know with what is going on right now.

3:04:11 Chair Ellis

Okay. Any questions for Kathryn?

3:04:19 K. Aylward

We have a lot of news. Thank you. Legislative Fiscal Office has assigned us a new analyst. As you know we have had John Borden as our LFO analyst for four years, or six years. He sort of tag teamed with Robin LaMonte the first year. My understanding is that they have made a lot of changes in LFO, reassignments, and our new LFO analyst is Steve Bender, who has been there since 1996 or 97. I have sat in on a few meeting with him before. I recognized him, but haven't really had an opportunity to work with him much. He did come by the office and we chatted a bit. He has got a lot of experience and I think it is going to be a good working relationship. We also had a change at the Budget and Management Division in DAS. They have reassigned our budget analyst. It is now Blake Johnson. It used to be Linda Gilbert who was the manager of the Budget and Management Unit. She has now gone to LFO to be an LFO analyst, so we have been assigned to Blake Johnson. I have had an opportunity to meet with him. BAM, Budget and Management, actually has very little involvement in judicial branch budgets. They are sort of the gate keeper for all the executive branch agencies. Their requests filter up through budget and management who then say "yah" or "nay" for executive branch agencies. For us it is really more that we provide them the information because they need the information on everyone, but they don't really have authority to say yes or no. That plays less of a crucial role, obviously, than our LFO analyst. The other final thing I thought of that I should have said was about our special purpose appropriation. Originally I thought we can go to any Emergency Board and ask for it. Why not make it the December one, because that is the latest one. We will have a better picture of what our needs are. At this point there is no question that we will need the full 3.5 million that has been set aside. In fact, \$4 or \$4.5 might actually be what is required. So rather than

leave it because we are not going to have a better picture later in the year, and all that happens is if you leave stuff untouched - it is like are you going to eat those fries? I want to make sure that we can get in there. I don't want to leave it until December.

- 3:07:03 Chair Ellis I think that is right. If something doesn't go quite right it gives us time to ...
- 3:07:06 K. Aylward Exactly. So now I am thinking the September E-Board would be the appropriate one for us to provide a report. If that is the case then we will bring you the information at the August meeting as well.
- 3:07:25 Chair Ellis Okay.
- 3:07:30 N. Cozine One more update. We had spoken with the Commission a few times now about adjusting the Quality Assurance Task Force and the Contractor Advisory Group. We are moving forward on that. Both of those tie into the peer review process and into advice given to the executive director. When I joined and we started looking at the email lists, we realized that those two groups were identical plus or minus about two people. So we started a conversation about what we needed to do to better define the roles of those two groups, and really look at the members of those groups. We are going to continue along that process. Our thought, at this point, is since the two lists do look remarkably similar, to think about creating a new entity that would reflect largely the current membership and call it something like, "The Policy and Procedures Advisory Group", or something along those lines, that would potentially cover both areas. Both deciding when, where, and how to proceed forward on peer reviews, and also serving in the capacity of reviewing ideas, sharing ideas, and bouncing ideas off an advisory group. It seems that over time that is functionally what has happened with the two separate groups. I wanted to let you know about that, and get your feedback before we launch.
- 3:09:09 Chair Ellis Any reaction? That sounds fine to me.
- 3:09:17 J. Potter Mr. Chair? It just occurred to me that this building is locked and if we are taking a public meeting in a locked building we have to be careful not to....
- 3:09:32 Chair Ellis This is city hall.
- 3:09:33 P. Levy You should know for the record that there is a door opened to our open meeting. I will see if anyone is at it.
- 3:09:45 Chair Ellis It might explain the low turnout.
- 3:09:50 N. Cozine I did explain in my last email to everyone that included the Commission materials that the doors would be locked between noon and 1:00. It is automatically locked, yes, and there is no way they can undo it.
- 3:10:09 Chair Ellis Paul, can we do our strategic plan discussion?
- Agenda Item No. 4 Approval of Strategic Plan**
- 3:10:17 B. Strehlow Yes. I will actually stand at the door and anyone who comes along we could let them in.
- 3:10:36 J. Potter So the record is going to show that Billy is standing by the door if anybody wants to come in.
- 3:10:40 P. Levy Sergeant at Arms.
- 3:10:59 Chair Ellis Nancy, do you want to comment on the draft of the strategic plan?

3:11:01 N. Cozine Yes. It is the same draft that we had last time. I did not receive any independent emails or comments between our last meeting and today, so today it is on as an action item for approval unless there are comments that anyone wants to share at this point and I will make further adjustments.

3:11:22 Chair Ellis Any thoughts or comments? I had a very small little technical issue. On page 9, under Strategy 3, what is the intent of the word "public lawyer?" We might want to say, "Public and contract lawyers." I assume it wasn't limited to just the FTE lawyers.

3:12:00 K. Aylward No. We just meant not retained.

3:12:08 N. Cozine Actually, this is where the Commission had requested that rather than parity, we start talking about fair compensation for all public lawyers. It was intended to not only include public defense providers, but district attorneys and DOJ attorneys. That was what we understood our instructions to be. We could move it back to parity, or change it.

3:12:41 Chair Ellis The parity piece is handled correctly. I just wasn't sure whether the word "public" somehow meant they had to be employed by a government agency, which would then mean only the appellate division lawyers on the defense community would be included. I think you want a broader inclusion than that.

3:13:05 J. Stevens You could say tax supported lawyers.

3:13:11 S. McCrea I think that is worse.

3:13:11 N. Cozine Publicly funded?

3:13:17 Chair Ellis That might do it. It is a very small point. It just struck me. I thought on page 8, the last paragraph, where we say, "In 2003, Oregon's public defense system was underfunded," there are a lot of people that would read and not know what we were referring to was the extraordinary experience in 2003, of five special sessions each having to cut budgets state wide which led to defense being so underfunded that it couldn't cover the caseload. I just thought we ought to expand that description some. Here we are nine years later and there are people who don't remember those days. But other than those two comments I thought it read pretty well. If people are okay with the two areas that I suggested change, I think we could have a motion to approve.

MOTION: Hon. Elizabeth Welch moved to approve the strategic plan and adopt it as it is written correctly; John Potter seconded the motion: hearing no objection, the motion carried:
VOTE: 6-0

3:15:08 Chair Ellis So I think we are at a point where the only other item is to finish Douglas County.

Agenda Item No. 3 Approval Adjustment to ACP Contribution Amounts

3:15:13 K. Aylward I have an item, Agenda Item No. 3. It is behind the pink divider.

3:15:26 Chair Ellis Excuse me. This is an egregious oversight on my part.

3:15:31 J. Stevens I don't have a pink divider because I have not gotten my packet yet.

3:15:50 Chair Ellis So, Kathryn, walk us through approval adjustment to ACP contribution money.

3:16:06 K. Aylward Okay. We decided to keep it really simple. You had already approved what were the maximum guideline recoupment amounts at the end of the case. That was already in place. I think you updated it in October of 2011. So we just say, "how about we make the maximum

guideline contribution amount up front half what is at the end.” So, if a case is going to be \$500, it is half up front and half at the end. Again, these are just guidelines and they are maximums. So, we talked it over with Judicial Department and they said, we like it. It is sweet and simple. If you compare it to the chart on the next page, what the contributions were, you will see this was the chart that broke everything down by person, drugs, property, and having combined those the A felony contribution amount for example, my proposed amount is \$650, which would have been more than a drug A felony, more than a property, but less than a person. It is falling in there somewhere in the middle and the fact that very little is collected anyway; some counties aren't ordering it, and I think it is not something that we need to spend a great deal of time on. This is close enough. It doesn't have to be a science to figure the exact, perfect dollar amount. It doesn't matter anyway, because nobody looks at it anyway. Let's go 50/50. It is the least wrong answer.

- 3:17:51 Chair Ellis Are there any questions or comments? Is there a motion to approve the proposed ACP schedule?
MOTION: Shaun McCrea moved to approve the proposed ACP schedule; Hon. Elizabeth Welch seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**
- 3:18:21 Chair Ellis We could recess for a half an hour or we could talk some about what we have heard about Douglas County.
- 3:18:40 S. McCrea Let's talk for half an hour.
- 3:18:49 Chair Ellis Any thoughts or observations? I would see one issue that has been suggested, is should we encourage formation of a fourth provider structured as a consortium and include, at least to start, the two former PD lawyers. As I heard the discussion there were two or three things that might favor that. One is this conflict issue, which I think is real. We have three providers and they are all long time in the community and they have got to have a long history of past relationships. I can't believe this community doesn't have a fair number of situations where they are going to be conflicted out. There won't be enough lawyers because of conflict. It is not the end of the world to bring people in from out of county. I am assuming Greg's group is a source for that.
- 3:20:13 G. Hazarabedian Actually, not very much. There are a couple of lawyers who, I think, are in the Lane County Consortium. We have gone out of county a few times and remain willing to help.
- 3:20:28 C. Lazenby How often do we do it, because we pay for it?
- 3:20:30 K. Aylward I don't know. Six or eight times a year, maybe? Well, it's different now.
- 3:20:42 B. Strehlow Well, even now, it is not much. Even with the MASH consortium gone, we didn't see an increase in the numbers. In fact, what I did was I narrowed it to just a very few number of people, so that when they did have to go out of county, they could see some efficiencies in coming down, as opposed as having seven different attorneys coming in, and the courts certainly appreciate that too - having it narrowed to just one or two people. Actually, one person for the dependency and juvenile cases, and one for the adult criminal really, handling most of them unless there is a co-defendant situation where you need two or three out of county. Yeah, five or six times a year.
- 3:21:21 C. Lazenby So, is it justifiable that we really need to go to all of the effort of creating a new consortium?
- 3:21:29 B. Strehlow That is out of county attorneys. About 10% of the caseload is going, in-county, private bar.
- 3:21:43 J. Stevens If we create another consortium, we keep the money that we are now spending within the county, in a county that is really hurting economically right now.

- 3:21:58 Chair Ellis There are two qualified people. I think the report indicated that some people believe there is a shortage of felony qualified attorneys here. That is not what the testimony was, but is what the report said. I guess the third point that would make us look at this, is this issue between the PD and the one judge. If that doesn't resolve itself, I think it does create a problem. This would broaden the base of providers so at least you don't have the PD with quite as high a percentage of the total as it does now. All that said, it does strike me that four providers in a relatively - certainly smaller than four or five of the other areas that we operated in, seems like a lot. It could add to the administrative complexity. At the same time I think two of those providers are well regarded, small law firms that function very well. I see no issue there. It is just the way that it worked out. So what is everybody's reaction? Should we go down this path and pursue it? Should we just keep it in mind for down the road? Any thoughts?
- 3:23:33 S. McCrea I suggest that we keep it in mind for now. One of the things that Dan was saying was that he was waiting until the fall to see what happened in terms of the DA's office. My view is that we don't want to pursue this, and then have the bottom fall out of the cases. But keep it in mind, and see what happens in the fall.
- 3:24:03 Chair Ellis I didn't hear from the people we have heard from so far, or from the court, that there is great jealousy for taking caseload. We have seen that in some other parts of the state. Any other thoughts?
- 3:24:28 J. Potter I think I would like to explore more, and really focus on that. I want to think about it and talk to all three of the providers. See what might work – what the comfort level might be; where it meets our needs in getting through those conflicts. I don't know what the extent of the problem really is.
- 3:24:52 Chair Ellis I am not sure they know. They have only been in this position for a short period of time. It is, to my thinking, almost an easy decision. You have only three providers, and they're all in the room.
- 3:15:12 K. Aylward Mr. Chair, during contract negotiations, we explored whether or not an individual would be interested in forming a consortium, and I think it was given serious consideration. There was a serious desire on our part to see that happen. After much consideration, the decision was that leaving things alone was probably a better option than taking on what is clearly very challenging, in a small county in particular, to successfully run a consortium. You see the struggles that Guy Greco has had. I wouldn't envy anybody who got sort of stuck with that job. I can certainly see why somebody wouldn't voluntarily take it.
- 3:26:15 Chair Ellis I guess the concept would be, start it small, but envision it growing. The two law firms may not go on forever.
- 3:26:43 R. Cremer To be candid my real desire is to enter into one more contract beyond this, with the understanding that my associate would likely take over the tail end of that contract after I retire. It is still in the conceptual stage, and I really haven't discussed it with Billy or anyone else, but that is my thinking at this stage. But, I am only one person.
- 3:27:19 J. Potter So MASH was a four person consortium, correct? When we are envisioning a new consortium, two names come up. People have said there are two people out there that we would like to have. That is a small consortium.
- 3:27:39 K. Aylward I think there are two people who are possible candidates as members of a consortium. The key is finding someone to head a consortium. Especially if we are hearing that some of those individuals are five to six years up in their experience. I would be reluctant to, sort of take the

little bits of leftovers, and say, "Okay, here. You are a consortium." I need to find that leader first.

3:28:16 J. Potter So a leader of a two person consortium?

3:28:16 K. Aylward I am not sure I would do a two person either. I think it would have to be three.

3:28:21 B. Strehlow A two person you are really talking about adult criminal felonies is what I heard, but there is also a significant portion of the juvenile caseload where there is conflicts. I think there are probably two other local members that could fill that niche – two or more.

3:28:42 J. Potter So what about individual contracts rather than consortium? Add two or possibly three.

3:28:54 K. Aylward Part of the reason that we don't like individual contracts. We do have them, obviously, with death penalty attorneys, because we don't want the associate, we want you. It is a contract with you. If there is no you, there is no contract. That is a little bit different. We have been in situations where, for us, it is a two year commitment and sometimes they are up, and sometimes they are down, and then they get hit by a bus and we have to go ask the widow for the bit of money that they were down. They can't work it off or they get sick or they go on vacation. We don't have the continuity. That is the purpose of contracting. We want to put it to bed. We want to know that it is there. We want to know it will work. That is never the case with an individual, because there is never a safety net, no backup plan, so I would be disinclined to do that.

3:30:11 Chair Ellis What I think I am hearing is let's keep this on the back burner. Let's look at it in September. Everybody comfortable with that?

3:30:21 J. Potter Yeah. I am comfortable with that, with the caveat that, I think we are saying to the contractors that are already here, here is what we have discussed. We are taking a look at it. Gather their ideas so folks can come prepared to talk to us about what might work here.

3:30:41 C. Lazenby Whatever we do is going to have to mess with the system. It seems like it is working pretty well right now. They seem to be able to share and do the caseload in a very cooperative manner which we don't see all the time. If we do add a fourth entity, we would want to collaborate with the local contractors, as opposed to our usual approach.

3:31:15 S. McCrea Our way or the highway.

3:31:40 Chair Ellis Any other comments on what we have heard so far? We are expecting the Presiding Judge, I think.

3:31:49 N. Cozine The presiding judge had court matters and could not be here until 1:30 p.m. I did send the materials and invitation to all the other system partners. When we met with them we explained our desire to have everyone appear. In stark contrast to my Umatilla effort where I told everyone to be here at the same time, I told people to come when they could that we would be here from 9:00 a.m. to 2:00 p.m., and to please join.

3:32:22 Chair Ellis Sure.

3:32:24 N. Cozine And I did not get specific times from people. Mr. Arneson has just arrived.

3:32:42 Chair Ellis Jim, do you want to share with us what is on your mind?

3:32:58 J. Arneson Well I have just come from a very disappointing result in a case, so that is an unpleasant way to...

3:33:12 J. Potter Adult or juvenile?

3:33:12 J. Arneson Adult. 300 month sentence.

3:33:29 Chair Ellis So, what are your thoughts? How is the defense functioning here?

3:33:33 J. Arneson I can tell you I have no thoughts whatsoever right at this moment. If you want to direct something my way, and just so you understand, I saw the tail end of Dan Bouck, but I haven't seen any of the other presentations.

3:33:58 Chair Ellis One thing we have been asking about is whether there is much organized communication between system components here, or is everybody just kind of doing their thing and not talking to each other?

3:34:13 J. Arneson The main system component of organization I would say is organized by the judges. The dependency judges have traditionally gathered the players together on generally either a monthly or bi-monthly basis to review dependency court issues. The same judge normally handles delinquency cases. We meet quarterly to discuss delinquency issues and the players for delinquency are the juvenile department; the defense lawyers are invited; the prosecutor who handles it is invited, and I think that is it. Then the dependency players are dependency lawyers, DHS, and then oftentimes judicial administration folks. A lot of the issues that come up have to do with scheduling and arranging things so that court appointed lawyers can get appointed in a prompt and efficient manner. I think those would be the two main system organizations. Dan has been good about keeping the monthly defense lawyer meeting going. But that is not a system organization. That is for defense lawyers, and information that might be of benefit to other defense lawyers.

3:36:08 Chair Ellis Any observation on this issue that is out there between the PD's office and the one judge?

3:36:21 J. Arneson I would like to see it get resolved. It is a tremendous burden on the system to have the judge who should be one of the primary criminal courtrooms missing a substantial number of cases. It puts burdens throughout the court system. Beyond that I don't have any thoughts.

3:37:10 Chair Ellis I believe you for a number of years have done something I don't think many other providers do, which is a systematic effort to get client comment on cases.

3:37:26 J. Arneson Correct.

3:37:26 Chair Ellis How is that going?

3:37:27 J. Arneson We reduced it from doing every case to now twice a year. I think it is April and October. Every case that is closed we send out a questionnaire. We happened to have just finished April, so we are getting quite a few questionnaires. I would like to do it every month because it really is good feedback for lawyers, because the information is generally very, very positive.

3:38:18 Chair Ellis Even though many of the communications go to the same address?

3:38:20 J. Arneson Yes. Although we had difficulty, for awhile, getting our questionnaires into the prison. I don't remember how we resolved that issue. But, yes, even given they go to a Salem address, I would have to say most are from folks who are not spending a tremendous amount of time incarcerated.

3:38:52 Chair Ellis How does it help with your practice? I am trying to get a sense is it something we ought to really push others to do?

3:39:04 J. Arneson The way it help in my practice is, it will - if we get enough of them back we can identify where the lawyer is having particular issues communicating with clients. One of the questions on there is, do the lawyers get back to you when leave a message to call back? It gives us an idea whether the lawyer is following up with their clients. I use it mainly in evaluating lawyers, but they also get immediate feedback because we give them a copy of the evaluation. I have to say that it, generally, is kind of a morale booster. Normally, the person will write comments on there that will say, "Loved having so and so. They really stuck up for me." You will get the occasional one that will have snarky comments on it. It is in general positive assistance in both evaluating folks and getting feedback to folks.

3:40:34 Chair Ellis You have three associates?

3:40:34 J. Arneson I have four.

3:40:34 Chair Ellis What is your turnover experience?

3:40:41 J. Arneson Turnover experience in the last four years has been high; very high for me at least. Tom Bernier, we have been together off and on for many, many, many years, and Tom has been part of the contract since 1991. He has been steady with me. But in the last four years I feel like I have been doing a lot of training. One went to Los Angeles to follow her love.

3:41:27 Chair Ellis Hard to fight that one.

3:41:35 J. Arneson Hard to fight that one. Another left the office for personal reasons having to do with the breakup of a marriage. Another left because she had job offer in Eugene and wanted to get back to the Eugene area.

3:41:58 Chair Ellis So no generic reasons?

3:41:59 J. Arneson Right.

3:42:00 Chair Ellis Has it been hard to recruit?

3:42:04 J. Arneson It has not been. I have just been astounded at the quality of folks that are out there. It is pretty sad.

3:42:20 Chair Ellis The down economy has it benefits.

3:42:24 J. Arneson It certainly does. We are in the process of hiring a sixth lawyer now because Tom is planning to go part-time on his 65th birthday next year, so I want to get set for that. Plus I want to be able to have more coverage for the court appointed contract. So we are hiring a sixth lawyer. We narrowed the pool down to, I think eight, that we interviewed and of those eight I was hoping that we would get a consensus candidate that everybody would say that is the one that we want. We have narrowed it down to four that we like very, very much. We would be happy to hire any of them. We are going to go through a second round of interviews.

3:43:15 Chair Ellis That is a happier situation than the reverse.

3:43:15 J. Arneson It is a much happier situation. It is just a sad situation for these poor, relatively young folks. They aren't all young.

3:43:28 Chair Ellis We have already asked Richard here to bare his sole. Do you plan to stay active for the foreseeable three to five year future?

3:43:45 J. Arneson Three to four year future. My plan is that, at the age of 70, at the end of the contract term after this next one, my goal would be either to retire or to go part-time. My preference, I

think, would really be to be able to continue practice. Although with a verdict like today reminds me that I ought to be retiring in 30 minutes or so. That is my plan. That is what I have discussed with everybody, and the part of the recruiting effort that we are doing is to kind of tell folks that we are looking for folks who are interested in putting their roots down here in Roseburg and staying with the law firm long term. We had a fellow who was that person, but because of marital issues he was the one that left.

- 3:45:04 Chair Ellis It sounds like for one more cycle of stability will be with us. Then the following cycle we might..... You and Richard sound like you are on the same
- 3:45:18 J. Arneson Richard and I are actually planning long term retirement together at some place in Hawaii.
- 3:45:37 R. Cremer Many of us, Jim, Tom Bernier, myself, all began practicing criminal defense in Roseburg at roughly the same time. That is why you are going to see this exodus.
- 3:45:54 J. Arneson Richard, I think you were slightly ahead of me.
- 3:46:00 R. Cremer I came here in 1976.
- 3:45:58 J. Arneson I came in 77. There were lots of lawyers who came in 77.
- 3:46:03 Chair Ellis Jim, one of the reasons we come to communities instead of sitting in isolation in Salem is to get input from the provider community and others in the system how we can do our job better. I would be very interested if you have any suggestions.
- 3:46:29 J. Arneson The two areas that were always the biggest concern - the number one concern use to be getting extraordinary expenditures approved. It happens either with blazing speed or the denial happens with blazing speed. It is clear that we need to provide additional justification for it before getting it approved. That is really just a wonderful turnaround from 10 or 15 years ago. It is very, very nice. The other is the responsiveness of the contractors. We call and I try to call later in the day because Billy has this message line that says, "I will call you back nearly immediately and in no case it will be more than the next day." So I try to call very late in the day in the hope that I can harass him if he misses it by a day. He is very responsive to both email and telephone. That is so helpful for me with an office of my size, and with the ups and down in the personnel in our office. Since we lost the mid-status lawyer, the lawyer who had a half dozen years of experience. Losing him I essentially had three lawyers without much training at all. We were training them and getting them started. Misdemeanor training, and we have now gotten one that is felony qualified. It has meant that I have had to be on nearly every case co-counselling all of these cases. The other providers in the system, and Billy has coordinated, have been very responsive, saying, take a break from felony cases for a month so you can kind of catch up and get yourself situated. That has been very helpful to me. I appreciate the responsiveness. It works very well to coordinate things through Billy. In terms of improvements you were coming today to announce, more money.
- 3:49:27 Chair Ellis We were saving that.
- 3:49:32 J. Arneson Even though the Commission and the staff have done an admiral job of keeping the budget from being hammered, the amount of money that is paid for Measure 11 cases in Douglas County is scandalous. We don't have a system where you normally get more than one credit for a Measure 11 case, because our county is not one of those counties that tends to charge five or six separate incidences. So if you live in a county that charges five or six separate incidences on a Measure 11 case, then you get counts up to five. At least you are getting a substantially larger sum than the one credit Measure 11 case. It is an extraordinary low amount and it is the reason that we are not doing the Measure 11. It is not enough money.
- 3:50:53 Chair Ellis Or what you need is a DA that overcharges.

3:50:55 J. Arneson Yes. A DA that overcharges. The DA does overcharge, but it is all one date.

3:51:04 Chair Ellis Other questions?

3:51:06 Hon. Elizabeth Welch I am just curious, because that is something that I have never heard about before. I am just curious, because I have not heard about before. Is that a variable?

3:51:15 K. Aylward What I am hearing; I am thinking - put that in the RFP, in big capital letters and hammer that home. Our office is under a lot of pressure. How come he gets that, and shouldn't that all be the same, and if we can say, "Ah ha, in your county look at the multiple credits. You get it here and in Douglas County, they never get that, and that why is theirs is \$2,600 and yours is \$1,800." That is the end of the discussion. As much as you can help us become aware of why you should be different, or why a case type should be different, that is useful for us.

3:51:51 J. Arneson I appreciate that but it is the reason that we have declined to do Measure 11 cases. They take a tremendous amount of resources. It takes your most qualified lawyers in the office. It just really drains the organization.

3:52:16 Chair Ellis Any questions for Jim?

3:52:19 J. Potter Since the termination of MASH and now only having three contractors, do you see a need to backfill MASH in some way? Adding another contract? Adding another consortium? Individual contracts to deal with multiple defendant cases?

3:52:37 J. Arneson You know I don't have a very good feel for a system view of it. I happened to be a mentor for one of the new lawyers who has picked up special dependency cases. Tom is a mentor for another one of those lawyers who has picked up the dependency cases. I know they have gotten a lot of dependency cases. I believe it is being covered also by somebody out of Eugene who is taking a fair amount. I don't have a feel for how administrating all of those individual lawyers affects either the court or Billy. I am assuming that they are able to find lawyers in all of these various places, but I would guess from the administration standpoint they would prefer to make one call rather than having to check with half a dozen different lawyers.

3:53:45 J. Potter So right now the administration of public defense is three contracts. Two private law firms, and the public defender. Is that the most effective, efficient way to do it in this county?

3:54:07 J. Arneson You mean without considering whether there ought to be a consortium to do the third, or are you saying do I want to cut my own throat and

3:54:25 J. Potter Notwithstanding you. You have a contract and I understand that. Is there a better model?

3:54:38 J. Arneson Well it seems to me you can't just have a public defender. You have got to figure out whether the alternate provision of services is going to be a consortium or private law firms, or just contracting with individuals. I have not seen anything either locally, or in my experience as Chair of the Quality Assurance Committee, that would tell me that consortia are a more effective way of delivering quality services.

3:55:20 Chair Ellis They are certainly not more effective on training. Part of what you have said here today resonates. You are obviously a very experience lawyer and you are training and mentoring these younger ones coming into the system. In the consortium model, that is rare.

3:55:41 J. Arneson The consortium system, I think, is a wonderful administrative tool, but I think it puts the administrator of the consortium in an extremely difficult position. You aren't really

supervising anybody. You have to do it based on a complaint level and it is essentially 10 different lawyers, all of whom have different levels of experience. All of whom have different levels of commitment and an administrator. I don't think it is best way of providing quality assurance.

- 3:56:27 J. Potter You weren't in the room when more or less we asked Richard the same question about his law firm and what is going to happen after retirement. He has a person that intends to takes over and continues on and contracts with the state. Did I heard you say you are telling lawyers that are coming to set roots in Roseburg with an eye towards not just doing private practice, but with an eye towards continuing contracts.
- 3:57:00 J. Arneson Yes. I am telling folks who come in that I want to people to be flexible enough to make a living in private practice in case the contract doesn't go. I have attempted to be that way throughout my term of the contract so that I wasn't in a position of being absolutely beholdng to the state or the Commission. I am telling people that come in, I am looking for somebody who is long term, committed to a private practice in Roseburg, and it would be my hope that the quality of folks that we have in the office at that point would be able to negotiate a contract with the PDSC.
- 3:58:04 Chair Ellis Okay. Anything else for Jim? Thank you for all you do on the quality task force side. We appreciate that.
- 3:58:16 J. Arneson You are very welcome. I have been off it for a bit now, and I have to say that I don't miss it.
- 3:58:27 Chair Ellis So we are still expecting Judge Garrison at 1:30.
- 3:58:40 N. Cozine Correct.
- 3:58:40 Chair Ellis As far as you know that is the only other speaker?
- 3:58:42 N. Cozine It is the only other confirmed time that I have. I had anticipated when we met with everyone we expressed the desire to have everyone here to testify. When I sent out the materials I invited people to come and attend this meeting but I didn't actually schedule times.
- 3:59:05 Chair Ellis So, what is the pleasure. Shall we recess until 1:30 and if he comes we will reconvene and communicate with him. I do have to get out of here by 2:00.
- 3:59:17 Hon. Elizabeth
 Welch Is there any point in communicating with his office to see if he is coming.
- 3:59:20 N. Cozine I had an email exchange with the trial court administrator. She sent an email at 6:30 last night and I responded at 10:30 p.m. I am certain that we will see the presiding judge and the trial court administrator at 1:30.
- 3:59:40 Chair Ellis We will be in recess until 1:30 or when the judge arrives.
- (recess)
- 4:00:00 Chair Ellis Judge Garrison, if you would like to come forward and share with us some thoughts we would appreciate it.
- 4:00:15 J. Garrison I am here because you are here and I am glad to be here.
- 4:00:16 Chair Ellis I don't know if you have had a chance to read the draft report.
- 4:00:20 J. Garrison I have.

4:00:21 Chair Ellis Any thoughts or comments?

4:00:22 J. Garrison I did share those thoughts with the Chair and she incorporated those with - well you are the Chair, I shared them with the Director and she incorporated those thoughts in the report. I was pleased that she did that.

4:00:49 Chair Ellis There is obviously an issue in this county right now with this affidavit issue.

4:00:53 J. Garrison Yes sir.

4:00:53 Chair Ellis Any thoughts on how we can be helpful to try to resolve that?

4:01:00 J. Garrison You are being helpful already. May I share some update? Mr. Potter has agreed, and I have agreed, and Mr. Bouck has agreed, and Mr. Marshall has agreed, to begin some conversations. I was just updated on those conversations a moment ago by Mr. Potter. Mr. Potter has met with Mr. Bouck and his staff and I understand that they have generated some ideas that are going to be put together on paper and refined and then we are going to continue some further conversation. We are all committed to doing our best to resolve this. Now whether it gets resolved is another question, but there is a willingness to continue discussion and dialogue and I think that is where we are headed.

4:02:04 Chair Ellis One issue that we were just talking about is there are three providers in this community. They are all organized in the way that they are subject to the Oregon State Bar unit rule for conflicts, which means that if the entity has represented either a party or a witness in a case that conflict continues with the current participant and it means that if there is a conflict with a lawyer there is a conflict with everybody in that office. So our worry is that with only three providers I am sure there are incidents whether it be either multiple parties or parties and witness, or mother, father, children issues, that you may experience conflicts without good alternative provider sources that some of the other areas we are familiar with. Has that happened? Do you worry that they may happen? What is your observation?

4:03:16 J. Garrison I want my response to be delicate and that my understanding presently is that the public defender's office, Mr. Bouck's organization, is the front line of defense and if there are conflicts or overflow then it overflows to Mr. Arneson's office or Mr. Cremer's office. Mr. Arneson is shaking his head no. There is an exception to what I have just said, and that is the juvenile matters. Is that why you are shaking your head no?

4:03:54 J. Arneson Judge, this is incredible, but I think this might be the first time that I have heard you say an inaccurate statement. Mr. Cremer's office and mine both take a prorated portion of the caseload.

4:04:07 J. Garrison Of all the cases?

4:04:07 D. Bouck Yes, but we try to screen before we send them out to avoid conflicts. So if there are 10, we check them first, and if there are conflicts, those are the ones we try to send out.

4:04:31 J. Garrison Thank you for that correction.

4:04:32 R. Cremer That doesn't mean we only take conflicts. We are each contracted to take a certain number of cases of various case types.

4:04:44 Chair Ellis What we have seen in some parts of the state and it is an expense that is avoidable so we are very sensitive, is late discovered conflicts where a lawyer gets into a case and then gets six months or three months, whatever, and has incurred a lot of costs and then there becomes a

realization that my partner used to represent an adverse witness or something. Then you end up with a substitution and that is not good. Have you had much of that issue here?

- 4:05:25 J. Garrison Not that I have observed. Of course it happens and of course my observation is that the conflicts are discovered rather quickly and are dealt with. Is that your experience as well?
- 4:05:38 J. Arneson Most often. Occasionally something we didn't see comes up, but we want to get out of it before we do a lot of work on the case. We find out as fast as we can. About five percent or less.
- 4:05:55 Chair Ellis That sounds good to me. I am not sure I have a baseline data point to reference, but that sounds okay.
- 4:06:07 J. Garrison The delicate thing that I wanted to say, and was getting to, was when the Commission met with us earlier we would like to see more providers, not less. That works better for us, and we understand that there has been a problem with one of the providers formerly known as MASH, and I certainly understand the concerns about the MASH organization. We hope that moving into the future that there can be more providers as opposed to less. I understand that there are lawyers that are willing to enter into contracts with defense services when that opportunity becomes available.
- 4:06:50 Chair Ellis Do you yourself handle juvenile cases?
- 4:06:50 J. Garrison Yes. Not primarily. Our referee pro tem Judge Zuver handles the vast majority of juvenile cases, both delinquency and dependencies, however there are an overflow or conflict group of cases that we farm out to each of the judges on a rotation basis. I have approximately one a month that is usually a major case.
- 4:07:23 Chair Ellis One area we have been discussing, because we are sensitive to it, is the waiver of counsel in juvenile cases. I would be interested in how that is handled here.
- 4:07:37 J. Garrison I was privileged to hear Judge Welch's report at the presiding judges meeting, and that was also a subject of conversation in the report that was drafted. That was one of the things that we commented back on. I think the vast majority of cases, 99% of cases, are all appointed counsel, but we haven't come of the mind that I think Judge Welch would urge that all juveniles in every case, under all circumstances, could not be either emotionally or mentally able to waive counsel. The debate is really eaten up by the practice, and that is that 99% of the cases have appointed counsel.
- 4:08:28 Chair Ellis And counsel stays with them. It is not like counsel is there, and there is a waiver, and counsel leaves. Counsel is on the case for the duration?
- 4:08:38 J. Garrison Once counsel is appointed, it is rare that counsel drops out of the case unless there is some good reason for that. Either a conflict, or something like that, but then substitute counsel is provided and a new appointment made.
- 4:09:08 Chair Ellis One reason we make of going around the state and meeting in communities like Douglas County, is for us to get feedback how we can do our job better. I would invite you to comment now and let us know later if it comes to mind, any ways that you can see that we could do a better job making sure there is competent counsel and providers.
- 4:09:38 J. Garrison I think for the most part, without exception, competent counsel is appointed. We have a wonderful group of public defenders that are a part of our community. The public defender's office, Dan Bouck's office, is energetic and very competent. There are a lot of young attorneys there that are willing to bust their buns for the client and that is admirable, and we all respect them a great deal. The same can be said for Mr. Arneson and Mr. Cremer's office.

Both highly competent attorneys. The best in that regard. Our state seems to be committed to appointment of counsel in indigent cases, which is very appropriate. So are we here locally. You are doing a great job.

- 4:10:24 Chair Ellis If you have thoughts or suggestions you know where to find us.
- 4:10:33 J. Garrison I don't at this time but I appreciate the opportunity.
- 4:10:37 Chair Ellis Any questions for Judge Garrison?
- 4:10:37 J. Potter Judge, notwithstanding the mini bench bar meeting that just took place here with the lawyers, there doesn't seem to be, according to the report, any organized Criminal Justice Advisory Committee meeting or very few of those types of meetings. Is there a need for quarterly meetings organized of criminal, juvenile law providers and support folks?
- 4:11:13 J. Garrison LPSCC, as I understand it Mr. Potter, is primarily driven by Commissioner Lawrence and it meets at his call and does not meet frequently. With regard to the juveniles, there are monthly meeting with the juvenile providers and the juvenile judge. I attend those meetings sometimes, but there is discussion generally among those folks on how to work through problems. There have been problems indeed. The last one was getting discovery out of DHS to the attorneys so that cases could be done in a timely manner. That was an ongoing problem that was discussed. The criminal defense attorneys meet on a regular basis amongst themselves, and discuss problems. I come and talk to them upon request, and that is approximately once a year that that happens. I will even give a CLE, and get feedback. In this smaller community it is done on - I think we get together and talk but it is on a less formal as opposed to formal basis.
- 4:12:31 J. Potter One of the things that Nancy and I noticed as we went around and talked to everybody a few weeks ago is that everybody said without exception that our door is always open. The open door policy. It does seem to be collegial and people do chat with each other informally one on one, but my question is really focused just on whether or not it makes any sense to have any sort of formalized process to bring all of the players together to talk about everything from budget to policy.
- 4:13:02 J. Garrison I am not opposed to that. I am willing to do that. My only statement would be, and I am sure I speak for everyone, having a meeting to have a meeting isn't always a good idea.
- 4:13:22 J. Potter Mr. Cremer mentioned that too.
- 4:13:22 J. Garrison However, maybe on some annual basis would be a good idea. I know it is hard to get all of us together on any kind of regular basis because of our schedules. I am open to the idea. I don't know that there are any problems going unsolved. For example when the recusal issue, disqualification issue, was advanced by the public defender's office, I think Dan Bouck's first or second stop was by office to say he had a problem and this is where I am going with it. I am letting you know about it. I know that communication is always open there. I can pick up the phone and talk to Dan or Arneson or Cremer.
- 4:14:18 Hon. Elizabeth Welch A little question. In the materials that we got about Douglas County in regard to juvenile cases, there are a couple of sentences and I would ask if you could explain this because I don't understand. The Juvenile Department reports that kids are not usually held through disposition: that they use conditional release agreements. They also report that most "most cases resolve at the first detention review" hearing. Do you understand that?
- 4:14:55 J. Garrison I think I do. You are talking about doing those cases. At the first appearance counsel is appointed and there is discussions that go on regularly between the defense attorney and the

Juvenile Department and the DA's office, and those discussions many times lead to resolution of the case. The resolution oftentimes is some sort of conditional release or conditional disposition of the charge and the parents are in court while I am handling those cases for the most part and the resolution is taken in that regard.

4:16:44 Hon. Elizabeth
Welch

When you say resolution, do you mean resolution of the charge or resolution of the issue of detention? Because a detention review hearing is a review of whether the youngster needs to be held in custody pending trial.

4:16:46 J. Garrison

In my experience the case gets resolved at that hearing. In other words, disposition of the case occurs at that hearing. Many times the case will be resolved by the child being released. They will be released on conditions. The conditions will be go to school. Mind your parents. Stay out of trouble. Obey all laws. Don't have any knives. Sometimes there will be house arrest, which means you can't leave the house without your parents. There is a curfew. You have permission to go see your lawyer. You have permission to go to school. Sometimes there are sports programs that are involved, but otherwise you are home and that becomes the resolution of the case. I find that to be rather efficient.

4:16:54 J. Arneson

I think my experience is that kids don't like detention and the offer frequently is eight days detention, credit for time served, and kids like to get out. The detention review hearing normally occurs about that eight to 10 day period. I think that would be my idea as to what driving, at least the kids that are in detention, now if they get released it is a different matter. In my opinion that is a lot of what is driving it.

4:17:34 J. Garrison

I think what Mr. Arneson said, to use my paraphrase, is that there is some incentive, some leverage that is exerted just by being in detention. This is one way to get out of detention. If there isn't a resolution of the case and credit for time served and moving on, then the judge makes a decision as to whether or not to keep in further detention. I have been at that point too. Depending on the circumstances I either release for another review within a short period time or take them out of detention. I say that a lot of cases get resolved at that point. That is my experience.

4:18:23 R. Cremer

I think that is accurate but I think also part of what we do is oftentimes finding acceptable resources. That is acceptable to the judge and the Juvenile Department for the child to go to while the case is pending. Because sometimes the kids come in and it doesn't look like that they have a responsible place to go and that is why they are held in detention. But I also agree with what Jim is saying that I think that we pay more attention to the children who are in detention and it doesn't appear that there is a likelihood they will get out without actually resolving the charge. Because you know 10 days in detention for a 12 or 13 year old is like 10 months to an adult. I think we as lawyers really work those cases much more rapidly than we would if we had an adult client in jail. That is not to say that they don't get the same consideration in terms of their defense. The reality is that the vast majority of the cases are provable. There is no reason for the kid to sit in jail.

4:19:41 J. Garrison

Did we answer your question, Judge Welch?

4:19:38 Hon. Elizabeth
Welch

Yeah. I don't want to get into a lengthy discussion because the meeting is almost over. What I was concerned about most cases resolve. That was a quote and that means the case is over with. Depending on the nature of the charge maybe the case shouldn't be over 10 days after the case.

4:20:13 J. Garrison

The word "resolve" is usually some sort of a disposition as I explained.

4:20:22 Hon. Elizabeth

Welch Of the charge. Not of the question of detention or whether somebody, a lawyer, found a place that is reasonable for a kiddo to be so that they don't have to be in detention.

4:20:33 J. Garrison In my experience there is a reasonable place for the child to go, otherwise it is a bigger problem. Sometimes the parents don't want the child and sometimes their aunts or uncles who will be resources. Sometimes there are no resources. When there are no resources that is when there are difficult decisions.

4:20:59 Chair Ellis Other questions for Judge Garrison? Thank you very much.

4:21:04 J. Garrison Thank you. Thank you for coming down.

4:21:09 Chair Ellis Anything else anybody wants to do or say, if not I would entertain a motion to adjourn.

4:21:29 J. Larner I am Jessie Larner and I am the Trial Court Administrator here. Thank you for inviting me. I wanted to say that I have worked with the contracts at my end for quite a few years. I have worked with Billy, who has been wonderful to work with. He has always been direct and when we have a resource that we are looking for he is a good resource that we go to. I have to say that recently, with budget reductions, there could be some confusion maybe, or even not enough knowledge for our staff. We have had to adjust. With these last reductions, I have gone from a staff of 50 to 36.

4:22:23 Chair Ellis How long have you been TCA?

4:22:24 J. Larner I have been the Trial Court Administrator since 2003. I have been an employee with OJD for 32 years. Prior to that I was the supervisor for court operations for 20 some years. I have worked with this contract and I would say, probably what I need to do is work with my staff, because we have changes. One of the issues that I need to help resolve with staff is when they have a need for an attorney, and they call, and we don't get an attorney. For example recently we had a mental hearing and our mental hearing parties are held out of county now. It makes it kind of difficult at times for us and my clerks to locate an attorney that will be able to go out of county to talk to the party as their attorney. So we are working at that and I wanted to thank Billy for helping us. I know sometimes we can't find an attorney and he always seems to come up with one that is maybe in another county. I wanted to thank you for that. That is kind of the situation with the court right now with the staff. We have not really closed to the public, like a lot of courts have. We are still trying to stay open like the Chief has asked us to do. We have been able to do that because of staff taking on additional work. We get our jobs done, but we are rushed. I just wanted you to know the situation with our court.

4:24:17 Chair Ellis Okay.

4:24:19: C. Lazenby Mental commitments are out of county? You mean Lane, or Salem?

4:24:21 J. Larner They are held out of county. The hearings are actually here and the parties then have to be transported. There is not a facility where they are being held right now except for out of county.

4:24:35 Chair Ellis Thank you.

4:24:41 J. Larner Thank you.

4:24:41 Chair Ellis Anything else? If not, I would entertain a motion to adjourn.
MOTION: John Potter moved to adjourn the meeting, Shaun McCrea seconded the motion; hearing no objection, the motion carried: **VOTE 6-0.**

Meeting adjourned.

Attachment 2

**Public Defense Contract Recommended for
Approval by the Public Defense Services Commission
at its June 14, 2012 Meeting**

County	Proposed Contractor	Term	Cases	Value
Lincoln	Lincoln Defenders and Juvenile Advocates, Inc.	7/1/12 - 12/31/13	4,086	\$1,541,520

Attachment 3

Clackamas County Update

At the March 2012 PDSC meeting, Caroline Meyer provided an update on Clackamas County service delivery. At that meeting, the Commission expressed concern that Clackamas Indigent Defense Corporation (CIDC) had not finalized the addition of two outside members to their board. Attached for review are the CIDC documents requested by the Commission in follow up to the March meeting.

- By-Laws
- Client Letter
- Questionnaire to System Participants
- Questionnaire to CIDC Attorneys

BY-LAWS
OF
CLACKAMAS INDIGENT DEFENSE CORPORATION
A Nonprofit Corporation
REPEAL and ADOPTION

All By-Laws and all amendments thereto heretofore promulgated by the Board of Directors of the Clackamas Indigent Defense Corporation (hereinafter “the Corporation”) shall be and are hereby repealed in consideration of the adoption of the By-Laws set forth hereunder.

ARTICLE I

Offices

Section 1. Principal Office. The principal office of the Corporation shall be maintained in Clackamas County by the Administrator (see Article IV, Section 2). The Corporation may have such other offices as the Board of Directors may designate from time to time as required by the business of the Corporation.

Section 2. Registered Office. The registered office of the Corporation may be, but need not be, identical with the principal office in Clackamas County, State of Oregon, and the address of the registered office may be changed from time to time by the Board of Directors as required by the business of the Corporation.

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ARTICLE II

Members

Section 1. Membership. The membership shall consist of those licensed Oregon attorneys having an active, independent contract with the Corporation to provide indigent defense legal services pursuant to the Corporation's contractual obligations to the State of Oregon. New members may be selected in a manner determined by the Board of Directors. Membership herein is not assignable or transferable.

Section 2. Qualifications. All members must meet and maintain each of the following qualifications:

- A. Licensed and admitted to practice law in the State of Oregon as members in good standing of the Oregon State Bar Association; and
- B. Conduct affairs in compliance, both professionally and personally, with all federal and state law; and
- C. Operate a principal office physically located within Clackamas County for servicing clients, with an active, personal email address for business use;
- D. Membership in good standing in the Clackamas County Bar Association; and
- E. Approval as an attorney in good standing by the Public Defense Services Commission and the Clackamas County Courts.

Section 3. Annual Meeting. The annual meeting of the members shall be held within 60 days of the date of these By-Laws, and subsequent annual meetings shall be held during the month of February. At said annual meeting members shall, by election,

fill member-director vacancies to the Board of Directors and transact such other business as may properly be brought before the membership.

Section 4. Special Meetings. Special meetings of the members may be called at any time by the Board of Directors, the President, or upon written request of ten members addressed to the President. Special meetings shall be called not less than five days nor more than thirty days after receipt of request, and if the President fails to issue or call and cause the notice thereof to be given, any member may give notice as herein required.

Section 5. Place of Meetings. The Board of Directors may designate any place, either within or without the State of Oregon, for any annual meeting, or for any special meeting called by the Board of Directors or the President, and if no designation is made, or if a special meeting be otherwise called, the place of meeting shall be in the Clackamas County Courthouse.

Section 6. Notice of Meeting. Written or email notice stating the place, day and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than seven days nor more than fifty days before the date of the meeting, either personally, by mail or by email. If mailed, each notice shall be deemed to be delivered when deposited with the United States Postal Service, postage prepaid, addressed to the member at his/her last known office address as the same appears on the records of the corporation. If emailed, each notice shall be deemed to be delivered when electronically transmitted to the member at his/her last known email address as the same appears on the records of the Corporation.

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Notice of any regular or special meeting may be waived by written consent, whether executed before or subsequent to such meeting. The attendance of any member shall be deemed a waiver of the notice hereby prescribed.

In the event the annual meeting of the members of this Corporation shall not be held as herein provided, or within sixty days thereafter, or if the required business is not transacted, the election of directors and all other business which might have been transacted at such annual meeting may be transacted at any adjournment of such meeting or at any special meeting of the members of this Corporation called for such purpose.

Section 7. Proof of Service of Notice. An entry of the service of notice of a meeting, given as above provided, shall be made in the minutes of the proceedings of the members, and such entry, if read and approved at a subsequent meeting, shall be conclusive on all questions of such service.

Section 8. Quorum. At a meeting of the members, fifty percent of the total membership, in person or represented by another member by proxy in writing, shall constitute a quorum for the transaction of any business. If less than a quorum attends a meeting, a majority of the members so represented may adjourn the meeting from time to time without further notice. At such resumed meeting at which a quorum shall be present or represented, any business may be transacted which may have been transacted at the meeting as originally notified.

The members present at the duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum, unless, of course, its business has been completed; provided,

however, that at any resumed meeting the business thereof shall be conducted without undue delay and without further adjournment unless necessary to complete said business.

Section 9. Membership Vote. Each member shall be entitled to one vote.

ARTICLE III

Board of Directors

Section 1. General Powers. The business and affairs of the Corporation shall be managed by its Board of Directors. Said Board shall have the power and authority to make rules and regulations not inconsistent with the laws of the State of Oregon and By-Laws of the Corporation for the guidance of the officers and employees of the Corporation and for the transaction of its business; to call meetings of the members when deemed advisable and generally to exercise all powers necessary to carry out the object and purposes as heretofore established. It is expressly understood that nothing herein contained shall be deemed to limit or restrict the general authority vested in said Board for the management and control of the Corporation.

The Corporation, through the Board of Directors, shall compensate attorneys who contract with CIDC to provide legal services to indigent defendants. The Board shall have the authority to set standards and guidelines for contracts with and case assignments to the independently contracting attorneys. Compensation to the attorneys shall be set, and is to be solely determined, by the Board.

The Board of Directors shall control and exercise all corporate powers with respect to the business and property of the Corporation.

Section 2. Number of Directors. The Board of Directors shall be composed of

nine member-directors and two nonmember-directors. Nonmember-directors shall not be employed by any governmental body or institution and shall not have a criminal record.

Section 3. Qualifications of Directors. Any member of the Corporation may serve as a member-director on the Board of Directors. Nonmember-directors are not otherwise affiliated with the Corporation, provide no services or receive any benefit from the Corporation's contract with the State of Oregon to provide indigent defense services, and are appointed to the Corporation's Board of Directors by a consenting third-party agency as set forth in Sections 4D and 4E. The Corporation envisions that the nonmember-director positions might best be filled by a retired Clackamas County Circuit Judge and a business person, residing and conducting business in Clackamas County, who can meaningfully contribute to the Corporation's governance by virtue of the individual's personal and professional acumen. The inclusion of nonmember-directors, however, including their identity, qualifications and value of service, may be re-examined and amended by the board from time to time.

Section 4. Term of Office of Directors. The Board of Directors shall consist of nine member-directors each serving a three-year term, and two nonmember-directors each serving a two-year term. Positions on the Board of Directors shall be filled as follows:

A. Two member-directors shall be deemed to have commenced service on March 1, 2009 and shall continue to serve until February 28, 2012. Those member-directors are Mark W. Lyons, and Scott K Thompson. Brad Jonasson has retired.

These three member-director positions shall be filled during the annual meeting (February, 2012), shall be effective for a 3-year (March 1, 2012 to February 28, 2015) term, and shall thereafter be refilled upon the expiration of each succeeding 3-year term.

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B. Two member-directors shall be deemed to have commenced service on March 1, 2010 and shall continue to serve until February 28, 2013. Those member – directors are Michael F. Czaiko and Heather L. Karabeika. Three member-director positions shall be filled during the annual meeting (February, 2013), shall be effective for a 3-year (March 1, 2013 to February 28, 2016) term, and shall thereafter be refilled upon the expiration of each succeeding 3-year term.

C. Three member-directors shall be deemed to have commenced service on March 1, 2011 and shall continue to serve until February 28, 2014. Those member– directors are Arthur B. Knauss, Ronald L. Gray, and Jack Bernstein. Three member-director positions shall be filled during the annual meeting (February, 2014), shall be effective for a 3-year (March 1, 2014 to February 28, 2017) term, and shall thereafter be refilled upon the expiration of each succeeding 3-year term.

D. With the consent of the Clackamas County Bar Association (“CCBA”), one nonmember-director shall be appointed by the CCBA leadership to fill a two-year position on this Corporation’s Board of Directors commencing immediately and ending on February 28, 2013, and second nonmember-director for a term commencing on March 1, 2012 and expiring February 28, 2014. Thereafter the CCBA shall appoint a nonmember-director to fill the available vacant position commencing March 1st each calendar year.

Section 5. Vacancies. Any vacancy occurring on the Board of Directors by death, resignation or otherwise, may be filled by the affirmative vote of a majority of the remaining directors though less than a quorum of the Board of Directors. A director elected to fill a vacancy shall be elected for the unexpired term of his/her predecessor in office. Any directorship to be filled by reason of an increase in the number of directors shall be filled by an election at the annual meeting or a special meeting of the members called for that purpose.

Section 6. Regular Meetings. A regular meeting of the Board of Directors shall be held immediately after and at the same place as the annual meeting of the members for the purpose or organization, election of officers and the transaction of other necessary business. The Board of Directors may provide by resolution, the date, hour and place for the holding of additional meetings without notice other than such resolution. Notice of all Annual Board meetings shall be emailed to all members and directors at least 30 days in advance. Anyone interested in filling a Board vacancy must give written or emailed notice of that interest to the Administrator no less than 15 days before the Annual meeting.

Section 7. Special Meetings. Meetings of the Board of Directors may be held at such time and place as said Board may from time to time determine. Meetings of the Board of Directors shall be held at any time on the order of the President or on the order of two directors.

Section 8. Notice of Special Meetings. Notices of the meetings of the Board of Directors, stating the date, place, hour and, in general, the purposes thereof, shall be delivered in person, by mail, or by email to each director not later than five days before

the day appointed for the meeting. An entry of the service of notice, given in the manner above provided, shall be made in the minutes of the proceedings of the Board of Directors, and such entry if read and approved at a subsequent meeting of the Board, shall be conclusive on the question of service. If all the directors shall be present at any directors' meeting, however called or noticed, and sign the written consent thereto which is entered in the record of the meeting, any business may be transacted at such meeting, and the transaction of such business shall be as valid as if transacted at a regularly called or noticed meeting.

Attendance of a director at any special meeting shall constitute a waiver of notice of such meeting except where a director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

Section 9. Addresses of Directors. Each director shall register his/her own mailing address and individual email address with the Administrator, and notices of meetings mailed (via USPS) or emailed to either such address constitute valid notices thereof.

Section 10. Quorum. A majority of the number of the directors shall constitute a quorum for the transaction of business and every act or decision of the majority of the directors present at a meeting at which a quorum is present, made or done when duly assembled, shall be valid as the act of the Board of Directors, but a majority of those present at the time and place of any regular or special meeting, although less than a quorum, may adjourn from day to day or time to time, without further notice, until a quorum shall attend; and when a quorum shall attend, any business may be transacted

which might have been transacted at the meeting had the same been held at the time originally called.

Section 11. Presumption of Assent. A director of the Corporation who is present at a meeting of the Board of Directors at which action on any corporate matter is taken shall be presumed to have assented to the action unless he shall file his written dissent to such action with the person acting as secretary of the meeting before the adjournment thereof, or shall forward such dissent by certified mail to the Secretary of the Corporation immediately after the adjournment of the meeting. Such right of dissent shall not apply to the director who voted in favor of such action.

Section 12. Informal Action by Directors. Any action required to be taken at a meeting of the directors or any other action which may be taken at a meeting of the directors may be taken without a meeting provided a consent in writing setting forth the action so taken is signed by all of the directors. Likewise, an affirmative email response from each director to a proposal for action transmitted to the Board for consideration by email shall also constitute consent for said action.

Section 13. Confidentiality of Board Business. The business of the Board of Directors is confidential to CIDC, and shall not be discussed outside of Board meetings, publicly or privately, without the express permission or directions of the Board.

ARTICLE IV

Officers

Section 1. Number. The officers of the Corporation shall be the president, vice president, secretary and treasurer, each of who shall be elected by the Board of Directors. Any two or more offices may be held by the same person except the office of president

and secretary. Such other officers, assistant officers and agents as may be deemed to be necessary may be elected or appointed by the Board of Directors.

Section 2. Administrator. The Board of Directors shall have power to appoint a lawyer or non-lawyer administrator who shall hold office at the pleasure of the Board and at a compensation to be determined by the Board. The Board of Directors shall have the power to delegate to the administrator such executive power and authority as they may deem necessary to facilitate the handling and management of the Corporation's affairs.

Section 3. Election and Term of Officers. The officers of the Corporation to be elected by the Board of Directors shall be elected annually at the first meeting of the Board after each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as can conveniently be scheduled. Each officer shall hold office until his/her successor shall have been duly elected and shall have qualified, or until his/her death or until he/she shall resign or shall have been removed in the manner hereinafter provided.

Section 4. Removal of Officers or Employees. Any officer, agent or employee may be removed by the directors when in their judgment the best interests of the Corporation will be thereby served. Such removal, however, shall be without prejudice to the contract rights, if any, of the person removed.

Section 5. Vacancies. A vacancy in an office because of death, resignation, removal, disqualification or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6. Officers as Ex Officio Members of the Board of Directors. Any officer of the Corporation may be a Board member. Any member of the Clackamas

County Bar Association may be selected by the Board of Directors to assist the Board in an advisory capacity.

Section 7. President. The president shall be the principal executive officer of the Corporation and shall, in general, supervise and control all of the business and affairs of the Corporation. He/she shall, when present, preside at all meetings of the members and of the Board of Directors. He/she may sign contracts and other documents as from time to time authorized by the Board of Directors. In general, the president shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors or the membership.

Section 8. Vice President. The vice president shall perform such duties as shall be assigned to him/her by the Board of Directors, and in the case of death, disability or absence of the president, the vice president shall perform and be vested with all the duties and powers of the president until the president's successor shall be elected, or the president shall have resumed his/her duties.

Section 9. Secretary. The secretary shall (a) keep the minutes of the members' meetings and of the Board of Directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these By-Laws and as may be required by law; (c) be custodian of the corporate records and of the seal of the Corporation and see that the seal of the Corporation be affixed to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized; (d) to keep a register of the current post office address and email address of each member which shall be furnished to the secretary by each member; (e) in general,

perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him/her by the president and Board of Directors.

Section 10. Treasurer. The treasurer shall have (a) charge and custody of and be responsible for all funds and securities of the Corporation, receive and give receipts for any monies due or payable to the Corporation from any source whatsoever, and deposit all such monies in the name of the Corporation in such banks or other depositories as shall be selected in accordance with the provisions of these By-Laws; and (b) in general, perform all duties incident to the office of treasurer and such other duties as from time to time may be assigned to him/her by the Board of Directors and the president. With the Board's approval, the treasurer may designate an employee of the Corporation to assist in the carrying out of the duties and responsibilities of the office of treasurer. If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his/her duties in such sum and with such surety or sureties as the Board of Directors shall determine.

ARTICLE V

Special Conditions

Section 1. Relationship of Officers and Directors to Corporation. Officers and directors shall be deemed to stand in a fiduciary relationship to the Corporation and its members, and shall discharge the duties of their respective positions in good faith and with that diligence, care and skill which ordinarily prudent men/women would exercise under similar circumstances in like positions.

Section 2. Rules of Meetings. Business shall be conducted pursuant to the current edition of Robert's Rules of Order and such rules that may be promulgated by the Board of Directors, the latter to control in case of conflict.

ARTICLE VI

Committees

Appointment. The Board of Directors may designate and appoint one or more committees, each of which shall consist of not less than two directors. Said committees may at the Board's discretion have advisory members from the Clackamas County Bar Association. The authority of the committee shall not exceed that granted by the Board. The designation and appointment of any such committee and the delegation thereto of authority shall not operate to relieve the Board of Directors or any individual director of any responsibility imposed upon it or him/her by law.

ARTICLE VII

Indemnification

Conditions. The Corporation is authorized to indemnify persons in accordance with the provisions of ORS 65.387 to 65.414 as may be determined by the Board of Directors.

ARTICLE VIII

Contracts, Loans, Checks and Deposits

Section 1. Contracts. The Board of Directors may authorize any officer to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Corporation, and such authority may be general or confined to specific instances.

Section 2. Loans. No loans shall be contracted on behalf of the Corporation and no evidence of indebtedness shall be issued in its name unless authorized by resolution of the Board of Directors. Such authority may be general or confined to specific instances.

Section 3. Checks, Drafts, Etc. All checks, drafts or other orders for the payment of money, notes or other evidence of indebtedness issued in the name of the Corporation shall be signed by the secretary or treasurer or an employee of the Corporation designated by the treasurer with the approval of the Board of Directors.

Section 4. Deposits. All funds of the Corporation not otherwise employed shall be deposited from time to time to the credit of the Corporation in such banks or other depositories as the Board of Directors may select.

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ARTICLE IX

Membership Classification

Members shall be those individuals who qualify in accordance with the provisions of these By-Laws. There shall be no charge or fee to any member or to any person who desires to make application to this corporation for membership.

Article X

Amendment of By-Laws

These By-Laws may be modified, amended or repealed and new By-Laws may be adopted by the Board of Directors.

ADOPTION of the aforesaid By-Laws ratified and confirmed by the Board of Directors, Clackamas Indigent Defense Corporation, this ____ day of _____, 2011.

Art Knauss
Board Member –Acting President

Ronald L Gray
Secretary/Treasurer

Client Letter



Clackamas Indigent Defense Corporation

Ronald L. Gray, Administrator
802 Main Street, #103
Oregon City, OR 97045
503-655-1111

Dear Client:

It is important for us to determine how to do the best job for our clients. It helps us to get your opinion. Please fill out this form and return it to us in the envelope we have provided.

Thank you,

Ron Gray
Clackamas Indigent Defense Corp.
Administrator

Name of Lawyer: _____

Your name (optional): _____

Table with 3 columns: Yes, No, Sometimes. Rows include: My lawyer listened to my side and explained the State's side., My lawyer explained the law and my defense(s)., My lawyer explained the risks and possible outcomes of trial, My lawyer returned phone calls, My lawyer stood up for me, My lawyer was polite, My lawyer did what was promised, Would you recommend the lawyer to others?, Comments:

Return to CIDC
802 Main Street, #103
Oregon City, OR 97045

Questionnaire to System Participants



Clackamas Indigent Defense Corporation

Ronald L. Gray, Administrator
802 Main Street, #103
Oregon City, OR 97045
503-655-1111

April 30, 2012

Clackamas Indigent Defense Corporation (CIDCC) is the group of lawyers providing legal services to indigent defendants.

In an effort to evaluate and improve our system, we would ask that you please fill out this questionnaire and return it to me before June 1, 2004. Your insight will help us not only improve how we do business, but also help our court system.

Please return this to me by:

- 1. Mail at 802 Main Street, #103, Oregon City, OR 97045;
2. Fax at 503-655-1112; or
3. Drop off at the Courthouse in my mail box in Room 11, or my blue file folder in the docket office (Room 200).

We need your insight and wisdom to continue to make our system the best in Oregon. Thank you for your help.

Sincerely,

Ronald L. Gray
Administrator

RLG/jab

Name of Person Providing Response: _____
Optional

Questionnaire regarding representation provided by Clackamas Indigent Defense Corporation, (CIDCC).

Circle One:
Excellent = 5 / Poor = 1

- 1. In your experience, how would you characterize the general quality of defense provided by CIDCC? 5 4 3 2 1
2. Is there a difference in the quality of representation provided in different kinds of cases... Yes No
3. If your answer to No. 2 is yes, indicate your observations about the quality of representation provided by CIDCC in the following types of case:
a. Measure 11. 5 4 3 2 1
b. Major felony 5 4 3 2 1
c. Minor felony 5 4 3 2 1
d. Misdemeanor 5 4 3 2 1
e. Probation violation 5 4 3 2 1
f. Other (please specify) - 5 4 3 2 1
4. In your experience: Always = 5 / Rarely = 1
a. Are CIDCC attorneys generally prepared for case manager appearances? 5 4 3 2 1
b. Are CIDCC attorneys generally prepared for pretrial hearings? 5 4 3 2 1
c. Are CIDCC attorneys generally prepared for trial? 5 4 3 2 1
d. Are CIDCC attorneys generally prepared for sentencing and/or disposition? 5 4 3 2 1

e.	Do CIDC attorneys work hard at negotiating the cases?	Always = 5 / Rarely = 1					
		5	4	3	2	1	
f.	Do CIDC attorneys resolve cases pretrial?						
		5	4	3	2	1	
g.	Do DA's in your jurisdiction have realistic expectations in negotiations?						
		5	4	3	2	1	
5.	Rate your perception of the representation provided by CIDC in the following areas:	Excellent = 5 / Poor = 1					
	a. Investigation	5	4	3	2	1	
	b. Negotiations	5	4	3	2	1	
	c. Motion practice	5	4	3	2	1	
	d. Plea practice	5	4	3	2	1	
	e. Trial practice	5	4	3	2	1	
	f. Sentencing / disposition	5	4	3	2	1	
	g. Client contact	5	4	3	2	1	
	h. Post trial / disposition issues	5	4	3	2	1	
	i. Probation violation issues	5	4	3	2	1	
	j. Preservation of issues for appeal	5	4	3	2	1	
6.	The previous questions all relate to the organization. Do most of the CIDC attorneys fall in the categories you identified above?	Yes					No
7.	Are some of the lawyers significantly better than the average?	Yes					No
8.	Are any significantly worse?	Yes					No
9.	Are there any CIDC lawyers whose competency you question?	Yes					No

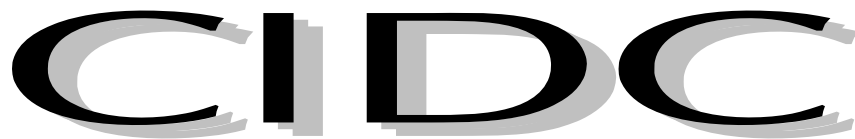
See last page, over

Compliance with Principle 3 of the Oregon State Bar's "General Principles for Counsel in Criminal ... Cases"

Always = 5 / Rarely = 1

- | | | | | | | |
|----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---|---|---|---|---|
| 1. | Do CIDC attorneys appear to be proficient in the applicable substantive and procedural law? | 5 | 4 | 3 | 2 | 1 |
| 2. | Do CIDC attorneys abide by the Code of Professional Responsibility and the rules of the court? | 5 | 4 | 3 | 2 | 1 |
| 3. | Do CIDC attorneys acquire and maintain appropriate experience, skills and training? | 5 | 4 | 3 | 2 | 1 |
| 4. | Do CIDC attorneys devote adequate time and resources to the case? | 5 | 4 | 3 | 2 | 1 |
| 5. | Do CIDC attorneys engage in the preparation necessary for quality representation? | 5 | 4 | 3 | 2 | 1 |
| 6. | Do CIDC attorneys appear to endeavor to establish and maintain a relationship of trust and open communication with the client? | 5 | 4 | 3 | 2 | 1 |
| 7. | Do CIDC attorneys appear to keep the client informed and seek the lawful objectives of the client? | 5 | 4 | 3 | 2 | 1 |
| 8. | Do CIDC attorneys appear to make accommodations where necessary due to a client's special circumstances, such as youth, mental or physical disability or foreign language barrier? | 5 | 4 | 3 | 2 | 1 |

Questionnaire to CIDC Attorneys



Clackamas Indigent Defense Corporation

Ronald L. Gray, Administrator
802 Main Street, #103
Oregon City, OR 97045
503-655-1111

We recently circulated a questionnaire to interested persons in Clackamas County requesting their opinion on how CIDC provides service. Now we are asking for your input.

In an effort to evaluate and improve our system, we would ask that you please fill out this questionnaire and return it to me before June 11, 2004, if possible. Your insight will help us not only improve how we do business, but also help our court system.

We need your insight and wisdom to continue to make our system the best in Oregon. Thank you for your help.

Sincerely,

Ronald L. Gray
Administrator

RLG/jab

Name of Person Providing Response: _____
Optional

Questionnaire regarding representation provided by Clackamas Indigent Defense Corporation, (CIDC).

Circle One:
Excellent = 5 / Poor = 1

- 1. How would you characterize the general quality of defense provided by CIDC?
2. Do you feel there a difference in the quality of representation provided by CIDC in different kinds of cases...
3. If your answer to No. 2 is yes, indicate your observations about the quality of representation provided by CIDC in the following types of case:
4. In your experience:
a. Are CIDC attorneys generally prepared for case manager appearances?
b. Are CIDC attorneys generally prepared for pretrial hearings?
c. Are CIDC attorneys generally prepared for trial?
d. Are CIDC attorneys generally prepared for sentencing and/or disposition?

e.	Do CIDC attorneys work hard at negotiating the cases?	Always = 5 / Rarely = 1				
		5	4	3	2	1
f.	Do CIDC attorneys resolve cases pretrial?	Always = 5 / Rarely = 1				
		5	4	3	2	1
g.	Do DA's in our jurisdiction have realistic expectations in negotiations?	Always = 5 / Rarely = 1				
		5	4	3	2	1
5.	Please rate <u>your</u> representation in the following areas:	Excellent = 5 / Poor = 1				
a.	Investigation	5	4	3	2	1
b.	Negotiations	5	4	3	2	1
c.	Motion practice	5	4	3	2	1
d.	Plea practice	5	4	3	2	1
e.	Trial practice	5	4	3	2	1
f.	Sentencing / disposition	5	4	3	2	1
g.	Client contact	5	4	3	2	1
h.	Post trial / disposition issues	5	4	3	2	1
i.	Probation violation issues	5	4	3	2	1
j.	Preservation of issues for appeal	5	4	3	2	1
6.	Do you feel some of the CIDC attorneys are significantly better than the average?	Yes	No			
7.	Are any significantly worse?	Yes	No			
8.	Are there any CIDC lawyers whose competency you question?	Yes	No			
<u>Regarding the Administration of CIDC:</u>		Always – 5 / Rarely – 1				
1.	Do you feel that CIDC adequately provides needed information?	5	4	3	2	1
2.	Do you share this information with your staff?	5	4	3	2	1
3.	How would you rate the process for assigning cases?	Excellent = 5 / Poor = 1				
		5	4	3	2	1

4. How do you rate the performance of the administrator in the following areas:

Excellent = 5 / Poor = 1

- a. Setting and conducting meetings: 5 4 3 2 1
- b. Providing educational materials 5 4 3 2 1
- c. Negotiating contracts with the State 5 4 3 2 1
- d. Investigating complaints 5 4 3 2 1
- e. Generally, performing as the administrator 5 4 3 2 1

5. How do you rate the performance of the administrative assistant in the following areas:

- a. Assigning cases and making any necessary adjustments thereon
- b. Handling requests for information and/or adjustments 5 4 3 2 1
- c. Handling complaints 5 4 3 2 1
- d. Preparing payment for cases 5 4 3 2 1
- e. Records keeping 5 4 3 2 1
- f. Generally performing as the administrative assistant. 5 4 3 2 1

If you could change one thing about CIDC, what would it be?

If you feel praise is warranted for CIDC, what would it be?

Any other comments you'd like to make?

Attachment 4

JUSTICE ALLIANCE CENTER
YAMHILL JUSTICE CENTER

235 E 3rd St Ste 13
McMinnville OR 97128
503-857-0278
YamhillJusticeCenter@gmail.com

Board of Directors

NAME	OFFICE	TELEPHONE	TERM
Mark Lawrence	President	503 434-9066 lawoffice@onlinemac.com	10 years
Carol Fredrick	Vice-President	503 435-1455 cfredrick1@frontier.com	9 years
Paula Lawrence	Secretary	503 434-9066 lawoffice@onlinemac.com	8 years
Rachel Negra	Treasurer	503 435-4811 negrallawoffice@comcast.net	6 years
Michael Finch	Member	503-435-1455 mfinch92@frontier.com	2 years
Lori Coukoulis	Member	503 472-5674 lcoukoulis@onlinemac.com	7 years
Dick Duer	Member	503-550-1151 dickduer1@hotmail.com	1 year
Robert Selander	Executive Director	503 803-8976 selanderyjc@gmail.com	N/A
Lisa Johnson	Executive Secretary	503-857-027 YamhillJusticeCenter@gmail.com	

BYLAWS
OF
JUSTICE ALLIANCE CENTER

Adopted: December 22, 2011, amended 2-16-12

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NOTE: The Oregon Nonprofit Corporation Act (ORS Chapter 65) both establishes and limits the powers and procedures available to nonprofit corporations. Where any questions arise about the meaning of these bylaws, or where these bylaws are silent on an issue, the Oregon Nonprofit Corporation Act should be consulted. If you would like assistance in updating, amending or interpreting these bylaws, contact David Atkin, attorney, at Nonprofit Support Services.

BYLAWS
OF
JUSTICE ALLIANCE CENTER (JAC)

ARTICLE I. PURPOSE

Section 1. Purpose. The purposes of Justice Center Alliance is exclusively those allowed for organizations defined under §501(c)(3) of the Internal Revenue Code. Within these limits, the purposes of Justice Center Alliance include the following:

To establish and make available a panel of attorneys well qualified to provide criminal defense services in the state of Oregon and to provide professional, ethical, creative representation for indigent persons in Yamhill County.

ARTICLE II. CONTRACTORS

Section 1. Contractors. Contractors are “independent contractors,” as defined by the IRS. Contractors shall vigorously represent clients assigned to them by JAC to the best of their ability within the bounds of ethics and law.

Section 2. Contractor List. JAC shall maintain a formal, current, alphabetical record of the names, addresses list and status of all contractors.

Section 3. Selection of Contractors.

A. Application to be a contractor and receive clients from JAC shall be considered and approved by the Board of Directors, or its designee.

B. Contractor approval process and procedure:

1. All prospective contractors shall submit a completed application, letter of interest, and include any supporting materials (resume, letters of recommendation, Certificate of Qualifications etc.) requested to the Board of Directors for consideration.
2. The Board of Directors, or its designee, upon receipt of the application listed above may consider the prospective contractor for a six month contract on the JAC misdemeanor list. If the applicant is a member of the Oregon State Bar in good standing, and the Board or Board’s designee concludes that it would be in JAC’s interest under the totality of circumstances to contract with the applicant, then the applicant may be awarded a limited six month contract to be included in the rotation for appointments on the misdemeanor list.

- a. If the Board of Directors finds that it is in JAC's interest to allow a limited six month contract on lists in addition to the misdemeanor list then the Board may do so.
 - b. If the Board of Directors finds that it is JAC's interest to grant an applicant a contract without the six month limit the Board may do so.
3. The Executive Director may award a person a temporary 30 day contract on any list or lists without Board pre-approval. The Executive Director shall thereafter report the temporary contract to the Board of Directors. The temporary contractor shall be responsible to follow JAC's application procedure to be awarded a longer limited six month contract.
4. All limited six month contracts expire according to the terms of the contract, or may be terminated early consistent with these bylaws.
5. The Board of Directors may offer Contractors another contract with or without limitation as the Board finds expedient and in the interest of JAC.

Section 4. Contractor Venue. All Contractors shall maintain a law office in Yamhill County which is accessible to clients and is appropriate for meeting with clients. Contractors shall have a local phone number for clients. Contractors participating in a limited six month contract are excluded from the law office requirement but shall have a professional meeting space in Yamhill County appropriate for meeting with clients.

Section 5. Contractor's Standard of Representation. Contractors shall meet or exceed the standards of representation set forth in the most current JAC Standards of Representation Manual. The Executive Director has authority to assess a Contractor's performance and conformance to the required standards of representation, and take appropriate action for any failure to meet said standard.

Section 6. Suspension or Removal of Contractors from Lists. The Executive Director or the Board of Directors may suspend, cancel or modify the contract of a Contractor at any time with or without cause. The Executive Director shall promptly notify the Secretary upon the change in status of any Contractor. The Contractor may request the Board to review the suspension, cancellation or modification of their contract. The Board of Directors, in their discretion, may review the Executive Director's decision. The Contractor has no due process or property rights.

Section 7. Effect of Oregon State Bar Disciplinary Action on Contractor. A Contractor whose license to practice law has been suspended by the Oregon State Bar (OSB) shall have their contract with JAC suspended and be removed from all lists and appointments

during their OSB suspension. Nothing in this section limits the Board of Directors or Executive Director from taking additional action.

1. The suspended Contractor shall take all appropriate actions to ensure a lawyer licensed in the State of Oregon and approved by JAC continues to prosecute the defense of the Contractor's cases during the suspension.
2. If the suspended Contractor fails to adequately provide for the defense of the Contractor's clients during the suspension, then JAC will reassign the Contractor's cases to other JAC counsel. The Contractor shall forfeit all representation fees and shall be financially responsible to repay JAC any funds paid on any reclaimed cases.
3. Upon reinstatement by the OSB the Contractor that provided for the appropriate defense of the Contractor's clients during the suspension may be reinstated to the lists as if there had not been a suspension.

Section 8. Withdraw of Contractor. A contractor may resign and be removed from all lists at any time by sending or delivering a written resignation to the Secretary of the Board. The Contractor is responsible to complete the cases previously assigned and in progress. If the Contractor fails to provide for the defense of the Contractor's clients after the Contractor's resignation then JAC will reclaim the Contractor's cases and assign the clients another JAC counsel. The Contractor shall forfeit all representation fees and shall be financially responsible to repay JAC any funds paid on any reclaimed cases.

Section 9. Contractor Meetings. As outlined in the JAC Standards of Representation Manual, Contractors shall attend mandatory meetings that are called by the Executive Director or Board of Directors from time to time.

Section 10. Contractor's Relationship to Executive Director. Contractors shall follow the direction of the Executive Director. Failure to cooperate with the directions of the Executive Director may result in immediate suspension or removal as a contractor.

ARTICLE III. BOARD OF DIRECTORS

Section 1. Duties of the Board. The Board of Directors shall establish the corporation's policies and review and change them as necessary, oversee its programs, appoint or employ and supervise its executive director, authorize its expenditures, oversee its financial affairs, and ensure the proper management and use of its assets and property. The Board shall also ensure that the corporation properly employs the necessary

corporate formalities to make its decisions, that it prepares and submits all required state and federal reports, and that it operates in compliance with relevant state and federal laws. Board members shall diligently prepare for, attend, and participate in the meetings of the Board of Directors and any Board committees, as needed, in order to carry out these tasks. The Board must meet at least four times per year, and shall strive to meet at least once each quarter of the year. The role of the Board does not include direct management or conduct of the daily operations of the organization.

Section 2. Qualifications of Directors and Composition of the Board. Members of the Board of Directors must have demonstrated a commitment to the mission and purposes of the Justice Alliance Center, and must have expertise in areas relevant to the needs of the organization. Five core Board members shall initially be appointed by the incorporators. Following the initial appointment of the core five Board members by the incorporators, the core Board members shall appoint a community Board member who is not a member of the Oregon State Bar and one Contractor Board member.

Section 3. Number of Directors. The Board of Directors must consist of no fewer than five and no more than nine Directors. Five Directors shall be core members of the Board. The Executive Director shall be a member of the Board.

Section 4. Terms of Directors. The five core directors shall serve an initial term of 6, 7, 8, 9, or 10 years respectively. Each subsequent term of a core director shall be five years. The citizen director and the contract director shall serve two year terms except that the first term of the contractor director shall be a one year term so as to stagger the two non-core director's terms. Unless a director resigns or is removed from office, directors shall remain in office until their successors are properly appointed. There is no limit to the number of terms, successive or otherwise, a director may serve.

Section 5. Selection of Directors.

A) Appointment. Directors may be re-appointed and any new Directors appointed, by the then-current Board of Directors, shall begin their term on or near April 6 each year. Nominations for new Board appointments may be made by the Board of Directors, by individual Board members or by Contractors.

B) Appointment Process. Each Director will have the right to vote for as many persons as there are director positions open on the Board of Directors at the time of the appointment. Except that only core directors shall vote for any core director candidate. Appointment of a core Director requires a majority vote of core directors. Director appointment votes shall be by a secret ballot if any person so requests.

Section 6. Election of Officers. As soon as possible following each annual appointment of Directors, the Board of Directors shall elect officers of the corporation.

Section 7. Removal of Directors. Core Directors appointed by the incorporators and subsequent core directors may be removed with or without cause only by resolution of

the core directors. Citizen and Contract directors appointed by the Board may be removed with or without cause by the Board of Directors. Proper notice must be given in advance, as required for a special meeting of the Board, stating that the removal of a director is to be considered.

Section 8. Resignation of Directors. A director may resign at any time. The resignation of a director must be in writing and be delivered to the Board, the president, or the secretary. Once delivered, a notice of resignation is irrevocable.

Section 9. Filling Vacancies. Core directors may, by a majority vote, appoint new core directors to fill core director vacancies on the Board. The Board of Directors may, by a majority vote, appoint new Citizen and Contract directors to fill any vacancies of those positions. A director appointed to fill a vacancy will serve the remainder of the term normally associated with that position.

Section 10. Conduct of Directors. Directors shall discharge their duty of loyalty and their duty of diligence in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in a manner the director reasonably believes to be in the best interest of the corporation.

Section 11. Quorum. At all meetings of the Board of Directors, a Directors presence may be in person or by phone. A quorum is at least a simple majority of the number of directors in office immediately before the meeting begins, and a quorum is necessary to allow the transaction of corporate business or the making of corporate decisions.

Section 12. Decision-Making and Voting. All decisions require a clearly stated motion, a second, and a vote that must be recorded in the written minutes. Each member of the Board of Directors will have one vote, with the exception of the Executive Director who shall only vote in the event of a tie. At the request of any director, the names will be recorded in the minutes of each director who voted for, voted against, or abstained on a particular motion.

The directors must diligently and conscientiously attempt to make decisions by consensus. They must employ all standard consensus practices and techniques including the expression and careful consideration of minority views. When a consensus apparently cannot be achieved, any director may request that a vote be taken. The affirmative vote of at least a fifty-one percent (51%) simple majority of all of the Directors participating in any properly called meeting at which a quorum is present, is necessary and sufficient to make a decision of the Board of Directors unless a greater proportion is required by law or by these bylaws. An abstention counts as part of the total number of votes cast, and does not reduce the number of affirmative votes required to pass a motion.

Section 13. No Proxy Voting. No proxy voting is allowed at any meeting of the Board of Directors or as part of reaching any decision of the Board.

Section 14. Telephonic Meetings. Meetings may be held by telephone, video conferencing or other method, so long as all participating directors may simultaneously hear and speak with each other. A director participating in such a meeting is deemed present for purposes of a quorum.

Section 15. Decisions Without Meetings. Any decision that the Board of Directors may make at a meeting may be made without a meeting if the decision is approved by the affirmative vote of all of the members of the Board. A clearly stated motion must be sent to all of the directors on the Board by mail, fax or email, with clear instructions that this process requires 100% of the directors to vote "yes" for the motion to pass. If the motion is sent by mail or fax, then it must be signed and returned by mail or fax by each director. If the motion is sent by email then each director must send their vote by email in reply, in which case no signature is necessary. Motions are adopted and effective on the date that all directors in office have responded with an affirmative "yes" vote. If any director votes "no," abstains, or fails to vote, then the motion fails to pass. A printed record of each director's vote must be kept in the corporate records.

Section 16. Meetings. The Board must meet four times per year, and shall strive to do this by meeting at least once each quarter of the year. Meetings of the Board of Directors may be called by the president, or 50% of the directors in office. Robert's Rules of Order may be consulted for guidance but shall not be binding.

Section 17. Executive Session Meetings. The Board President or the Board by a majority vote of the Directors present may at any time decide to go into an Executive Session meeting. Executive Session shall be used when the Board deems it is necessary to protect the confidentiality of the matters that will be considered there. Executive Session meetings may be attended only by members of the Board of Directors, and any guests the Board invites to join the meeting, which may include the Executive Director, other staff, or any other person the Board wishes to invite. A Director may also be excluded from any portion of Executive Session meetings in which matters will be considered that present a conflict of interest for that Director. If a conflict of interest is disputed, it shall be decided by a majority vote. Minutes shall be properly recorded, but shall only be read or approved at a subsequent Executive Session if there is a need to continue to insure the confidentiality of the matters contained in the minutes. The Secretary shall take care to record in the minutes only the motions passed and information essential to comply with the law, in order to protect the confidential nature of Executive Sessions.

Section 18. Notice of Meetings. Notice must be given of every meeting of the Board, stating the date, time, and location of the meeting, and the purpose of the meeting if so required by law or these bylaws. The notice must be given not less than 5 actual days in

advance of the meeting if delivered by telephone conversation or in person, and not less than 7 days in advance if delivered by first class mail, email, or fax to an address provided by the individual director unless the Board orders otherwise.

Regular meetings: After the initial notice is given of the schedule for a series of regular meetings, which will occur at a fixed time and place, no further separate notice is required for each of those regular meetings. Notice must state the time, date, and location of the meeting. The Board may by resolution establish or change the location or dates of regularly scheduled meetings, with proper notice given to all directors.

Section 19. Waiver of Notice. Any director may waive the right to receive full advance notice of any meeting. Waivers of notice must be in writing, signed by the person entitled to notice, and must be given to the secretary to be placed in the corporate records. Waivers may be signed before or after the meeting has taken place. The attendance of a director at any meeting without specific objection to the notice constitutes a waiver of the full notice of that meeting.

Section 20. Authority of Directors. No member of the Board of Directors may officially represent the positions of the organization or speak or make agreements on behalf of the Corporation without specific authorization by the Board of Directors to do so.

ARTICLE IV. OFFICERS AND STAFF

Section 1. Officers. The officers of JAC shall carry out the policies and decisions of the Board of Directors as directed by the Board. The officers shall include a president, secretary and treasurer. The Board may also elect a vice-president/president elect, a chairperson, and other officers as desired. The same person may not hold the offices of president and secretary at the same time, but the same person may hold any other two offices. Officers are not required to serve simultaneously as members of the Board of Directors. Officers who are not members of the Board have no right to vote on Board decisions.

Section 2. Election and Term of Office. The officers of JAC will be elected by the Board of Directors. As soon as possible following the election of directors, the Board of Directors will elect new officers of the corporation. Officers will serve one year terms. However, unless they formally resign or are removed from office, officers will remain in office until their successors are properly elected, designated or appointed. There is no limit to the number of terms, successive or otherwise, an officer may serve.

Section 3. Removal. Any officer elected by the Board of Directors may be removed by the Board of Directors whenever, in its judgment, the interests of the corporation would be best served by such removal. Removal will be without prejudice to the contract rights, if any, of the officer so removed. The person being considered for removal has no vote in the process of removal.

Section 4. Vacancies. If any office of the corporation becomes vacant by death,

resignation, retirement, removal, disqualification, or any other cause, the remaining directors still in office, although less than a quorum, may elect an officer to fill such a vacancy. The elected officer will hold office for the remaining portion of the term of that office.

Section 5. President. The president is the principal officer of the corporation and will, in general, supervise or oversee the supervision of all of the affairs of the corporation. The president generally will preside at all meetings of the Board of Directors, unless the Board selects another person to preside. The president will also perform other duties as may be assigned by the Board of Directors. The president may serve as an ex-officio member of any committee.

Section 6. Vice-President/President Elect. In the absence of the president or in the event of the president's inability to act, the vice-president will perform the duties of the president. The vice-president, when acting as president, will have all the powers of and is subject to all the restrictions on the president. The vice-president will also perform other duties assigned by the Board of Directors. More than one vice-president position may be created and duties clarified, in an ordinary resolution of the Board. If a Vice-President is not seated and the president is absent or otherwise unable to act the Secretary shall perform the duties of the vice president.

Section 7. Secretary. The secretary will perform or oversee the performance of the following duties: a) record and keep the minutes of the meetings of the members and of the Board of Directors and of any Board committees, in one or more books provided for that purpose; b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; c) be custodian of the corporate records; d) keep a register of the mailing address of each contractor as provided by such contractor; e) ensure that all required state and federal reports are prepared and filed in a timely fashion; and f) perform or oversee all duties incident to the office of secretary and such other duties as from time to time may be assigned by the president or by the Board of Directors. The Secretary may delegate some or all of these tasks but remains responsible for their proper completion.

Section 8. Treasurer. The treasurer will perform or oversee the performance of the following duties: a) be responsible for the proper management and control of all funds of the corporation; b) prepare full and accurate financial records on a timely basis of all the income, expenses and assets of the corporation; c) present reports at every Board meeting on the financial affairs of the corporation; d) provide financial information necessary to prepare and file the required reports to state and federal government agencies, showing the income, disbursements, and assets of the corporation. The Treasurer may delegate some or all of these tasks but remains responsible for their proper completion.

Section 9. Executive Director and Staff.

- A. The Board may appoint or employ an executive director or other staff, whether paid or unpaid, to perform and conduct the programs and activities of the

organization. The Board of Directors shall evaluate the performance of the Executive Director on an annual basis.

- B. The executive director shall have the power, subject to the approval of the Board of Directors, to hire staff, establish staff duties and performance standards, evaluate the performance of staff, and when necessary terminate the employment of staff of the corporation.
- C. The Executive Director shall have the power, subject to approval of the Board of Directors, to establish sundry court appointed attorney lists, appoint contractor attorneys to cases, put contractors on and remove contractors from court appointed attorney lists, establish standards for defense services, direct, supervise and remediate contractors and perform such other duties as the Board may direct.

The Executive Director shall be a member of the Board of Directors, but shall only vote in the event of a tie.

E.

ARTICLE V. COMMITTEES

Section 1. Establishment. The Board may establish any committee, including standing committees or temporary committees, by a resolution of the Board. Such resolutions must name the committee, the purpose of the committee and must state whether it is a "Board" committee or a "non-Board" committee, as defined below.

Section 2. Board Committees. The Board may establish "Board" committees to which are delegated part of the power of the whole Board to authorize expenditures, approve amendments to budgets, set policies, and authorize programs or activities. Such committees must be established by the affirmative vote of at least a majority of all directors then in office. Board Committees must consist of two or more directors, and they must not have any members who are not members of the Board of Directors. Board Committees must follow all of the meeting requirements that the Board of Directors itself must follow, including the requirements for proper notice, for having a quorum to conduct votes, the passage of motions, the writing of minutes, and the subsequent approval and permanent storage of Board Committee minutes. The Board may require further procedures that Board Committees must follow as well. For all Board committees, the Board must pass a resolution that clearly states what powers, authority, and duties have been delegated to the committee, who is the chair of the committee, and who are the members of the committee.

Executive Committee: The Board may elect an Executive Committee. The Executive Committee will have the power to make decisions between Board meetings, including financial and budgetary decisions. The Executive Committee must comply with the provisions of the bylaws concerning the full Board as far as those are reasonably applicable to the Executive Committee. All Executive Committee decisions must be recorded in official minutes, which will be submitted to the full Board. Unless the Board of Directors decides otherwise, the Executive Committee will consist of the president, secretary, and treasurer of the organization, so long as they are simultaneously members of the Board of Directors. The Executive Committee must make reasonable

efforts to contact all Board members first, to discuss the issues to be dealt with at an Executive Committee meeting.

Section 3. Non-Board Committees.

A. The Board may establish "non-Board" committees, including working committees or advisory committees, which do not have the power to authorize expenditures, adopt budgets, set policy, establish programs, or make decisions for the corporation. Such committees are established through a resolution adopted by the directors present at a properly called meeting. Any person may be a member of such a committee, whether or not that person is a member of the Board of Directors.

B. Financial Oversight Committee: There shall be a committee responsible for financial oversight of the organization's income and expenses, which shall be named the Finance and Audit Committee or the Financial Oversight Committee. The committee must consist of two or more people, including at least one person with some financial experience or experience with bookkeeping, who are not the organization's check signers or bookkeepers. The committee shall be responsible for overseeing the organization's financial transactions and the implementation of the organization's financial policies. As part of its mission, the committee shall review on a monthly basis, or oversee a monthly review of, the organization's expenditures, financial transactions, bank statements, returned checks, and credit card statements. The committee shall report any questions or concerns about the organization's finances to the Board. The committee shall also make the necessary arrangements for and oversee the organization's annual audit or annual financial review, which is described in these bylaws.

Section 4. Committee Members. The Board will appoint the members of every Board committee. The Board may appoint the members of Non-Board committees, or delegate this task to the President or the Committee Chair. The term of office of a member of a committee will continue until his or her successor is appointed unless the committee is terminated, the member resigns or is removed from the committee, or the member ceases to qualify as a member of the committee.

Section 5. Chair. One member of each committee will be selected or appointed chair by the Board, or if the Board wishes, it may delegate that power to the president or the members of the committee.

Section 6. Committee Procedures. Unless otherwise specified, Board Committee meetings will operate with the same quorum and voting requirements as the full Board, and as far as possible will operate according to the procedures of the Board as stated in these bylaws. If any formal decisions or resolutions are voted on at a committee meeting, then the votes and the resolutions so adopted must be recorded in the form of corporate minutes and filed with the secretary.

Section 7. Limitations on Powers. No committee may a) elect, appoint or remove any officer, member of the Board of Directors, or member of a Board committee; b) authorize the sale, lease, exchange, or mortgage of all or substantially all of the property and assets of the corporation; c) authorize the dissolution of the corporation or revoke proceedings therefore; d) amend, alter, or repeal the Articles, the bylaws, or any resolution of the Board of Directors; e) authorize the payment of a dividend or any part of the income or profit of the corporation to its directors or officers.

ARTICLE VI. MISCELLANEOUS PROVISIONS

Section 1. Compensation of Officers and Directors. No officer or member of the Board of Directors will receive any compensation for fulfilling the responsibilities of a member of the Board or of an officer as defined in these bylaws. However, the corporation may pay compensation to officers and members of the Board of Directors for other services performed as employees or independent contractors as long as the required rules for conflicts of interest are followed. Board members and their relatives who receive regular compensation from the corporation must always constitute less than a majority of the Board. Officers and members of the Board of Directors may receive reimbursement for actual expenses incurred in the course of fulfilling their responsibilities.

Section 2. Conflict of Interest. A conflict of interest is always present whenever the corporation pays money or other compensation, or provides any tangible benefits, to an officer or member of the Board or to a member of a director's or officer's family. All transactions involving conflicts of interest must be approved using the following procedures: 1) Conflict of interest transactions must be approved by the full Board of Directors; they cannot be approved by staff, the executive director, or by a committee. 2) Directors and officers who have a conflict of interest in any matter must a) declare the existence of any direct or indirect conflict of interest, b) disclose the details of the proposed transaction on the record, c) abstain from voting on that matter, and d) leave the room where the vote is to take place, until the votes have been counted. The minutes must record this to show that it was done. 3) The rest of the Board must analyze the transaction and sufficient information to ensure that all transactions involving a conflict of interest are fair to the corporation and that no special benefits are being given to any person. The information relied upon by the Board, and its source, must be recorded in the minutes. 4) All conflict-of-interest transactions must be approved by the affirmative vote of a majority of all of the members of the Board of Directors who do not have a conflict of interest involved in that issue, as long as no less than two disinterested directors vote to approve the transaction.

All Directors and Officers must sign a disclosure of all conflicts of interest, and update it if that disclosure needs to be changed.

Section 3. Financial Controls. The Board of Directors shall adopt formal Board policies

that provide a system of financial controls that are adequate to prevent the misuse, embezzlement or theft of the organization's funds and assets, and that would discover it if those problems or crimes were to occur. Those financial policies shall require that there must be three separate levels of financial operations, and that those operations shall be performed by different people: 1) those with the authority to spend the organization's money; 2) those who are the bookkeeper(s) who record and track the income and expenditures; and 3) those who oversee the bookkeeping system and the expenditure of funds. This means that the persons who have authority to sign the corporation's checks or use its credit cards shall not be allowed to also serve as the organization's bookkeeper(s); and that the organization's bookkeeper(s) shall not be given permission or authority to spend the organization's money, sign its checks or use its credit cards.

Section 4. Annual Financial Assessment. The Board must require the performance of an annual audit, financial review, financial compilation or financial assessment, which must involve the services of a trusted person with bookkeeping skills and knowledge, who does not do the bookkeeping for the organization or sign checks for the organization. This need not be a formal GAAP audit, but must at least involve a sufficiently thorough review of the organization's financial records so that it would likely discover any misuse, embezzlement or theft of the organization's funds or assets. The financial oversight committee described above shall select the person performing the annual financial assessment and shall ensure that the resulting report is presented to the entire board.

Section 5. No Discrimination. In the delivery of its services to the public, JAC does not discriminate for or against any person on the basis of ethnicity, nationality, place of origin, religion, gender, sexual orientation, marital status, familial status, economic status, age, or mental or physical disability.

ARTICLE VII. AMENDMENTS

Section 1. Articles of Incorporation and Bylaws. The affirmative vote of at least two thirds of the entire Board of Directors at a properly called meeting, at which a quorum is present, is necessary and sufficient, to make, alter, amend or repeal the Articles of Incorporation or the Bylaws. Proper written notice must be given in advance, including either a written copy or written summary of the proposed amendments.

CERTIFICATE OF SECRETARY

I, the undersigned do hereby certify that the foregoing bylaws constitute the bylaws of Justice Alliance Center, as duly adopted by the Board of Directors on the 22nd day of December, 2011.

Signed this 22nd day of December, 2011.

Secretary of Justice Alliance enter

Justice Alliance Center Contract With Attorney

The agreement is between Justice Alliance Center and _____, (hereinafter "Contractor")

As of January 1, 2012 and until December 31, 2012, Justice Alliance Center will be under contract with the State of Oregon to handle indigent criminal defense work in Yamhill County Circuit Courts. During the same time period Justice Alliance Center agrees to assign cases to contractor subject to the following terms and conditions:

1. ASSIGNMENT OF CASES

Justice Alliance Center shall assign cases to contractor on a strict rotation basis. Contractor shall be placed, as qualified, on a Measure 11, felony, misdemeanor, and probation violation lists with other contractors. A separate list will be maintained for those qualified for juvenile dependency and delinquency appointments. The rotation shall be between listed contractors on each list.

It is the goal of Justice Alliance Center to distribute cases in a fair and equitable manner between contractors. Justice Alliance Center shall periodically review the case disbursement to determine if, in Justice Alliance Center's discretion, the rotation of cases complies with the stated goal. Ultimately, the assignment of cases is at the discretion of Justice Alliance Center.

2. COMPENSATION

A. Each assigned case shall be paid at the following rate

Murder (MURD)	\$16,000
Ballot Measure 11 cases (AM11) (BM11) (JM11)	\$1,600
Felonies: A (AFEL)	\$1,000
B (BFEL)	\$850
C (CFEL) (DFEL) (DVIOL) (UFEL) (FAPA) (SUPP) (EXTR) (OTHR)	\$550
Misdemeanors (DUIS) (MISS) ((DWSS) (OTMS) (SCDV) (CONT)	\$310
PV's (FPV) (DPV) (MPV)	\$200
Juvenile Termination of Parental Rights (JUTC) (JUTP)	\$2,300
Juvenile Ballot Measure 11 (JM11)	\$1,600
Juvenile Dependency (JDEC) (JDEP)	\$700
Juvenile Postdispositional Proceeding (JPDC/JPDP)	\$290
Juvenile Felony (JUDF)	\$820
Juvenile Misdemeanors, Juvenile Other (JUDM) (JUDO)	\$310
Juvenile PV (JPV)	\$200
B. Treatment Courts (per annum)	9,000

- C. Each contractor will be paid monthly on a case-appointed basis, no later than the 15th day of each month. Should the caseload exceed the predicted monthly projections, or if payment is delayed by the State, payment will be made for as many appointment days as can be paid in full with the funds provided by the state.
- D. A percentage of the payment from the State, as determined necessary by the Board of Directors, shall be held by Justice Alliance Center in a separate fund. The said fund shall be used by Justice Alliance Center to pay administrative costs and for extraordinary work by contractors as determined by Justice Alliance Center. Should the amounts being held in said fund ever prove to be insufficient to cover expenses, Justice Alliance Center will increase the percentage being held.
- E. If additional case credits are due the contractor under the terms of the state contract, it is the responsibility of the contractor to notify Justice Alliance Center to verify appropriateness of any such credits. The time limit for requesting additional credits is no later than ten days after judgment on each case.
- F. Contractor understands that the source of funds for this contract is the State of Oregon, and in the event the State declines to accept or pay contractor as an indigent defense service provider this agreement is null and void and contractor shall hold Justice Alliance Center harmless.

3. **COSTS**

All experts and investigators used by contractors must have prior judicial or State Court Administrator approval, and shall be paid directly by the State of Oregon. Justice Alliance Center is not responsible for said costs.

4. **PROVISION OF SERVICES**

- A. Contractor shall remain a member in good standing in the Oregon State and Yamhill County Bars, and shall maintain professional liability insurance coverage.
- B. Contractor shall maintain his or her office in Yamhill County and shall have a professional meeting place available for meeting with clients and conducting business related to this contract. Said office shall have the capability of accepting collect phone calls from client. Said office shall also have a working fax for sending and receiving faxes to and from Justice Alliance Center.

A professional meeting place does not include the Yamhill County Circuit Courthouse or other governmental building. A professional meeting space must be a specific location that is owned, leased, rented, or occupied by the

attorney under agreement that give the right to exclusive or shared control of that location. Shared control must allow sufficient access to the meeting space to accommodate private meeting time with indigent clients.

C. Contractor shall provide legal services for each appointed client by providing legal advice and assistance on all matters related to each pending case through judgment on each case. Contract shall provide said services in person and not through an associate or agent unless otherwise provided in this agreement. Contractor shall provide said service with due diligence and professionalism and shall not allow unrelated work to cause deterioration in the quality of service rendered to each client.

D. If contractor has direct conflict of interest with a particular case, contractor shall notify Justice Alliance Center immediately. The case will be reassigned to another contractor and contractor will receive a substitute appointment. Once a new contractor is assigned, new contractor will prepare and submit requisite substitution on attorney forms to the court, if necessary.

F. **“One Bite of the Apple”** During any twelve-month period, contractor will be allowed to remove him/herself for only one case for personal reasons. Administrator must be notified when contractor elects to decline a case under this provision. Contractor will be skipped during that rotation and will not receive a make-up case.

G. **“Fee-Splits”** When an attorney withdraws or is forced to resign from a case before completion or closure and the case is reassigned to a new attorney,, the attorneys shall attempt to agree on a fee split immediately after the case is closed if not sooner. In the event the attorneys cannot agree on the fee split, the Board shall decide the fee split and notify the attorneys of said decision within 30 days of the close of the case.

H. Justice Alliance Center shall monitor case assignment and the performance of the contract. If in the discretion of Justice Alliance Center, contractor fails to provide services according to the requirements herein, Justice Alliance Center may terminate this contract. If an attorney is assigned tasks by the Executive Director or Board of Directors designed to improve delivery of attorney services hereunder, and if the attorney fails to carry out said tasks to the satisfaction of the Executive Director or Board, the Executive Director may immediately suspend the contractor from further appointments, but the Board may terminate this contract at will.

I. As provided by this section, contractor’s services are to be in person, but may be delegated to another Justice Alliance Center contractor under the following circumstances:

- (1) If contractor is on vacation, ill or otherwise unavailable, for a period not the exceed fourteen (14) consecutive days, contractor may designate another Justice Alliance Center contractor to carry out contractor's duties required by this contract for purposes of receiving cases, unless objected to by the client, including coverage of arraignments, recognizance hearings, and the interview of in-custody clients. Another contractor may not be designated to cover trials, substantive motions, or any contested hearings unless a formal order of substitution or association of counsel is approved by the appropriate court.
- (2) In order for a contractor to remain in the case rotation, contractor shall provide written notification of the name of the covering attorney to the administrator's office not less than five (5) days prior to the first day of the absence. If a contractor's absence shall exceed fourteens (14) days, the contractor shall be suspended from the rotation for all but the last fourteen (14) days of said absence excluding illness. Example: If a contractor is gone for 21 straight days, contractor shall be off rotation for the first 7 days and on rotation with appropriate coverage the final 14 days. Contractors who fail to notify the Justice Alliance Center administrator of their vacations or other times of being unavailable to fulfill the terms of this contract shall immediately be suspended from all rotations until the contractor's return and/or forfeit one rotation from the assignment list upon their return. If contractor fails to arrange for coverage of case appearance as set forth above in this section, and fails to notify the administrator of contractor's expected absence, contractor shall be suspended on the rotations of case assignment when the failure to notify and cover is discovered. Should contractor need to refuse a case due to unavailability not previously reported to the Justice Alliance Center administrator, the contractor shall be skipped one case on all rotations. Two such violations during any twelve (12) month period shall be referred to the Board of Directors for possible termination pursuant to this contract.

J. Contractor may apply to the Executive Director for a voluntary suspension of services from the entire rotation due to extraordinary circumstances. The Executive Director may grant the request for voluntary suspension of services if the Executive Director determines the voluntary suspension is not defeating the purpose of this contract or the goals of Justice Alliance Center. If the request for voluntary suspension of services is for a period that is longer than 50% of a calendar quarter, the Board of Directors must approve. Contractor will not receive make-up cases, but will simply be reinserted into the rotation upon the end of the voluntary suspension of services.

K. Contractor shall continue representation of appointed clients until final determination of the court or removal by court order. Contractor may not suspend representation pending potential withdrawal of court appointment if defendant is later deemed ineligible. This includes setting office appointments, attending court appearances and/or other necessary services. If a defendant declares intent to retain private counsel, contractor shall continue representation until receipt of confirmation from retained counsel.

5. **ARRAIGNMENTS**

In addition to the provision of services otherwise provided herein, contractor also agrees to appear for the purpose of covering in-custody circuit court arraignments in such courts as shall be determined by the Board of Directors. The dates to be covered shall be assigned by the administrator on a rotating basis. The administrator shall provide a calendar at least two months in advance, except for January and February, 2012, to accommodate the scheduling of contractors. A contractor may reschedule such duties with other contractors to accommodate vacations, trials, and other conflicts, providing the following notice requirements are met. If such a trade occurs, the contractor initiating the trade shall confirm the rescheduling in writing with the administrator's office not less than 48 hours prior to the arraignment time. However, if the rescheduling occurs as a result of illness or other emergency, the name of the substitute contractor shall be immediately communicate by telephone to the administrator.

If contractor fails to cover arraignments or to make arrangements as required in this section of the contract, contractor shall be skipped in one rotation from each assignment list as a penalty. Two such violations during any 12-month period shall be referred to the Board of Directors for possible termination pursuant to this contract.

6. **MEETINGS**

From time to time Justice Alliance Center will schedule a meeting of contractors. Unless otherwise agreed by Justice Alliance Center, all such meetings are mandatory. Justice Alliance Center will make every effort to set said meetings with sufficient advance notice and at such times and places to minimize inconvenience to the contractor's schedules.

7. **TERM OF CONTRACT**

This contract shall be for a term ending on December 31, 2012, until terminated by Justice Alliance Center, or unless extended or modified as otherwise provided herein.

8. **ASSIGNMENT**

DUE TO THE UNIQUE SKILLS AND ABILITY OF CONTRACTOR, AND THE REQUIREMENT THAT CONTRACTOR GIVE PERSONAL ATTENTION TO EACH CLIENT APPOINTED HEREUNDER, THIS AGREEMENT AND THE DUTIES HEREUNDER ARE NOT ASSIGNABLE BY THE CONTRACTOR.

9. COMPLAINTS OR CLAIMS

If contractor receives notification that a complaint or malpractice claim has been filed against him/her with the Oregon State Bar or Professional Liability Fund, the contractor shall immediately notify Justice Alliance Center, in writing, of the existence and substance of said complaint or claim.

If Justice Alliance Center receives a complaint concerning the services of a specific contractor, the contractor shall be notified and given an opportunity to respond. If a response is requested by the administrator, failure to respond in a timely manner shall be grounds for termination.

10. TERMINATION

A. Justice Alliance Center shall monitor case assignment and performance of the contractor. If contractor is disbarred by the action of the Oregon State Bar, the contractor shall be deemed to have failed in providing services according to the requirements herein and Justice Alliance Center shall terminate this contract immediately.

B. If, in the discretion of Justice Alliance Center, the contractor is deemed to have failed in providing services according to the requirements herein or failed to comply with the terms of this agreement, Justice Alliance Center may, after providing the contractor an opportunity to be heard, take any of the following actions upon written notice to contractor:

- (1) Terminate this contract immediately;
- (2) Give contractor notice to comply within a reasonable time; or
- (3) Suspend contractor from receiving case assignments until further notice.

C. Justice Alliance Center may terminate contractor immediately upon receipt of any lawsuit or civil action filed against Justice Alliance Center by contractor. Justice Alliance Center may, in its discretion, terminate contractor upon notice by contractor of contractor's intent to file suit against Justice Alliance Center.

D. Upon termination or suspension, contractor shall continue to represent previously appointed clients hereunder according to the terms and conditions specified herein.

E. In the event that contractor is unable or unwilling to complete the work required for said appointed clients, Justice Alliance Center shall reassign those case to other attorneys and contractor shall be liable for all costs incurred by Justice Alliance Center in that process. As sums due under this clause shall be deemed immediately due and payable to Justice Alliance Center.

F. Contractor may terminate this agreement by provision of written notice to Justice Alliance Center, through its administrator. Said termination shall be effective upon receipt of said notice by administrator. Upon termination by contractor, contractor shall continue to represent previously appointed clients unless contractor and Justice Alliance Center otherwise provide by separate agreement.

11. CONTRACT WITH STATE OF OREGON

Contractor shall be bound by the terms of the agreement between Justice Alliance Center and the State, a copy of which will be provided to the contractor when available. In the event the terms of this contract are inconsistent with said agreement, the terms of said agreement are controlling. Contractor shall cooperate with and assist Justice Alliance Center in complying with the terms, conditions and obligations of the State contract. Further, contractor shall not in any manner hinder, frustrate or interfere with the effective performance of the terms, conditions and obligations of the State contract. Conflicts of interest are to be resolved in accordance with and subject to the contract with the State.

12. INSURANCE

Contractor shall carry insurance required in the incorporated agreement with the State and shall provide proof of same to Justice Alliance Center upon request. Contractor's insurance shall name Justice Alliance Center as an additional insured.

Contractor shall save and hold harmless Justice Alliance Center, its officers, agents, Board of Directors and employees from all claims, suits or actions of whatever nature resulting from or arising out of the activities of contractor or its employees under this contract.

13. REPORTING

Reports required by the State must be submitted to the State no later than the 20th day of each month. Therefore, contractor must deliver completed forms to Justice Alliance Center's administrator no later than the 10th day of each month following the completion of the case requiring such reporting. Any failure to comply with said reporting requirements shall be a breach of this contract and shall result in immediate termination of this contract.

14. **NON-COMPETITION**

Contractor shall engage in no activity during the term of this agreement which shall be to the detriment of or risk a negative financial impact on Justice Alliance Center. Specifically, contractor agrees not to engage in activity which shall be considered in competition with Justice Alliance Center’s interests, including but not limited to competitive bidding for services provided by Justice Alliance Center under the incorporated agreement with the State Court Administrator for the State of Oregon. Any action in violation of this clause shall result in the immediate termination of contractor’s agreement with and services for Justice Alliance Center.

15. **ARBITRATION, ATTORNEY FEES, COSTS**

If suit or action is instituted to enforce compliance with the terms of this contract, the parties agree to mandatory arbitration of said suit or action. If the parties cannot agree on an arbitrator with 15 days of the filing of said suit or action, the Presiding Judge for Yamhill Circuit Court shall designate the arbitrator. The deposit for the arbitration shall be split evenly between the parties. The losing party agrees to pay prevailing party for its fees, costs, expenses and reasonable attorney fees incurred in said suit, action and arbitration, including any appeal therefrom.

16. **MERGER**

This agreement contains the entire agreement between the parties and supersedes all prior agreements, written or oral. The grant of this contract in no way obligates Justice Alliance Center to offer future contracts to the contractor.

17. **IMPLEMENTATION AND PROMULGATION OF GUIDELINES**

Justice Alliance Center may from time to time adopt guidelines to implement the policies set forth herein.

Date: _____

Date: _____

Justice Alliance Center:

CONTRACTOR:

By:

Attachment 5



Oregon

Public Defense Services Commission

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone (503) 378-3349
FAX (503) 378-4462
www.oregon.gov/OPDS

MEMORANDUM

To: Public Defense Services Commission

From: Paul Levy, General Counsel

Re: OPDS Review of Nonroutine Expense Requests and Recent Caselaw

Date: June 6, 2012

Among the most important functions performed by the staff of the Office of Public Defense Services (OPDS) is the review of requests from appointed counsel for preauthorization of case expenses. Pursuant to ORS 135.055, OPDS is directed to approve expenses that are established as “necessary and reasonable for the investigation, preparation and presentation of a case for trial, negotiation and sentencing.” The statute also provides for judicial review if OPDS denies expenses. Recently, the Court of Appeals issued an opinion in which appointed counsel sought judicial review of an OPDS denial of expenses. This memorandum discusses that opinion.

OPDS has devoted considerable effort to informing appointed counsel about the right to cases expenses, the requirements for requests for expenses, the standards for review of such expenses, and the procedure for obtaining judicial review.¹ As directed by ORS 151.216(1)(f)(E), the Commission has adopted, as part of its Payment Policies and Procedures, a requirement that attorneys requesting expenses submit a narrative that explains “the reason the service or expense is necessary and reasonable for proper representation, and what results counsel expects to obtain with the service or expense requested.” Section 3.2.3.1. Guided by longstanding caselaw in this area, OPDS has informed attorneys that it will approve reasonable expenses where the request establishes a “reasonable probability that the expenditure will produce a benefit for the defense,” *State v. Hammond*, 42 Or App 137, 600 P2d 443 (1979), or “[w]here a defendant establishes the probable value of the assistance sought such that there is a significant risk of error in the proceedings if that assistance is denied.” *State v. Rogers*, 313 Or 356, 366, 836 P2d 1308 (1992).

¹ OPDS staff regularly speak at seminars and publish materials describing the requirements for seeking case expenses. Staff also frequently describe the process to attorneys in emails, telephone calls and in person.

MEMORANDUM

June 6, 2012

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Although trial counsel occasionally seek judicial review in the trial court when OPDS denies a request for expenses, the first instance of appellate review in a matter decided by OPDS is the recent case of *State v. West*, ___ Or App ___, ___ P3d ___ (May 31, 2012).² In *West*, the attorney sought funds for an expert to assist the defense in advancing an argument that, despite statutory authority to the contrary, he should be entitled to the discovery of the source codes and schematics for the Intoxilyzer 8000 in a driving under the influence of intoxicants case. OPDS had denied the expense because there was no showing that access to source codes and schematics was reasonably likely to benefit the defense of the case. We presented our position in an *ex parte* hearing before the Presiding Judge in Multnomah County, conducted pursuant to ORS 135.055((3)(c), at which the court also denied the request.

In affirming the trial court decision in the matter, the Court of Appeals notes that “[u]nder ORS 135.055, an indigent defendant is entitled to funding for an expert witness if he can show that the expense is reasonable and necessary to his defense.” The court also cites *State v. Rogers, supra*, for the proposition that a defendant has a “constitutional right under the Fourteenth Amendment to the basic tools necessary for the preparation of an adequate defense,” and that a defendant is entitled to funds where the defendant makes the showing, quoted above from *Rogers*, that OPDS employs in its own review of such requests. In *West*, the attorney could only argue that the expert “*might* be able to demonstrate that the documents [sought] reveal something useful” [emphasis in original]. “[T]he fatal flaw in defendant’s argument,” the court wrote, “is his failure to demonstrate the possibility that the expert could testify to anything useful to his case.”

Although the *West* court had no occasion to mention the role of OPDS in the case, the decision is helpful to our agency. It tells us that we are applying the correct standards for our review of case expenses as we seek to fulfill our duty to promote performance of counsel that is consistent with constitutional obligations and state and national standards of justice while also serving as responsible stewards of taxpayer funds. The opinion also helps both the bench and bar understand what is required for entitlement to case expenses.

² The opinion is available at: <http://www.publications.ojd.state.or.us/Publications/A142519.pdf>

Attachment 6

**Public Defense Services Commission
Package 040 Mandated Caseload
2013-15 Biennium**

1	Standard inflationary adjustment	\$5,644,321
2	Trial-level non-death penalty caseload change	\$0
3	Death penalty caseload from prior biennia	\$4,238,379
4	Non-attorney provider cost increase	\$1,248,436
5	Personal services adjustment	\$12,219,139
6	Mileage reimbursement (55.5 cents per mile)	\$139,484
	Total Package 040	\$23,489,759

Public Defense Services Commission Budget History

	2007-09 actual	2009-11 actual	2011-13 Leg Approved	2013-15 Current Service Level
Appellate Division	\$9,466,734	\$10,498,368	\$12,061,433	\$15,170,374
Public Defense Services Account	\$198,918,106	\$209,829,736	\$210,930,230	\$235,904,989
Contract & Business Services	\$4,179,962	\$3,189,462	\$3,380,247	\$3,896,605
Total	\$212,564,802	\$223,517,566	\$226,371,910	\$254,971,968

2005-07 Biennium Agency Request Budget

POP#	Name	Cost	Notes
100	ACP transfer	-\$201,542	1.45FTE auditor positions transferred to OJD
101	Employee Commensurate Compensation	\$223,801	AD attorneys to match DOJ attorney salaries
102	Post-Conviction Relief	\$765,888	Add 4 AD attorneys
103	Parity	\$10,642,151	Atty hrly \$55/\$75; investigator \$30/\$40; \$4.8 mill for partial PD gap
	Total	\$11,430,298	

2007-09 Biennium Agency Request Budget

POP#	Name	Cost	Notes
100	Juvenile Dependency Representation	\$526,546	Add 4 AD juvenile appellate attorneys and reduce the Account
101	Employee Commensurate Compensation	\$350,659	AD attorneys to match DOJ attorney salaries
102	Post-Conviction Relief	\$303,453	Add 4 AD attorneys and reduce the Account
103	Public Defense Provider Compensation	\$29,358,320	Atty hrly \$70/\$95; investigator \$35/\$45; \$6.2 million for PD parity
	Total	\$30,538,978	

2009-11 Biennium Agency Request Budget

POP#	Name	Cost	Notes
100	Juvenile Dependency Representation	\$17,274,024	30% trial-level caseload reduction
101	Post-Conviction Relief	\$331,651	Add 4 AD attorneys and reduce the Account
102	Public Defense Provider Compensation	\$21,576,514	Atty hrly \$70/\$95; investigator \$35/\$45; \$6.7 million for PD parity
	Total	\$39,182,189	

2011-13 Biennium Agency Request Budget

POP#	Name	Cost	Notes
100	Juvenile Dependency Caseload Reduction	\$11,033,520	20% trial-level caseload reduction
101	Employee Commensurate Compensation	\$1,040,235	AD attorneys to match DOJ attorney salaries
102	Public Defense Provider Compensation	\$18,223,558	Atty hrly \$70/\$95; investigator \$35/\$45; \$6.5 million for PD parity
	Total	\$30,297,313	