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OPDS/Retaliation

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BACKGROUND

I was retained by the Department of Justice's Labor and Employment section to review concerns raised by the ACLU of Oregon about the Office of Public Defense Services (OPDS).

As part of this process, I interviewed a number of witnesses who are or have been public defense attorneys or firm administrators who contract with OPDS, most of whom asked for anonymity due to concerns of retaliation.¹ I also interviewed OPDS General Counsel Erick Deitrick, Assistant Operations Director Heather Pate and Chief Criminal Trial Counsel Laurie Bender.

All witnesses were admonished to keep our conversation confidential and were admonished that they were protected from retaliation for speaking to me in good faith on the subjects we discussed. I informed all witnesses I could not keep our conversation confidential as I needed to make a report to the DOJ attorneys. All interviews were recorded except where a witness declined. No complainant is identified in this report.

SCOPE/ALLEGATIONS

Based on a communication from the ACLU dated August 11, 2021:

¹ One contractor, a male, raised concerns about being paid late because of his complaints to the PDSC about how long it was taking to pay contractors. I note that there were a significant number of complaints about this from a wide range of people, males, females, attorneys, investigators and others. OPDS staff openly acknowledged that there was a period when the agency struggled to process invoices in a timely manner.

"Female defense attorneys have faced serious situations of retaliation from OPDS, including multiple situations of retaliation by a leadership level male employee of OPDS after the women defense attorneys shared serious concerns about or related to OPDS or this male employee."²

Most of the female public defense attorneys I spoke with identified OPDS' current General Counsel, Eric Deitrick, as the individual who (they believed) retaliated against them.

BACKGROUND

I heard from several female public defense attorneys that they had been treated poorly either by Deitrick or the previous OPDS General Counsel or by staff at OPDS for having made complaints or taken positions they felt necessary to take.

Most were not willing to speak on the record. The issues brought up by those not willing to speak on the record included direct and personal disparagement, cutting their fees without notice or basis, and retaliation for having questioned a policy by lowering a previously established hourly rate.

One witness pointed out that there is a lot of "swagger" in criminal defense but that women are punished, labeled as aggressive, etc., if they swagger.

Most of the witnesses in this matter are female attorneys who serve as public defense counsel. One witness is a consortium administrator. Unless identified otherwise, I use the term attorney to refer to public defense attorneys throughout this report.

SPECIFIC ISSUES RAISED

A. Witness 1

1. Witness 1 said that OPDS raised the hourly rate to \$100 per hour on capital cases in 2019 or 2020, but continued to pay many attorneys \$49 per hour.

<u>Summary</u>: It is not substantiated that attorneys were appointed to murder cases after July 1, 2020 at rates less than \$100 per hour. It is true that there were public defense attorneys who were earning much less than \$100 per hour after July 1, 2020 because they had been appointed in prior years at lower hourly rates according to OPDS policy. Attorneys continued to earn the hourly rate at which they were appointed, even after subsequent policy hourly rate increases which benefitted subsequently appointed attorneys.

<u>Facts</u>: On July 1, 2020,OPDS instituted a policy rate of \$75 per hour for all cases except capital murder. The capital murder rate was adjusted to \$105 per hour on January 1, 2020. Witness 1 did not learn about the July 1, 2020 policy change right away, but I note that OPDS published it on its website.

After July 1, 2020, every public defense attorney appointed to a murder case was paid \$105 or more except for five attorneys (four males and one female). They were appointed to non-capital murder cases. The policy rate for non-capital murder at the time was \$75.00 per hour. These five attorneys were appointed at \$100 per hour, except the female attorney, who was appointed at \$101 per hour (one male was co-counsel, all others were lead counsel).

Witness 1 believed that even after this adjustment, OPDS was paying some public defense attorneys \$49 per hour and others \$100 per hour. This is true, because OPDS paid \$46 per hour on murder

² The ACLU letter also raised the issue of pay equity in the same letter, which is the subject of a second, separate report.

cases up until September 1, 2019, and only \$55 per hour thereafter until July 1, 2020 when the rate was raised to \$75 per hour. An attorney who was appointed prior to July 1, 2020 at \$55 per hour or prior to September 1, 2019 at \$46 per hour would have continued to earn the rate at which they were appointed while their case was on going. OPDS did not raise rates of public defense attorneys who were appointed prior to rate increases unless they were requested to do so (and then not always), so this type of disparity was common.

2. Witness 1 believed a male attorney who was appointed to a case taken over by a female attorney was paid a higher rate than the subsequent female attorney.

Summary: This is not substantiated.

Facts: Both the female and male attorneys (appointed in April and August, 2018, respectively) were paid \$70 per hour.

3. Witness 1 asked for an increased rate for a Ballot Measure 11³ case in 2021 and was denied while others doing similar were granted pay increases.

<u>Summary</u>: This issue was thoroughly explained in the separate report on pay disparities at pages 9-12. This concern is substantiated.

B. Witness 2

- 1. Witness 2 told me the former OPDS General Counsel personally insulted her, denied her a contract while less qualified people were offered contracts, and once even came to her office to look through her files, claiming he needed to know if she was properly taking care of client records. Since the former OPDS General Counsel retired, this attorney reported that she has been treated fairly by the current OPDS General Counsel.
- 2. Witness 2 believed she was not paid fairly compared to males prior to 2020.

Summary: Witness 2 was not paid less on average than males. See Tables 1-3.

<u>Facts</u>: Tables 1-3 shows all the hourly cases Witness 2 took on to compare her rates to the median for all attorneys and males for the comparable period:

	Table 1				
Capital Murder		Witness 2: 8 cases total		Comparison (Median and Gap Analysis Appendix A to Pay Report)	
From	То	# of Cases	Median		
2003	8/9/07	0	n/a		
8/10/07	2/17/14	6	\$60.00	All Attorneys low rate \$50.00 All Attorneys high rate \$75.00 All Attorneys Median: \$55.00 All Leads Median: \$60.00 All Male Leads Median: \$72.50 One female and six males were paid more per hour than Witness 2 during this policy period out of 95 attorneys	
2/18/14	8/31/19	2	\$ 82.50	All Attorneys low rate \$50.00 All Attorneys high rate \$95.00	

³ Ballot Measure 11 cases are specific crimes which carry a mandatory minimum sentence. https://www.oregonlegislature.gov/citizen_engagement/Reports/2004IG_Measure_11.pdf

	Table 1					
Capital Murder		Murder Witness 2: 8 cases		Comparison (Median and Gap Analysis Appendix A		
		total		to Pay Report)		
				All Attorneys Median: \$75.00		
				All Leads Median: \$75.00		
				All Male Leads Median: \$75.00		
				No females and two males were paid more per hour than		
				Witness 2 during this period out of 94 attorneys		
9/1/19	6/30/20	0	n/a			

	Table 2					
Other Murder		Witness 2: 15 cases total		Comparison (Median and Gap Analysis Appendix A)		
From	То	# Cases	Median	/		
2003	8/9/07	1	\$ 55.00	All Attorneys low rate \$50.00 All Attorneys high rate \$55.00 All Attorneys Median: \$50.00 All Leads Median: \$50.00 All Male Leads Median: \$50.00		
8/10/07	2/17/14	4	\$ 55.00	All Attorneys low rate \$50.00 All Attorneys high rate \$65.00 All Attorneys Median: \$55.00 All Leads Median: \$50.00 All Male Leads Median: \$55.00 One female and four males were paid more per hour than Witness 2 during this period out of 88 attorneys		
2/18/14	8/31/19	9	\$ 55.00	All Attorneys low rate \$50.00 All Attorneys high rate \$95.00 All Attorneys Median: \$55.00 All Leads Median: \$55.00 All Male Leads Median: \$60.00 13 of 29 females and 31 of 65 males were paid more per hour than Witness 2 during this period out of 94 attorneys		
9/1/19	6/30/20	1	\$100	All Attorneys low rate \$65.00 All Attorneys high rate \$100.00 All Attorneys Median: \$85.00 All Leads Median: \$85.00 All Male Leads Median: \$85.00 Witness 2 received the highest rate paid this year (with 8 others) out of 24 attorneys		

	Table 3					
AFEL		Witness 2: 1 case		Comparison (Median and Gap Analysis Appendix A)		
From	То	Average	Median			
2003	8/9/07	0	n/a			
8/10/07	2/17/14	0	n/a			
2/18/14	8/31/19	\$60.00 (one case, 10/19/15)	\$60.00 (one case, 10/19/15)	All Attorneys low rate \$55.00 All Attorneys high rate \$95.00 All Attorneys Median: \$70.00 All Leads Median: \$60.00 All Male Leads Median: \$90.00 One of four females and six of seven males were paid more per hour than Witness 2 out of 11 attorneys in 2015 (AFL, PCRA, JUDF)		
9/1/19	6/30/20	0	n/a			

C. Witness 3

1. Witness 3 was berated for speaking up at a PDSC meeting and expressing concerns about juvenile expertise and retaliation.

<u>Summary</u>: OPDS could not produce the recording of the PDSC meeting where Witness 3 spoke up. However, it is clear from other related documentation that Witness 3 did speak up about juvenile expertise and also about concerns of retaliation.

<u>Facts</u>: Witness 3 had concerns about the lack of juvenile expertise within OPDS in 2019 and she knew others shared that viewpoint but were hesitant to speak about it due to fear of retaliation. Witness 3, being secure in her expertise, did not fear retaliation and so she went to a PDSC meeting in 2019 to talk about her concern of OPDS' lack of expertise in house in juvenile law.

At the August 15, 2019 meeting (according to the official minutes) Witness 3 presented a letter on the issue of OPDS's lack of inhouse expertise on juvenile law and also offered public testimony. Witness 3 said her comments at that meeting were focused on OPDS' statutory responsibility to have attorneys with knowledge of juvenile law making decisions on juvenile cases. Witness 3 told me she did not feel concerned about retaliation but knew that others were, so she chose to speak up in the meeting. During her testimony, according to Witness 3, she made her points and alluded to the idea that others agreed but did not speak up due to concerns about retaliation. Witness 3 said she was castigated by former OPDS Executive Director Lane Borg, and then after she spoke, a Commissioner queried multiple males who spoke after her if they believed there was retaliation, all of whom denied they felt that way.

Witness 3 felt she was treated unfairly by the PDSC for speaking up about matters of public concern.

I asked OPDS for recordings of the August 15, 2019 PDSC meeting. I was provided a recording and transcript for the afternoon meeting, not the morning meeting. Upon further inquiry, I was told OPDS no longer had a copy of the recording or transcript of the morning meeting.

The transcript and recording of the afternoon meeting contained several references to the fact that Witness 3 had raised retaliation in the morning. In the transcript I was provided, a commenter made the following statement in the afternoon of August 15, 2019:

[name and organization omitted]. "I wanted to comment briefly on the concerns [Witness 3] brought up this morning about juvenile law. First, I've got to say I think I have an excellent working relationship with my analyst _____, director _____. I certainly don't fear any retaliation from them about any thoughts I bring up to them about concerns I have with the agency or with you. But I do think it's important to look at the commitment to juvenile law, and having expertise in-house in the area."

After this, Witness 3 told me she experienced three different incidents which caused her to wonder if she was being retaliated against for having spoken up at this meeting.

2. Witness 3's hourly rate was raised to \$75.00 and she was told it would be her rate until further notice. Only a few days later, her rate was reduced to \$55.00 per hour.

<u>Summary</u>: OPDS' analyst offered a higher than guideline rate to Witness 3 because the consortium which usually handled these matters could not take them. When the negotiations with the consortium changed, the analyst changed Witness 3's rate back to the guideline rate. This creates a hardship on attorneys who had been told they could rely on a higher rate, especially given the very low hourly rates then in effect. However, I do not believe the analyst was motivated by retaliation against Witness 3.

<u>Facts</u>: In September 2019, Witness 3 was hired for a case at an hourly rate of \$75 and told she would receive that rate for all cases she took in that County on an ongoing basis. A few days later, the offer of the \$75 per hour rate was rescinded for future cases. Witness 3 said this interaction occurred in email with analyst Strehlow.

I asked OPDS for email files between Witness 3 and Strehlow. OPDS' IT staff were able to find individual emails at my request. I located an emailed interaction between Witness 3 and Strehlow in which Strehlow offered Witness 3 \$75 per hour in 2019 on a juvenile matter instead of the guideline rate of \$55 per hour. In this email, Strehlow told Witness 3 that this would be her rate going forward in Washington County.

However, three days later, Strehlow told Witness 3 that the reason they had needed conflict attorneys for these cases no longer existed, and he would not be offering the \$75 per hour rate going forward.

Date	Description of email	Exhibit
9/27/19	From Strehlow to Witness 3: "The hourly rate is \$75 on this Washington County dependency case. Please include this with your fee statement. In addition, I am including your name on a short list of attorneys to contact regarding dependency cases in Washington County for the next couple of weeks. The hourly rate for any new cases you take in Washington County is \$75 until further notice."	1
9/30/19	Strehlow to Witness 3: "Well, it was short lived. The consortium has agreed to only cut off c-felony and misdemeanor cases so there is no critical need for dependency	1

Date	Description of email	Exhibit
	coverage. Any new case assigned going forward will be at the hourly rate of \$55."	
_	[Apparently, the reason Strehlow had been seeking other attorneys for the dependency cases was that the consortium could not take them, but then that changed]	
10/17/19	Strehlow emailed Witness 3 asking for help with a case. She responded:	2
	"Dear OPDS:	
	After sharing with you my concerns about my personal financial and processional [sic] future, you assured me that I would receive a \$20 an hour incentive for taking these high conflict and difficult cases in Multnomah County. You even put this in writing. The very next day, you notified me that commitment was rescinded without an explanation. This has given me great pause in accepting these types of difficult appointments. Perhaps you can address my concerns about OPDS 's commitment to equity and fairness for attorneys taking these kinds of cases."	
	Strehlow replied:	
	"That seems a bit unfair as the initial email said it was for cases in Washington County and only until further notice. Three days later we emailed notice that the matter had been resolved with the consortium and we didn't need coverage for juvenile cases at the higher rate.	
	"Although it greatly benefited the juvenile clients in Washington County it was certainly unfortunate for you. However, you did get a few cases in those three days at the agreed upon hourly rate of \$75 and we greatly appreciate it. What hourly rate would you need to handle this case in Multnomah county?"	
	Although Witness 3 did not respond to this email (based on what OPDS provided me), she did begin taking cases again from OPDS the following month.	

3. Witness 3's fees on an appeal were reduced by Deitrick.

<u>Summary</u>: With respect to Deitrick's decision to reduce Witness 3's fees by one third, I do find retaliation. His decision was (as stated by the Court of Appeals) "against reason and evidence." This kind of capricious decision making supports a finding that Deitrick was retaliating against Witness 3, especially given that he directly told her that she was a "squeaky wheel" in an email exchange they had after her public comments about OPDS and Deitrick.

<u>Facts</u>: In the fall of 2019, Witness 3 made a public records request of OPDS related to the consortium where Witness 3 worked. Apparently, Deitrick made public comments about the quality of the work being done by that consortium during the fall of 2019. Witness 3 became concerned about the possible impact of these statements on her personal reputation and made a public records

request on October 28, 2019 seeking the background of those statements. Witness 3 was provided some information on November 19, 2019, but it was not what she specifically had asked for. Thereafter, Witness 3 renewed her request, asking the then OPDS Executive Director for the information on December 7, 2019 (Exhibit 3).⁴

Deitrick responded to this email on December 7, 2019 by referencing Witness 3's public comments about him and about OPDS:

"I know this was directed to Lane [Borg], but as he is in Geneva, and I am at home staring out at the rain (reminiscent of the Maui luau), I figured I would respond.

"Ms. Jackson sent you the exchange you two had in 2018 because it demonstrated the newspaper quote you referenced below. We had concerns based on the quality of the contract administrator, which you yourself brought to the attention of the agency. You are the person who informed Ms. Jackson on the inequity in case assignments (diversion v. contested case). And as I am sitting here at home, I am aware that there were other issues over the years that Ms. Jackson is aware of regarding Mr. [name omitted]'s role/tenure as contract administrator. So yes, that is a quality issue -- the quality of the administrator.

"I would note that you continue to *publish nonsense about me* on random list serves and whatnot, and I presume you will continue to do so. But perhaps you can understand that many of us (I presume you too) are trying to make improvements to our public defense system to improve outcomes for the clients and provide better work standards for the attorneys doing this work. This is challenging when so many people in this field have strong feelings and control issues.

"But I have zero understanding as to why you think the PDSC and OPDS should not only hear your complaints/asks/recommendations/etc., but also implement them. You are one attorney in a state full of hundreds of attorneys, staff, investigators, etc. that care deeply about public defense. At the agency level, we have to balance many competing interests.

"The squeaky wheel doesn't always get the grease. Sometimes, it just squeaks. I hope you find some way to find peace going forward. And I honestly hoped when we stumbled into that luau table together that we would have a chance to talk. Maybe it would/could have helped. I don't know . . ." (emphasis supplied) (Exhibit 3).

I note that the appellation, "squeaky wheel" refers directly to Witness 3's public comments about either her concerns relating to OPDS' lack of juvenile law expertise, which other witnesses also echoed (see, e.g., public comment August 15, 2019 transcript at 5) or about other public comments she made about Deitrick and/or OPDS (as he notes in his comments when he wrote that Witness 3 is continuing "to publish nonsense about me").

In early 2020, Witness 3 was handling a number of appeals on behalf of OPDS when she accepted a job at another contractor. This meant she had some conflicts and needed to withdraw after having filed the briefs and appeared at oral arguments. Deitrick directed that two of Witness 3's invoices be reduced by one third, based on his personal judgment about how much it would cost to have another attorney take the cases over. In an email to Witness 3, Deitrick said he made the decision by "simply *** evaluating how much work was done on the two cases [and] knowing what work needed to be done in an appeal generally" (Exhibit 4).

⁴ Exhibit 3 was redacted by hand because there was skipping of words/letters when it was done electronically.

Witness 3 appealed this reduction first to then OPDS Director Borg then to the Court of Appeals when Borg denied her appeal. The Court of Appeals agreed with Witness 3, finding that the one third reduction was an abuse of discretion because "the facts do not rationally support [OPDS'] decision" and that at most one tenth of her bill should have been reduced (Exhibit 5).

Witness 3 told me she had been unaware it was possible to ask for more money than the guideline rate. However, I note that other attorneys were asking for increases in the amount they were paid for juvenile appeals after the fact and being granted. For example, an attorney asked for and received increases after the representation was complete in four different cases: exception letters 1242 (fee increased from \$4500 to \$9820 in December 2017); 1271 (fee increased from \$4500 to \$9820 in September 2018); 1277 (fee increased from \$4500 to \$9820 in November 2018); and 1298 (fee increased from \$2000 to \$4000 in March 2019). Meanwhile, Witness 3's fees were being paid at the lower policy rate and cut even further without "reason and evidence" by Deitrick.

Witness 3 does not appear on OPDS' exception spreadsheet at all (even though she apparently took a few cases between September 27 and September 30, 2019 for \$75 per hour). It is surprising that OPDS would reduce Witness 3's fees in the two cases where she had already written the briefs and appeared at argument while simultaneously doubling the fees of other attorneys for similar matters after representation was already complete.

D. Witness 4

Witness 4 told me that Deitrick had created barriers to her being hired by firms without any notice to her in more than one employment situation. According to Witness 4, Deitrick investigated her without informing her of his concerns or what the complaint was. Witness 4 also said Deitrick called prospective employers and told them not to hire her. Witness 4 believes she was retaliated against in this way because she had conflict with her former employer who (Witness 4 believed) is a friend of Deitrick's.

<u>Summary</u>: Witness 4 was investigated two times by OPDS General Counsel staff without any official complaint and without informing her. Deitrick also spoke with two prospective employers for Witness 4 and made comments that contributed to a decision not to hire Witness 4 at one firm.

OPDS' complaint policy provides that nothing prevents it from taking action it deems appropriate. In this case, that means investigating an attorney who has not had any complaints two times without informing her. In addition, although Deitrick denies it, what the two firms told me about what Deitrick said to them was too similar to ignore.

Furthermore, in internal correspondence, Deitrick describes Witness 4 as having a "ton of problems" and "honesty" issues without any apparent basis in the records OPDS provided me. This baseless opinion of Witness 4 likely prompted the second investigation into her practice. Deitrick also refers to having heard concerns about Witness 4 for months; again, there is no basis for this assertion in the documents OPDS provided me (see, Exhibit 10).

I do not find retaliation because Deitrick also appears to harbor concerns about Witness 4's former employer. Nevertheless, Deitrick's opinions about Witness 4 appear to be baseless. I find Deitrick made comments to a prospective employer which resulted in Witness 4's job offer being withdrawn and that he made similar comments to another consortium administrator (which were ignored by the consortium because they appeared to be nothing more than innuendo). Deitrick also asked Witness 4 to be investigated twice: once without a complaint and once without informing her that there was a complaint or its specifics.

Facts: OPDS has a complaint policy which provides that complaints must be in writing.⁵ The complaint policy provides both that the complaint may be held in confidence and that the public defense attorney about whom the complaint is made will be informed and given a copy of the complaint (Sections I.C. and I.E. and I.F.). The policy does not state what should be done when a complaint is held in confidence (i.e., whether the public defense attorney will be notified of the complaint).

Section II.A. of the policy provides:

"II. Procedure for investigating complaints.

"A. During the course of investigation, if more information is needed, OPDS may contact the complainant. Complaints will not be decided based solely on the assertions of the complainant. OPDS will investigate all complaints by contacting the public defense attorney and discussing the complaint with the public defense attorney and providing the public defense attorney with an opportunity to respond to the complaint. OPDS may gather information from any other source."

Once the investigation is complete, OPDS' complaint policy states that it will (1) consider the public defense attorney's response; (2) determine whether the public defense attorney's representation failed to satisfy applicable public defense standards; and if so, take action to include:

- "1. Discussion with the public defense attorney and supervisor or consortium administrator (if applicable), with agreement for an appropriate course of action;
- "2. Written reprimand;
- "3. Mandatory training and/or attendance at a continuing legal education program;
- "4. Require the public defense attorney to obtain a mentor;
- "5. Modification of the public defense attorney's qualifications for case types;
- "6. Suspension from representation in public defense cases; and,
- "7. Take such additional measures as may be appropriate under the circumstances.

The policy also provides that OPDS will notify the public defense attorney and the consortium administrator (if applicable) in writing of its findings and of any action taken in response to a finding of unsatisfactory representation. The policy provides for an appeal to the Executive Director of OPDS.

Finally, the policy provides that OPDS can receive information from any source "regarding the performance of public defense attorneys and [take] such action as it deems appropriate."

1. Attorney Qualifications

OPDS has a policy on attorney qualifications to represent different levels of criminal cases (Exhibit 6).⁶ According to Pate, she has never heard of any attorney being disqualified or "blackballed" in any way.⁷ If an attorney did not want to handle certain kinds of cases, e.g., felonies, Pate said the

⁵ https://www.oregon.gov/opds/general/Documents/OPDS%20Complaint%20Policy.pdf.

⁶ See also, https://www.oregon.gov/opds/provider/StandardsBP/Attorney%20Qualification%20Standards.pdf.

⁷ Deitrick provided me with a list of attorneys and vendors who had been subject to scrutiny, bar complaints and investigation (Exhibit 7).

attorney would make a request to remove that qualification from the system, OPDS would "uncheck" felonies from their profile and the attorney would no longer be offered felony cases.

Qualifications of attorneys were decided by the OPDS General Counsel's office. Once an attorney is deemed qualified, they are entered into the database as qualified to take on the cases that OPDS staff has approved, or if they are already in the database, their qualifications are updated.

2. Witness 4's experience

Witness 4 told me that she was working with a firm where Deitrick's wife had worked and she believed Deitrick heard information about Witness 4 from her former employer through his wife. Witness 4 had conflict with her former employer, and she believes that because of this conflict, Deitrick retaliated against her. Witness 4 was fired by her former employer in December 2018, and interviewed at another firm. According to Witness 4, after Deitrick called that firm and talked to them, Witness 4 was told that Deitrick had called and told them not to hire her, and that they believed their contract could be in jeopardy if they did hire her and so declined to do so.

Witness 4 said she tried to call Deitrick after this but he would not call her back. Thereafter, Witness 4 was referred to a job opportunity with a criminal defense consortium in ____ County and she applied. Witness 4 said Deitrick also called the ____ County Defense Consortium's manager and told the manager not to hire Witness 4.

Witness 4 was hired by the consortium in ____ County. After being hired by the consortium, Witness 4 said she continued to call Deitrick but said he never called her back. Another attorney at OPDS did call Witness 4 back but Witness 4 never got a clear explanation of why she had been "blackballed" by Deitrick.

Thereafter, as Witness 4 progressed in her career, she sought higher qualifications from OPDS to take on higher level cases. According to Witness 4, she received feedback from those around her in her County that OPDS had called her references and checked up on her, and that it was the first time they ever recalled being called by OPDS to check on an attorney seeking a higher case qualification.

Witness 4 was qualified by OPDS to do higher level cases; then after this, Witness 4 said Deitrick and a OPDS Deputy General Counsel asked to "check in' with Witness 4 about her qualifications to do the work OPDS had already qualified her to do.

Witness 4 asked a senior member of the consortium who is also her mentor to attend this check in with her. During that meeting, Witness 4 said Deitrick told her that he had been hearing from others that she did not know what she was doing and had no criminal law experience. Witness 4 said Deitrick also told her that he had heard she falsely stated she had worked for the federal government when she had not (essentially, stating he believed she was either lying about or inflating her experience).

Witness 4 said all the issues Deitrick brought up were easily disproven. Witness 4 said Deitrick started the zoom call by telling her "I'm sure you know who I am, I've been following your career for a while now." Witness 4 said Deitrick and the OPDS Deputy General Counsel were claiming Witness 4's work was poor and she was not qualified to do the work she was doing. Although they said they had received complaints, they would not say who the complaints were from or be specific about the issues identified in the complaints.

Witness 4 said she and her mentor asked where Deitrick had heard the things he was saying but Deitrick refused to say. Ultimately, Witness 4 said Deitrick said he had no more concerns and ended the call.

Witness 4 said that OPDS has called judges and the DA's office in the County where she practices, asking questions about her, which she said delegitimized her. Witness 4 said people in her County did not believe her contract provider had faith in her because Deitrick undermined her reputation.

3. Deitrick's recollection

Deitrick said that the individual performance of a particular attorney is within OPDS' scope to evaluate. Deitrick said OPDS has a complaint policy which provides for procedures to investigate complaints. Deitrick said there is a complaint form on the web and that is typically how complaints come to the attention of OPDS.

Currently, Deitrick said that the Compliance and Audit team reviews complaints. However, at the time, the responsibility still rested with the OPDS General Counsel. Deitrick said once a complaint came in, they would triage the complaint to determine how serious it was. In Witness 4's case, Deitrick assigned the matter to a former OPDS Deputy General Counsel (Wakefield) to review the complaint about Witness 4 because Wakefield had experience with juvenile dependency and that was the issue OPDS was concerned about with Witness 4.

Deitrick said if the complaint is substantive, OPDS would reach out to the attorney. Deitrick said that OPDS does have control over who is qualified to do public defense work. Since Deitrick has been with the agency, he told me they have suspended only a couple of people (see, Exhibit 7).

Deitrick said Witness 4 originally came to his attention because a billing accountant called him and said someone was being hostile on the phone and this person turned out to be Witness 4. In that situation, Deitrick said the Court had determined a client of Witness 4's did not qualify for public defense counsel in a case and Witness 4 called OPDS (according to Deitrick) to see if the client could be qualified for public defense. Deitrick said Witness 4 was referred to him by staff because she was upset about this and taking out her frustration on the staff.⁸

Deitrick said at the time, Witness 4 was not felony qualified but she was misdemeanor qualified. Deitrick said Witness 4's client was charged with a misdemeanor (which Witness 4 was handling), but then the client was charged with a felony. Deitrick recalled that the client wished Witness 4 to represent him on a felony case but the judge determined either the client was not qualified to receive funding or that Witness 4 was not qualified to handle the felony case and would not appoint Witness 4 pursuant to the OPDS process (i.e., ensuring she would be paid the hourly rate for the representation). According to Deitrick, Witness 4 then took on the felony pro bono in Washington County.

Deitrick recalled talking to Witness 4 about not handling the felony case because she didn't meet OPDS' qualification standards for felonies. According to Deitrick, Witness 4 insisted she was qualified and then handled the case pro bono, meaning the matter was no longer a public defense matter.

⁸ Based on the documents provided by OPDS, Witness 4 came to Deitrick's attention before this because they had concerns about whether she could do the juvenile work she was being hired to do without supervision.

⁹ Based on the records OPDS provided, OPDS called the Court about this after the Court appointed Witness 4 to the case.

Deitrick said thereafter, Witness 4 moved to Multnomah County and OPDS started hearing complaints about her. Wakefield, a former OPDS Deputy General Counsel, did an observation of Witness 4 at this point. At this time, there were no complaints about Witness 4 based on the records OPDS provided to me.

Deitrick agreed his wife had worked for Witness 4's former employer (the individual Witness 4 went to work for in 2018 and who fired Witness 4 in December 2018). Deitrick said his wife had just left and Witness 4 might have taken his wife's place at the firm.

Deitrick said he did hear from his wife about what was going on at the Multnomah County Courthouse but believed he heard about Witness 4 through Liz Wakefield, who was then in house with OPDS but who used to work in Multnomah County. Deitrick believed Wakefield had heard about Witness 4 through her contacts in Multnomah County.

Because of the things they heard, Deitrick said Wakefield followed up with judges and referees to determine whether Witness 4 needed supervision and mentorship. Deitrick said this follow up was within OPDS' scope of determining what attorneys are qualified to do in terms of public defense cases. However, Deitrick said Wakefield was circumspect in her inquiries.¹¹

After Witness 4 was terminated by her former employer in December 2018, Deitrick said he did speak to someone at a prospective employer firm for Witness 4 because the firm administrator reached out to OPDS to find out if Witness 4 could be authorized to work on the OPDS defense matters they wanted to have her perform.

Deitrick said his position on Witness 4 was that she could do criminal work without supervision but would need supervision from an experienced attorney to do juvenile dependency.

Deitrick was aware that Witness 4 moved to a different County. Deitrick told me he did not recall ever speaking to the Executive Director of the ____ County Defense Consortium, about Witness 4, nor did he recall speaking to anyone else there about her when she applied for the job.

Thereafter, in May 2020, Deitrick said he received phone calls from the Trial Court Administrator and the District Attorney in ____ County about Witness 4. Deitrick said both reported concerns about Witness 4's truthfulness and demeanor in court (the Trial Court Administrator's concerns were apparently based on what she was hearing from the judges; one of the ____ County judges did file a bar complaint about Witness 4 and write a letter of complaint to OPDS about Witness 4, neither of which were substantiated.

Deitrick also told me that Witness 4 had a pending bar complaint from a judge in ____ County for lying in court, which is the only time this has occurred in his time at the agency (I note that the outcome of this matter was that the judge was determined to be mistaken as noted in the previous paragraph).

Deitrick said it is very unusual for OPDS to hear so much about a particular attorney, which caused Witness 4 to rise to the level of scrutiny by OPDS' General Counsel.

¹⁰ Again, according to the records OPDS provided, no complaints were received about Witness 4 prior to any investigation and any concerns expressed about Witness 4 were expressed in the context of an investigation Wakefield conducted.

¹¹ Wakefield interviewed several referees and attorneys in Multnomah County in January and February 2019 and these interviews are document in OPDS' database on attorneys but are not appended hereto as an exhibit for reasons of confidentiality. These interviews occurred a month to two months after Witness 4 was fired by her former employer and after Deitrick spoke with Witness 4's prospective employer.

Deitrick said he did not dissuade anyone from hiring Witness 4, but he would have been clear about what OPDS would agree to in terms of cases she could handle. In 2018-2019, Deitrick said OPDS' concern was that she would need supervision to do juvenile dependency. After the complaints in May 2020, Deitrick assigned former Assistant General Counsel Whitney Perez to investigate the complaints about Witness 4 and thereafter met with her about them. Deitrick said he wanted to ensure she had mentorship.

4. What the documents show

Witness 4 was admitted to the Oregon State Bar in October, 2017. In March, 2018, OPDS qualified Witness 4 to handle misdemeanor cases. In August 2018, Witness 4 moved from Washington County to work with Witness 4's former employer in Multnomah County and applied to be qualified for lesser felonies, juvenile delinquency and dependency cases. In her application, Witness 4 stated she had lesser felony and misdemeanor experience and would be supervised by her former employer in areas where she did not have experience (such as in juvenile cases).

Upon receiving this application, OPDS staff had an internal conversation via email about Witness 4's application. Deitrick and others were concerned about whether Witness 4 was qualified, would receive proper mentoring and stated that her qualifications were "thin" (Exhibit 8). OPDS staff's concerns were whether she had enough experience to do the juvenile law work Witness 4's former employer wanted her to do and whether she might become overwhelmed without supervision. Deitrick stated she needed to practice under someone with experience in juvenile law (Exhibit 8). There were apparently no concerns about Witness 4's ability to handle lesser felony and misdemeanor cases. As of November 19, 2018, Wakefield told Deitrick she had not heard any concerns or complaints about (Exhibit 9).

Based on a statement Deitrick made about Witness 4's former employer in internal correspondence, I do not believe Deitrick is close or friendly with Witness 4's former employer and therefore would not have retaliated against Witness 4 for having conflict with the former employer. In the internal correspondence, Deitrick questioned the former employer's motivation in hiring Witness 4. Deitrick asked his staff, "I guess my question is, if they need an attorney, why don't they just bring her into the consortium? The ONLY reason not to is so that [Witness 4's former employer] can take a cut off the top" (Exhibit 8).

At the end of December, 2018, Witness 4's former employer terminated Witness 4's employment. Thereafter, OPDS became involved to communicate to the contract holder about the juvenile cases Witness 4 had been assigned under the contract. On January 3, 2019, Deitrick wrote to the firm leadership that OPDS would not pay for Witness 4 to continue handling the cases she had through Witness 4's former employer firm. Additionally, Deitrick told the firm:

"We have entered into a contract with the [the consortium] to provide legal counsel to clients over a two year period, and [Witness 4's] cases were assigned to [the consortium] via that contract. We are under no obligation to provide additional funding to [Witness 4] to continue working on those cases, either by contact or statute, and we do not intend to.

"Additionally, our correspondence regarding [Witness 4's] qualifications and subcontracting with the PDC makes it clear that we approved her qualifications for juvenile representation on the condition that she receive mentorship and supervision. It does not simply qualify her to handle juvenile cases, and based on our initial considerations, as well as the information

we have gained about her performance over the past several months^[12], we would not authorize her for these case types unless she continued to be mentored and supervised by a qualified juvenile dependency attorney."

After this email, Wakefield did some research on cases Witness 4 was handling, and discovered she had a Measure 11 case which OPDS did not believe Witness 4 was qualified to handle. This led to email and correspondence between Wakefield and Witness 4 to the effect that OPDS would inform the court that OPDS did not believe Witness 4 was qualified to handle the Measure 11 case.

Thereafter, Wakefield called a number of attorneys and juvenile referees in Multnomah County to ask questions about Witness 4's competence and demeanor in representing juveniles. There is no record of a complaint about Witness 4 prompting this and Witness 4 was not notified of OPDS' inquiries about her.

Because Witness 4 told me she had applied for a job at a firm and had her offer rescinded because of something Deitrick communicated to that firm, I contacted the individual 13 at the firm who spoke to Deitrick. This individual told me he initiated the call to OPDS to determine what cases Witness 4 could be qualified to handle.

This individual said the firm planned on hiring Witness 4, who was doing juvenile dependency at another firm. According to this individual, he was dissuaded at least in part from hiring Witness 4 by what he heard from Deitrick. This individual recalled Deitrick telling him there was an ongoing "thing" with Witness 4 so "just be careful." This individual told me Deitrick did not explicitly tell him not to hire Witness 4 but Deitrick did say there were concerns about her. Ultimately the firm decided not to hire Witness 4 because they were not comfortable hiring an attorney for the OPDS contract if OPDS had concerns about the attorney. Based on an email from Wakefield to Deitrick around this time, it appears the firm told Witness 4 something similar (who then related this information to Wakefield) (Exhibit 11).

After this, Witness 4 told me she applied for a job in ____ County and learned from the consortium's administrator that Deitrick had called the administrator about Witness 4.

According to the consortium's administrator, she spoke to Deitrick when the consortium was considering hiring Witness 4. The administrator said Deitrick told her said he had concerns about Witness 4 and that things had been brought to his attention but he would not elaborate or tell the administrator what they were. The administrator recalled Deitrick saying, "I shouldn't say but you should keep it in mind." The administrator said the consortium decided to bring Witness 4 on because it would not be right to refuse to hire her based on innuendo.¹⁴

Thereafter, in October 2019, OPDS eliminated juvenile dependency from the list of Witness 4's qualifications. In November 2019, Witness 4 was qualified by OPDS to handle major felonies (Exhibit 12).

In May 2020, Deitrick and other OPDS General counsel staff renewed their conversation about Witness 4's qualifications because Deitrick received a phone call from the ____ County DA

¹² There are no notes in the OPDS database on Witness 4's performance before this email. There are several notes after this email showing that OPDS began investigating Witness 4 in January and February 2019.

¹³ The individual asked for anonymity.

¹⁴ The administrator said she has been working with criminal defense firms for a very long time and has never known OPDS to be so involved with an attorney. Typically, the administrator said if there were a concern, they would contact the administrator and the attorney, do an investigation and report the findings.

questioning Witness 4's honesty (Exhibit 13). In this internal email exchange, Deitrick asserted "we have had a ton of issues with her, particularly on the issue of honesty" (Exhibit 13, page 2).¹⁵

Deitrick also said he learned from the DA that Witness 4 was handling Felony Measure 11 cases, which Deitrick said she was not qualified to do (Exhibits 12 and 13 makes it clear that Witness 4 had been approved to handle major felonies in the fall of 2019 by OPDS). Another attorney noted that Witness 4 had been qualified to handle these cases in the fall, and Deitrick responded, "I can't remember honestly. Maybe we did say it was ok. But the longer she stays somewhere, the more the complaints follower [sic] her. Honesty is currently a concern in ____. Also, she has a '17 bar number . .." (Exhibit 13, page 1). ¹⁶

The information from the ____ County DA resulted in Deitrick assigning Assistant Deputy Counsel Whitney Perez, an attorney in his office, to investigate these concerns about Witness 4. However, Witness 4 was never informed these concerns had been articulated nor what they were.

Perez spoke to several people about Witness 4 and concluded that Witness 4 exaggerated her qualifications and experience and can have difficulty accepting feedback. Thereafter, Deitrick and Perez met with Witness 4 and her mentor and recommended Witness 4 receive mentoring.

I spoke to Witness 4's mentor about his recollections of this meeting. According to her mentor, who is a highly experienced criminal defense attorney and on the Board of Directors of the ____ County Consortium, OPDS' concerns were about Witness 4's qualifications. Witness 4's mentor said he was surprised by this because Witness 4 had been "qualified" by OPDS to handle the kinds of cases she was handling. Witness 4's mentor said Deitrick and his associate claimed Witness 4 was not experienced and that she needed a mentor, which did not tally with his own experience with Witness 4. Witness 4's mentor said Deitrick told them there had been a complaint which caused him to have concerns but he would not tell Witness 4 and her mentor what the complaint was or who made the complaint.

Witness 4's mentor recalled that the concerns Deitrick was expressing were not factually accurate. For example, Deitrick said that Witness 4 was not experienced in federal court but Witness 4 was claiming she was. However, her mentor knew that Witness 4 has had cases in federal court. Her mentor explained that for OPDS, typically they want to know if an attorney has had a certain number of cases in a particular court or type of matter in order to "qualify" that attorney to handle those types of cases for OPDS (see, Exhibit 6). Witness 4's mentor said Witness 4 had the requisite experience according to OPDS' policy, but she might need ongoing coaching as anyone would to improve.

Witness 4's mentor said his experience with Witness 4 is that she is coachable, she wants to learn, she works hard and she knows the law. Witness 4's mentor said that he offers her advice from time to time as he would any attorney in the consortium. Witness 4's mentor said she is well within the norm for defense attorneys in terms of her demeanor, knowledge and abilities.

OPDS took no action to reduce the scope of cases Witness 4 was qualified to handle for OPDS following this process.

¹⁵ Based on the records provided to me, this is the first time the issue of honesty was articulated regarding Witness 4 (and it was later determined to be unfounded).

¹⁶ Again, based on the records provided to me, this call from the District Attorney is the first evidence of a complaint about Witness 4.

E. Witness 5

Witness 5 wished to remain anonymous, so I could not follow up on her particular allegations. Generally, she said following her submittal of a proposal for a contract which she had spent more than 40 hours drafting, OPDS never responded to nor even acknowledged receiving the proposal.

Witness 5 also told me that when her male colleagues ask for funds for a paralegal or a law clerk, they report to her that the request is routinely approved. However, Witness 5 said this does not happen to her. Rather, Witness 5 indicated when she asks for the same support her male colleagues routinely receive, she is told by OPDS that she is "too expensive."

F. Witness 6

Witness 6 believes a contract she held with OPDS was unfairly terminated and that Detrick has both defamed her and retaliated against her for her public comment about OPDS' and Deitrick's decisions.

<u>Summary</u>: Deitrick wrote a letter disparaging Witness 6 on OPDS stationary, signed it as OPDS General Counsel and sent the letter to an attorney representing another attorney against an Oregon State Bar complaint filed by Witness 6. The letter makes statements of "fact" about Witness 6 which remain uninvestigated and unvalidated by a neutral party.

Deitrick also shared the letter which disparaged Witness 6 with an attorney who contracts for OPDS but who had no reason to receive it. Based on their emailed correspondence, which included many disparaging remarks about Witness 6, I conclude Deitrick and this attorney are friends. In addition, Deitrick specifically told this friend that he was upset about Witness 6's public comments about him. Deitrick also shared Witness 6's contract with this friend.

After Witness 6's contract ended, Deitrick offered Witness 6 an hourly rate of \$75.00 when she had been paid \$100 per hour prior to having a contract both as an hourly and contracted attorney. I conclude this reduction in her hourly rate was made in retaliation for her public speech about Deitrick and OPDS. At the point that this decision was made, Witness 6 had demanded in writing that Deitrick retract the letter he wrote about her in November 2020 and she had also asked to be heard by the Public Defense Commission on the issue of the cancellation of her contract and Deitrick's letter, among other things.

Furthermore, in May and June 2023, Deitrick offered his support (before retracting it) to a state attorney opposing a fee petition made by Witness 6. I find Deitrick did this due to his ongoing antipathy towards Witness 6.

<u>Facts</u>: In 2020, Witness 6 initiated a plan to represent adults in custody during the pandemic who would have medical habeas claims based on conditions of confinement related to COVID. She worked with OPDS and other organizations to create this plan, and OPDS retained her to lead a team of attorneys and medical experts beginning in April 2020 to a contracted period starting in August 2020 through April 30, 2021.

Under Witness 6's plan, Witness 6 was to provide leadership, recruit attorneys, develop pleadings, and administer the cases with staff. Initially, Witness 6 was paid \$100 per hour without a contract for her work but as the workload increased, she negotiated a contract in August 2020 with OPDS to include support staff, benefits, and expenses. The contract term was six months (from August 1, 2020 to January 31, 2021). Witness 6 believed that this contract would be extended because of the number of habeas cases filed about COVID.

OPDS paid for Witness 6's work through Federal CARES funds available until December 2020. Once that funding ended, the costs for the contract came from OPDS' general fund budget and internal pressure began to mount to end the contract. The contract was extended until 4/30/21, then it was not renewed.

In response to an inquiry from Witness 6's attorney about the non-renewal of her contract, OPDS stated:

"The contract for your client was for her to provide technical assistance and training on medical-based habeas petitions, as well as representation of her clients. As we were approaching the end if the initial contract term this past winter, we determined that the need for such services was abating and, additionally, the Federal CARES act money that we were getting some reimbursement for COVID-related expenses was not going to be available past December of 2020. We nonetheless made the decision – with your client's approval – to extend the contract an additional three months to further assess the impacts of the federal lawsuit regarding vaccinations for adults in custody as well as the Judge Suede settlement. Having taken such steps, we then decided we did not need the contract and informed your client' (Exhibit [ltr to _______]).

Around the same time, Witness 6 received a letter from Deitrick reducing Witness 6's hourly rate to \$75 per hour once her contract ended. Prior to this, for more than a year, Witness 6 had been paid \$100 per hour as an hourly attorney even before having a contract with OPDS. Witness 6 ultimately hired two attorneys to communicate with OPDS about her (1) habeas case load and her (2) hourly rate because she was unable to resolve the issues directly.

Deitrick told me Witness 6's contract was not renewed because she entered into a settlement of most of the cases in January 2021. The contract was extended to April 30, 2021 to allow for the cases to be finalized. Deitrick also believed that COVID vaccinations would moot the need for any new cases. In addition, internal documents show that OPDS did not have budgeted funds for the project and there was internal staff pressure to end the project for financial reasons.

1. Deitrick's letter dated November 11, 2020 about Witness 6

In September or October 2020, Witness 6 filed an Oregon State Bar complaint against a public defense attorney who (Witness 6 said) withdrew from seven cases without notifying the clients or Witness 6. This attorney appealed to Deitrick in defending the bar complaint. Deitrick wrote a letter to this attorney's attorney who defending him against the bar complaint making what appeared to be factual statements about Witness 6 on OPDS letterhead, signing the letter as OPDS General Counsel.

I have reviewed this letter. Witness 6 has asked me not to publish its contents other than a high-level description because of the things Deitrick said about her in this letter. The letter makes statements about Witness 6 which remain uninvestigated and unvalidated by a neutral party. In my opinion, the letter is highly derogatory about Witness 6. Deitrick made pejorative and personal statements about Witness 6's character, which he told me he based on complaints he received from attorneys who worked with Witness 6.

Witness 6 subsequently learned that Deitrick wrote this letter in his role as OPDS General Counsel on OPDS stationary, and the letter was shared with the Oregon State Bar. Witness 6 was not aware of this letter until January 2021 or later. Later, in January and February 2021, Witness 6 also learned that OPDS did not intend to renew her contract.

Deitrick told me he did write the November, 2020 letter about Witness 6 to an attorney defending against a bar complaint Witness 6 filed. Deitrick said the statements he made in that letter were based on phone calls and emails he received from public defense attorneys about Witness 6's behavior.

Deitrick provided me with the emailed complaints he received about Witness 6. There were three complaints by separate attorneys prior to the date of the letter; the remainder expressed concerns about a contract Witness 6 wanted them to sign.

In addition, Deitrick provided me with a list of 15 individuals outside of OPDS (and an additional four OPDS staff) he says made verbal complaints about Witness 6 (these names included those who had emailed complaints, and two of whom had expressed concerns about signing a contract but not concerns about Witness 6). Nevertheless, Deitrick provided enough information to substantiate he received at least some complaints about Witness 6.

I note that OPDS also received highly complementary emails and letters about Witness 6 and her work from individuals in Oregon and across the country who had collaborated with her on project.

There were several emails between Deitrick and a criminal defense attorney named [Jane Doe], with whom Deitrick discussed Witness 6. However, these emails were not written until January 2021 or later, well after the November 2020 letter was written. I note that the conversation between Deitrick and [Jane Doe] about Witness 6 was negative. Furthermore, Deitrick forwarded Witness 6's contract to [Jane Doe], along with the letter he wrote in November, 2020 about Witness 6. [Jane Doe] is a contracted public defender and not a member of OPDS, the Oregon State Bar or involved in any way with the Bar complaint.

Deitrick told me the reason he shared the letter with [Jane Doe] was because he was frightened of Witness 6's reactions and of her making public complaints about him to the press and to the ACLU. Deitrick acknowledged that there had been no formal investigation by a neutral party about Witness 6's alleged behavior at the time he wrote his November 2020 letter on OPDS stationary to the attorney.

I note that when a different complainant, Witness 9, asserted to Deitrick through her attorney that the consortium she was working with was discriminating against women, Deitrick took the position that OPDS would not be investigating the contractor (Exhibit 14). Yet, when there were complaints against Witness 6 as a contractor, Deitrick wrote a scathing letter about her which was presented to the Oregon State Bar.

2. Reduction of Witness 6's hourly rate

After Witness 6's contract ended, Deitrick told her that her hourly rate would revert to \$75 per hour. Witness 6 hired an attorney to contest this and ultimately, the former Executive Director of OPDS, Borg, wrote her an email confirming she would be paid \$100 per hour after 4/30/21 for "these cases" (Exhibit 15).

Witness 6 continued to take cases from OPDS but at some point, her rate of \$100 per hour was denied by OPDS and it was reduced to \$75 per hour (Exhibit 16). Thereafter, OPDS took the position that Borg's phrase "these cases" had only included cases Witness 6 had been assigned while her contract was still in effect (i.e., before 4/30/21) and that any case she took on after 4/30/21 would revert to \$75 per hour.

I note that an attorney was assigned a Habeas case in January 2021 at the rate of \$105 (Exhibit 17). [Jane Doe], who appears to be a friend of Deitrick's based on their email correspondence about

Witness 6, was assigned a mandamus case at the rate of \$105 per hour in June 2021. Based on the exceptions granted by OPDS (based on data relied on in the pay disparity report), every Post Conviction Relief and Habeas Corpus case hourly rate exception after January 2021 was assigned the rate of \$100 per hour or more.

Borg's language according Witness 6 a rate of \$100 per hour in March 2021 (after negotiations with her attorney) is as follows:

"Based on my review of our records I believe that the \$100/hr [sic] as was previously being billed is appropriate and so I am granting that request and directing our staff to note that for hourly billing on these cases after the contract time expires, April 30th. As we discussed on the phone [Witness 6] will need to submit an NRE request if appropriate for legal assistant time that is beyond normal office support. Those request [sic] will be evaluated on their own merit" (Exhibit 15).

In 2021, then Executive Director Singer took the position that "billing on these cases" referred only to cases Witness 6 had been assigned while her Habeas contract was in effect, or before April 30, 2021. According to Singer, any Habeas cases assigned after 4/30/21 would be paid at the then policy rate of \$75 per hour (Exhibit 18).

However, Borg's email is not so precise; it does not define what "these cases" means. In addition, I note that Witness 6 had been given permission by Deitrick in 2020 to bill Habeas cases at the rate of \$100 per hour even before she had a contract with OPDS (Exhibit 19).

Furthermore, in April 2021, Witness 6 had not only hired counsel to negotiate her hourly rate with OPDS, she hired counsel to extract her from the cases still assigned to her under her contract with OPDS. It would not make sense to hire counsel to negotiate a rate only for those cases that Witness 6 was attempting to extricate herself from in April 2021. It is only logical that Witness 6 was negotiating for an ongoing rate (i.e., April 2021 and beyond) per hour for herself.

3. May-June 2023 Fee Petition

On May 19, 2023, Witness 6 asked OPDS' Chief Criminal Trial Counsel Laurie Bender if she could apply for attorney's fees in a case she had handled on behalf of OPDS due to a finding by a judge of bad faith on the part of the Oregon Department of Corrections. In her email, Witness 6 explained:

"I forgot to also bring up that I was awarded attr	ny [sic] fees in a habeas case where ct [sic]
found ODOC [Oregon Department of Correction	ons] acted in bad faith by refusing to
implement terms of habeas settlement.	allowed for 60 % of attny [sic] fees for
associated noncompliance litigation. I won the sa	
a couple years ag	go. The agreement with OPDS was that the
fee award would all go to me, not OPDS. Wante	ed to confirm that is still the case" (Exhibit
20).	

Bender replied the same day that she would check with the OPDS General Counsel and then respond to Witness 6 (Exhibit 20). On May 23, 2023, Bender emailed Witness 6:

"Yes, you are entitled to the attorney fees awarded by the Court. I confirmed with Budget and Finance that you should receive the attorney fees awarded by the Court associated with the noncompliance litigation and the finding of bad faith on the part of the state" (Exhibit 20).

Witness 6 prepared her fee petition with the court and filed it. Unbeknownst to Witness 6, the State attorney representing the Oregon Department of Corrections in the same case reached out to

Deitrick about the fee petition Witness 6 filed. On May 25, 2023, the State attorney attached a draft declaration to an email to Detrick stating in his email that Deitrick could make changes but that the State attorney understood that Deitrick had said he would sign it. Ultimately, Deitrick refused to sign the declaration, but he did provide the State attorney with a copy of Witness 6's fee agreement with OPDS (Exhibit 21).

Meanwhile, Bender and Deitrick apparently realized they were giving different information about the same issue to the two parties (Witness 6 and the state attorney representing the ODOC) (Exhibit 20). Bender wrote an email to Witness 6 on May 30 telling Witness 6 that Bender needed to "walk back" her agreement to Witness 6's fee petition (Exhibit 20).

On June 1, 2023, Deitrick communicated with the State attorney:

"I cannot sign a declaration in this case. We do not have a contract term or a written policy addressing the issue of attorney fees. Additionally, prior to our talking, our office had already communicated to [Witness 6] that we were ok with her receiving the fees, rather than the agency. If this continues to be an issue, we should consider creating a policy or contract term to address it. But absent that, and given our prior communication with [Witness 6], we cannot weigh in.

"I can confirm for you that her public defense hourly rate for this case is \$100/hour" (Exhibit 21).

As an attachment to that email, Deitrick provided a copy of Witness 6's hourly fee agreement with OPDS (Exhibit 21).

When Witness 6 found out that Deitrick had provided this information (due to the State attorney's response to her fee petition), she contacted OPDS' Executive Director. Some inquiry must have been made, because Bender wrote the following email to OPDS' Executive Director on July 10, 2023:

"I don't believe that I was provided the declaration prepared for Eric to sign, but it was determined that he should not sign any declaration, and further that he should respond that our agency had already approved her receiving the award. Eric provided the [state] attorney with the rate of compensation for [Witness 6's] work in this habeas matter. In hindsight, it would have been best if we had included [Witness 6] in the communications" (Exhibit 22).

I interviewed Deitrick on May 25, 2023 at 10:00 am. During that meeting, I went over concerns I had about his treatment of Witness 6, including that he had written the letter critical of Witness 6 in November 2020, and shared it with a member of the public ([Jane Doe]) who had no need to know the information. The same day I interviewed Deitrick, the state attorney sent Deitrick the draft declaration he wanted Deitrick to sign in opposition of Witness 6's attorney's fees.

When I later asked Deitrick why he would support the state attorney to oppose Witness 6's attorney's fees motion when she had been given leave to do the same thing in a previous case and when I had – that very day – indicated to him that his actions towards Witness 6 appeared to be problematic, Deitrick told me he was simply answering a public records request as he normally would do.

However, contemplating signing a declaration is beyond answering a public records request. At the beginning of the interaction with the state attorney, Deitrick was contemplating signing a declaration to oppose a public defender from obtaining attorneys' fees that she would otherwise receive as a sanction due to bad faith on the part of the defendant.

CONCLUSIONS

- 1. Witness 1's concerns were substantiated in part and not substantiated in part.
 - a. Witness 1 is correct that some attorneys were being paid much less per hour than other attorneys, but this was because those attorneys were appointed to cases prior to the policy rates being raised.
 - b. Witness 1 was incorrect about a male attorney appointed to a case being paid a higher rate than the subsequent female attorney.
 - c. Witness 1's concern that she was denied a higher rate for a Ballot Measure 11 case while others doing similar work were granted pay increases was substantiated in the report on pay.
- 2. Witness 2's concerns that she was being paid less than others were not on average substantiated.
- 3. Witness 3's concerns were substantiated in part and not substantiated in part.
 - a. Strehlow offered a higher than guideline rate to Witness 3 based on negotiations with a consortium which led to him needing other attorneys. When the negotiations with the consortium changed, Strehlow changed Witness 3's rate. I do not believe Strehlow was motivated by retaliation against Witness 3.
 - b. With respect to Deitrick's decision to reduce Witness 3's fees by one third, I do find retaliation, especially given that he directly told her that she was a "squeaky wheel" and the Court of Appeals described his decision as "against reason and evidence."
- 4. Deitrick investigated Witness 4 twice without any "official" complaints, both times without informing her.
 - a. In addition, although Deitrick denies it, I find Deitrick made comments to two prospective employers which caused one of them to withdrew Witness 4's job offer.
 - b. In internal correspondence, Deitrick defines Witness 4 as having a "ton of problems" and honesty issues without any basis or any complaint to that effect except one from a district attorney who may have had conflict with Witness 4 for any number of reasons, including that she is female and a strong advocate. At any rate, that complaint was not documented in OPDS' records and Witness 4 was not consulted about the district attorney's concerns.
- 5. Witness 5's concerns would have necessitated me asking direct questions about them which I did not have permission to do and so cannot substantiate those concerns.
- 6. Witness 6 was retaliated against by Deitrick. Witness 6 is vocal about her opinions of Deitrick and OPDS and has voiced them publicly and in letters to the Public Defense Services Commission (PDSC).
 - a. Deitrick, who would not become involved in another matter because the organization had a contract with OPDS, chose to write an unsubstantiated letter based on a few complaints he received about Witness 6. The letter is scathing and unfair and written on OPDS letterhead and signed by Deitrick as OPDS' General Counsel.

- b. Deitrick took the further step of essentially gossiping about Witness 6 with a member of the public and sharing that scathing letter with this member of the public.
- c. After Witness 6's contract ended in April 2021, Deitrick reduced her hourly rate to \$75 per hour, after having given her the hourly rate of \$100 since April 2020 because Witness 6 is acknowledged to be a leading expert on Habeas Corpus cases in Oregon. Furthermore, every hourly rate exception given in January 2021 and later for similar cases was at least \$100 per hour. I find the reduction in Witness 6's hourly rate to \$75 per hour was motivated by retaliation against her for vocally and publicly stating her disagreement with OPDS and particularly with Deitrick.
- d. After Witness 6 hired counsel and negotiated the hourly rate back to \$100 per hour, OPDS thereafter reduced the rate again in late 2021/early 2022. I find this to be a further act of retaliation.
- e. In June 2023, Deitrick supported a state attorney opposing an attorney fee petition Witness 6 filed after a finding of bad faith by the Department of Corrections and obtaining leave to do so from the Judge in the matter. The state attorney would have had a right to the information about Witness 6's hourly rate under public records law, but it appears Deitrick did more than simply provide a public record. Deitrick also discussed the matter with the state attorney, offering to sign a declaration until he was made aware that in the normal course of business, Witness 6 had already been given leave to file her fee petition and retain the fees if successful.

Exhibit List/Office of Public Defense Services Retaliation/Personnel Report

Exhibit	Description
1	September 20, 2019 email between Witness 3 and OPDS Analyst
2	October 17, 2019 email between Witness 3 and OPDS Analyst
3	December 7, 2019 email from OPDS General Counsel to Witness 3
4	March 18, 2020 email from OPDS General Counsel to Witness 3
5	Appeals court opinion re Witness 3
6	OPDS Attorney Qualification Standards
7	April 11, 2020 email from OPDS General Counsel re complaints against public defenders
8	August 28, 2018 email from OPDS General Counsel re Witness 4
9	November 19, 2018 from OPDS Deputy General Counsel re Witness 4
10	January 3, 2019 email from OPDS General Counsel re Witness 4
11	January 7, 2019 from OPDS Deputy General Counsel re Witness 4
12	May 20, 2020 email from OPDS General Counsel re Witness 4
13	May 20, 2020 email from OPDS General Counsel re Witness 4
14	February 7, 2020 email from OPDS General Counsel to Witness 9's counsel that OPDS would conduct no investigation into contractor behaviors
15	March 24, 2021 email from former OPDS Executive Director to Witness 6 re hourly rate
16	January 4, 2021 email from Witness 6 querying reduction in hourly rate
17	January 28, 2021 exception rate approval for PCR case to \$105 per hour
18	January 5, 2022 email exchange between Witness 6 and OPDS' former Executive Director
19	April 29, 2020 email from OPDS General Counsel to Witness 6 telling her to bill her work at \$100 per hour prior to her having a contract with OPDS

Exhibit	Description
20	May 31, 2023 email between OPDS Chief Criminal Trial Counsel and Witness 6
21	June 1, 2023 email from OPDS General Counsel re Witness 6
22	July 10, 2023 email from OPDS Chief Criminal Trial Counsel re Witness 6

From: Billy Strehlow B y.J.Streh ow@opds.state.or.us

Subject: Fw: #e#2nd Request Poss b e Parent P ck up - MOTHER:

Date: September 30, 2019 at 2:05 PM

To:

Hi ,

Well, it was short lived. The consortium has agreed to only cut off c-felony and misdmeanor cases so there is no critical need for dependency coverage. Any new case assigned going forward will be at the hourly rate of \$55.

Regards, Billy

Billy Strehlow Program Analyst 4 Office of Public Defense Services Contract Services 198 Commercial Street SE, Suite #250 Salem, OR 97301

www.oregon.gov/OPDS/

(503) 378-2512

---- Forwarded by Billy J Strehlow/OPDS on 09/30/2019 02:03 PM -----

From: Billy J Strehlow/OPDS

To:

Cc: Heather L Pate/OPDS@OPDS

Date: 09/27/2019 11:03 AM

Subject: Fw: #e#2nd Request Possible Parent Pick up - MOTHER:

Hi**lls**,

The hourly rate is \$75 on this Washington County dependency case. Please include this with your fee statement. In addition, I am including your name on a short list of attorneys to contact regarding dependency cases in Washington County for the next couple of weeks. The hourly rate for any new cases you take in Washington County is \$75 until further notice. Regards,

Billy

Billy Strehlow Program Analyst 4 Office of Public Defense Services Contract Services 198 Commercial Street SE, Suite #250 Salem, OR 97301

www.oregon.gov/OPDS/

(503) 378-2512

---- Forwarded by Billy J Strehlow/OPDS on 09/27/2019 11:00 AM -----

From: "Rebecca R. Magallon" <Rebecca.R.MAGALLON@ojd.state.or.us> To: "Billy.J.Strehlow@opds.state.or.us" <Billy.J.Strehlow@opds.state.or.us>

Date: 09/26/2019 03:19 PM

Subject: FW: #e#2nd Request Possible Parent Pick up - MOTHER:

Rebecca R. Magallon (Rebecca.R.MAGALLON@ojd.state.or.us) has sent you a protected message.

Subject: Re. Need He p with Parent Pick up -

Date: October 17, 2019 at 1:58 PM

To: B y Streh ow B y.J.Streh ow@opds.state.or.us

The case that you referred me to was actually a Multnomah County Case and was not out of Washington County. I learned that when I went to speak with the Washington County clerk in person. I am not available to take this case at this time.



This message is confidential and may contain sensitive and private privileged information. If you are not the intended recipient, or if you believe you have received this message in error, please notify me immediately by reply e-mail. Please keep the contents confidential and delete the message and any attachments from your system.

On Thursday, October 17, 2019, 1:48:11 PM PDT, <Billy.J.Strehlow@opds.state.or.us> wrote:

High I'll hold this open until tomorrow morning when I get in and then I'll need to move down my list.
Regards,
Billy

Billy Strehlow
Program Analyst 4
Office of Public Defense Services
Contract Services
198 Commercial Street SE, Suite #250
Salem, OR 97301
www.oregon.gov/OPDS/
(503) 378-2512
----- Forwarded by Billy J Strehlow/OPDS on 10/17/2019 01:46 PM -----

From:
To: "
Date:
Subject: Re: Need Help with Parent Pick up

That seems a bit unfair as the initial email said it was for cases in Washington County and only until further notice. Three days later we emailed notice that the matter had been resolved with the consortium and we didn't need coverage for juvenile cases at the higher rate.

Although it greatly benefited the juvenile clients in Washington County it was certainly unfortunate for you. However, you did get a few cases in those three days at the agreed upon hourly rate of \$75 and we greatly appreciate it. What hourly rate would you need to handle this case in

Regards, Billy

Billy Strehlow Program Analyst 4 Office of Public Defense Services Contract Services 198 Commercial Street SE, Suite #250 Salem, OR 97301 www.oregon.gov/OPDS/ (503) 378-2512

From:

To: "BillyJ.Streniow@apas.state.or.us" <Billy.J.Strehlow@opds.state.or.us>

Date: 10/17/2019 09:42 AM

Subject: Re: Need Help with Parent Pick up -

Dear OPDS:

After sharing with you my concerns about my personal financial and processional future, you assured me that I would receive a \$20 an hour incentive for taking these high conflict and difficult cases in Multnomah County. You even put this in writing. The very next day, you notified me that commitment was rescinded without an explanation. This has given me great pause in accepting these types of difficult appointments. Perhaps you can address my concerns about OPDS's commitment to equity and fairness for attorneys taking these kinds of cases.

Respectfully,

Sent from Yahoo Mail on Android

On Thu, Oct 17, 2019 at 9:07 AM, <u>Billy.J.Strehlow@opds.state.or.us</u> Billy.J.Strehlow@opds.state.or.us wrote:

Billy Strehlow
Program Analyst 4
Office of Public Defense Services
Contract Services
198 Commercial Street SE, Suite #250
Salem, OR 97301
www.oregon.gov/OPDS/
(503) 378-2512
----- Forwarded by Billy J Strehlow/OPDS on 10/17/2019 09:07 AM -----

From: Billy J Strehlow/OPDS

Ta

From: Eric J. Deitrick Eric.J.Deitrick@opds.state.or.us

Subject: Fwd: Request for records -

Date: December 7, 2019 at 4:49 PM To: eric.deltrick@gmail.com



Sent from my iPhone

Begin forwarded message:

From: "Fric.] Deitrick" < Eric, J. Deitrick@oxds.state.or.us>

Date: December 7, 2019 at 3:52:10 PM PST

Ce: Amy lackson@opds.state.or.us. lane.bog@opds.state.or.us

Subject: Re: Request for records



I know this was directed to Lane, but as he isin Geneva, and I am at home staring out at the rain (reminiscent of the Mau; luau), I figured I would respond.

Ms. Jackson sent you the exchange you two had in 2018 because it demonstrated the newspaper quote you referenced below. We had concerns based on the quality of the contract administrator, which you yourself brought to the attention of the agency. You are the person who informed Ms. Jackson on the inequity in case assignments (diversion v. contested case). And as I am sitting here at home, I am aware that there were other issues over the years that Ms. Jackson is aware of regarding Mr. s role/tenure as contract administrator. So yes, that Is a quality issue -- the quality of the administrator.

I would note that you continue to publish nonsense about me on random list serves and whatnot, and I presume you will continue to do so. But perhaps you can understand that many of us (I presume you too) are trying to make improvements to our public defense system to improve outcomes for the clients and provide better work standards for the attorneys doing this work. This is challenging when so many people in this field have strong feelings and control issues.

But I have zero understanding as to why you think the PDSC and OPDS should not only hear your complaints/asks/recommendations/etc., but also implement them. You are one attorney in a state full of hundreds of attorneys, staff, investigators, etc. that care deeply about public defense. At the agency level, we have to balance many competing interests.

The squeaky wheel doesn't always get the grease. Sometimes, it just squeaks. I hope you find some way to find peace going forward. And I honestly hoped when we stumbled into that luau table together that we would have a chance to talk. Maybe it would/could have helped. I don't know . . .

Thanks

Eric

Eric J. Deitrick General Counsel Office of Public Defense Services 503-378-2750 503-910-0434 (cell)

eric.i.deitrick@opds.state.or.us

From:

10: lane boro@oods.state.or.us

Cc: Eric J Deltrick @oods state or us, Amy Jackson @oods state or us Date: 12/07/2019 02:14 PM

Subject: Re: Request for records - contract

Dear Mr. Borg:

Would you be able to provide me information on the status of my public records request? Below are the exchanges between your office and myself.

Thank you,





From: Eric J. Deitrick

Sent: Wednesday, March 18, 2020 3:29 PM

To:

Subject: RE: Unpaid requests for payment January 28/Mar 2

It was simply me evaluating how much work was done on the two cases knowing what work needed to be done in an appeal generally. If you have a counter proposal to me for each case please send along and I would be glad to take a look and reassess . . .

Thanks, Fric

Eric J. Deitrick General Counsel Office of Public Defense Services eric.j.deitrick@opds.state.or.us 503-378-2750 503-910-0434 (cell)

From:

Sent: Wednesday, March 18, 2020 3:26 PM

To: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us>

Subject: Re: Unpaid requests for payment January 28/Mar 2

Thank you Mr. Deitrick. It would be helpful to know the criteria used by OPDS to determine the estimate of the work that was and was not completed. Would you be able to provide that to me? Then, I will be able to provide relevant and accurate information to OPDS regarding the work done.

On Wed, Mar 18, 2020 at 10:11 AM Eric J. Deitrick Eric.J.Deitrick@opds.state.or.us wrote:

The backup documentation was the ACMS file and all included.

OPDS had to find additional legal coverage for these cases as you withdrew from the case before completion. We had contemplated waiting to pay you until the cases resolved and we knew how much additional funding was spent. My understanding, however, was that was a no-go for you. So here we are.

Additional work needs to be done on both cases. We attempted to come up with an

IN THE COURT OF APPEALS OF THE STATE OF OREGON



ORDER ON REVIEW OF PDSC PAYMENT DECISION

ORDER ON REVIEW OF PDSC PAYMENT DECISION

Discretion can be abused in different ways, depending on circumstances and, therefore, the term "abuse of discretion" has "no hard and fast meaning." <i>EMC Mortgage Corp. v. Davis</i> , 174 Or App 524, 528, 26 P3d 185 (2001). One test for determining whether discretion has been abused is whether the decision reached was clearly against reason and evidence. <i>Id.</i> For example, a decision maker abuses its discretion when the facts do not rationally support the decision. <i>Id.</i> As explained below that is the case here.
However,
the facts do not rationally support the decision to reduce 's fee by 33 percent. Although the OPDS had to find another attorney to complete the case and may well have spent substantial funds to do so, the amount of the reduction in fees was an abuse of discretion. Instead, the facts rationally support a reduction of, at most, ten percent.
Therefore, on review, OPDS's payment decision is modified, and it is ordered that is entitled to payment of 90 percent of the amount requested; that is, entitled to total compensation of \$3,150 in this case.
C:
ej

PUBLIC DEFENSE SERVICES COMMISSION QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE

Revised December 19, 2019

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PUBLIC DEFENSE SERVICES COMMISSION QUALIFICATION STANDARDS FOR COURT-APPOINTED COUNSEL TO REPRESENT FINANCIALLY ELIGIBLE PERSONS AT STATE EXPENSE

The following standards are adopted by the Public Defense Services Commission pursuant to ORS 151.216(1)(f)(F).

STANDARD I: OBJECTIVE

The objective of these standards is to ensure the provision of competent legal representation to all financially eligible persons entitled to court-appointed counsel by state or federal constitution or statute.

STANDARD II: ATTORNEY CASELOADS

Attorneys appointed to represent financially eligible persons at state expense must provide competent representation to each client. Neither defender organizations nor assigned counsel shall accept caseloads that, by reason of their size or complexity, interfere with providing competent representation to each client or lead to the breach of professional obligations.

STANDARD III: GENERAL QUALIFICATIONS TO SERVE AS APPOINTED COUNSEL FOR FINANCIALLY ELIGIBLE PERSONS

Subject to the provisions of Standard V, the appointing authority shall appoint only those attorneys who:

- 1. Are active members of the Oregon State Bar or are attorneys of the highest court of record in any other state or country who will appear under ORS 9.241;
- 2. Agree to adhere to Standard II;
- 3. Either:
 - A. Meet the minimum qualifications specified in Standard IV for the applicable case type; or
 - B. Possess significant experience and skill equivalent to or exceeding the minimum qualifications specified in Standard IV, and who demonstrate to the satisfaction of the Office of Public Defense Services that the attorney will provide competent representation; or
 - C. Work under the supervision of an attorney who does have the requisite qualifications and who describes to the satisfaction of the Office of Public Defense Services how they will provide oversight of attorney performance in order to ensure competent representation.

- 3. Have adequate support staff and regularly monitored email and telephone systems to ensure reasonable and timely personal contact between attorney and client, and between the attorney and others involved with the attorney's public defense work;
- 4. Have an office or other regularly available and accessible private meeting space other than at a courthouse suitable for confidential client conferences; and
- Have read, understood and agree to observe applicable provisions of the current edition of the Oregon State Bar's Performance Standards for Counsel in Criminal, Delinquency, Dependency, Civil Commitment, and Post-Conviction Relief Cases, available at www.osbar.org.

STANDARD IV: MINIMUM QUALIFICATIONS BY CASE TYPE

1. <u>Misdemeanor Cases. Contempt. and Misdemeanor Probation Violation Proceedings in Trial Courts</u>

The minimum qualifications for appointment to misdemeanor and contempt cases and misdemeanor probation violation proceedings require that an attorney:

- A. Has reviewed and is familiar with the current version of the ABA Standards for Criminal Justice relating to representation in criminal cases; the Oregon Rules of Professional Conduct; the Criminal, Vehicle and Evidence Codes of Oregon; the criminal drug offenses, and other crimes outside the Criminal Code; the Uniform Trial Court Rules; and Oregon State Bar, Criminal Law (current version); and
- B. Satisfies at least one of the following:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of a public defender office, a district attorney office, or attorney in private practice in criminal cases; has undertaken such representation for at least six months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable criminal procedure and sentencing alternatives;
 - b. Has observed five complete trials of criminal cases that were tried to a jury;
 - c. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
 - Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case; or
 - e. Has served as a judicial clerk for at least six months in a court that regularly conducts criminal trials:

2. Lesser Felony Cases and Felony Probation Violation Proceedings in Trial Courts

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment to lesser felony cases and felony probation violation proceedings require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 1;
- B. Has met the qualifications in Standard IV, section 1 for at least nine months;
- C. Has served as counsel or as co-counsel in two criminal cases that were tried to a jury; and
- D. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards.

3. Major Felony Cases in Trial Courts

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than murder and capital murder cases.

The minimum qualifications for appointment to major felony cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 2; and
- B. Has met the qualifications in Standard IV, section 2 for at least nine months and has had at least nine months experience representing clients in lesser felony cases.

4. Murder Cases in Trial Courts

- A. Lead Counsel. The minimum qualifications for appointment as lead counsel in murder cases, not including capital murder, require that an attorney:
 - a. Meets the qualifications specified in Standard IV, section 3;
 - b. Has met the qualifications in Standard IV, section 3 for at least three years;
 - c. Has demonstrated to persons with direct knowledge of his or her practice a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving codefendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence; and
 - d. Has acted as lead counsel or co-counsel in at least five major felonies tried to a jury, which include at least one homicide case that was tried to a jury.

B. *Co-counsel.* Co-counsel in murder cases must meet the qualifications in Standard IV, section 4.A, subparagraphs a, b, and c.

5. Capital Murder Cases in Trial Courts

- A. Lead Counsel. The minimum qualifications for appointment as lead counsel in capital murder cases require that an attorney:
 - Has reviewed and agrees to fulfill the current version of the ABA Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, and the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases;
 - b. Meets the qualifications specified in Standard IV, section 4.A;
 - c. Has represented clients in major felony cases for at least five years;
 - Has acted as lead counsel or co-counsel in at least one murder case that was tried to a jury;
 - e. Has attended within the last two years at least 24 hours of specialized training on in the management, preparation, and presentation of capital cases through an established training program awarding CLE credits;
 - f. Has demonstrated to persons with direct knowledge of his or her practice:
 - (1) A commitment to providing zealous advocacy and high quality legal representation in the defense of capital cases;
 - (2) Substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases:
 - (3) Skill in the management and conduct of complex negotiations and litigation;
 - (4) Skill in legal research, analysis, and the drafting of litigation documents;
 - (5) Skill in oral advocacy;
 - (6) Skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
 - (7) Skill in the investigation, preparation, and presentation of evidence bearing upon mental status;
 - (8) Skill in the investigation, preparation, and presentation of mitigating evidence;

- (9) Skill in the elements of trial advocacy, such as jury selection, crossexamination of witnesses, and opening and closing statements; and
- g. On request, can demonstrate all of the above by:
 - (1) A written statement by the attorney explaining why the attorney believes that he or she has the qualifications required to handle a capital murder case; and
 - (2) Written statements from those with direct knowledge of the attorney's practice, declaring that they believe that the attorney should be allowed to defend capital murder cases and explaining why the attorney has the qualities required. Written statements must include at least five letters from persons in at least two of the following three groups:
 - i. Judges before whom the attorney has appeared;
 - ii. Defense attorneys who are recognized and respected by the local bar as experienced criminal trial lawyers and who have knowledge of the attorney's practice; or
 - iii. District attorneys or deputies against whom or with whom the attorney has tried cases.
- B. *Co-counsel.* Co-counsel in capital murder cases must meet the qualifications in Standard IV, section 5.A, subparagraphs a, b, c, e, f, and g.
- C. Procedure for Establishing Equivalent Skill And Experience In Capital Murder Cases. The Office of Public Defense Services may determine that an attorney with extensive criminal trial experience or extensive civil litigation experience meets the minimum qualifications for appointment as lead or co-counsel, if the attorney clearly demonstrates that the attorney will provide competent representation in capital cases. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).
- D. Caseload. An attorney shall not handle more than two capital cases at the same time without prior authorization from the Office of Public Defense Services.

6. Civil Commitment Proceedings Under ORS Chapters 426 and 427 in Trial Courts

The minimum qualifications for appointment in civil commitment proceedings under ORS Chapters 426 and 427 require that an attorney:

A. Meets the qualifications specified in Standard IV, section 2;

- B. Has handled at least three civil, juvenile or criminal cases in which a psychiatric or psychological expert was consulted by the attorney and the use of psychiatric or psychological evidence was discussed with the client;
- C. Has knowledge of available alternatives to institutional commitment;
- D. Has knowledge of the statutes, case law, standards, and procedures relating to the involuntary commitment of the mentally ill and developmentally disabled; and,
- E. Satisfies one of the following:
 - a. Has served as co-counsel in two civil commitment cases that have been submitted to a judge for determination; or
 - b. Has observed five civil commitment hearings that have been submitted to a judge for determination.

7. <u>Juvenile Cases in Trial Courts, Including Delinquency, Waiver Proceedings, Neglect, Abuse, Other Dependency Cases, Status Offenses and Termination of Parental Rights</u>

The minimum qualifications for appointment to juvenile cases, under ORS Chapter 419, are as follows:

- A. Juvenile Delinquency Cases in Trial Courts including status offense cases and waiver proceedings
 - a. Misdemeanor, misdemeanor probation violation, and status offense cases; Meets the qualifications for appointment to misdemeanor cases as specified in Standard IV, section 1, and satisfies at least one of the following:
 - (1) Has served as counsel or co-counsel counsel in at least two juvenile delinquency cases adjudicated after a contested hearing before a judicial officer; or
 - (2) Has observed at least five juvenile delinquency cases adjudicated after a contested hearing before a judicial officer.
 - b. Lesser felony and lesser felony probation violation cases. Lesser felony cases are defined in Standard IV, section 2:
 - (1) Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a);
 - (2) Has met the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) for at least nine months:
 - (3) Has served as counsel, co-counsel, or associate counsel in two juvenile delinquency cases adjudicated after a contested hearing before a judicial

officer;

- (4) In at least one juvenile felony case adjudicated after a contested hearing before a judicial officer has served as co-counsel or associate counsel with an attorney who has previously tried juvenile felony cases; and
- (5) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle lesser felony cases involving the potential for commitment to a youth correctional facility until age 25.
- c. Major felony and major felony probation violations. Major felony cases are defined in Standard IV, section 3:
 - (1) Meets the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b);
 - (2) Has met the qualifications for appointment to juvenile delinquency lesser felony cases as specified in Standard IV, section 7A (b)for at least nine months and has had at least nine months experience representing clients in lesser felony cases; and
 - (3) On request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25.

d. Murder cases:

- (1) Meets the qualifications for appointment to murder cases in trial courts as specified in Standard IV, section 4(A); and
- (2) Has met the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) for at least three years.
- e. Waiver proceedings (primary counsel):
 - (1) Meets the qualifications for appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c) and criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for juvenile murder cases as specified in Standard IV, section 7A(d) and criminal murder cases as required by Standard IV, section 1(4); or
 - (2) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A

- (c), or criminal major felony cases as specified by Standard IV, section 1(3). Additionally, the attorney has served as co-counsel in one juvenile delinquency major felony case that included an adjudicated waiver hearing. Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or
- (3) Upon request, can present a showing of expertise and competence in the area of juvenile and criminal trial practice by submitting at least three letters of reference from other lawyers, one of which must be a judge the attorney has appeared before. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.
- (4) In addition to either subsection (1), (2), or (3), the attorney must also satisfy one of the following:
 - Has demonstrated a skillful understanding of juvenile law, criminal law, the interplay between the two, and is able to advise the client of all outcomes and consequences of the waiver hearing;
 - ii. Has demonstrated an understanding of child and adolescent brain development;
 - iii. Has demonstrated an understanding of working with mitigators as part of the defense team; or
 - iv. Can certify participation in OPDS approved training specifically related to juvenile waiver hearing preparation and litigation.
- f. Waiver proceedings (co-counsel):
 - (1) Meets the qualifications for either (a) appointment to juvenile delinquency major felony cases as specified in Standard IV, section 7A (c), or criminal major felony cases as specified by Standard IV, section 1(3). Where the underlying offense is murder the attorney must meet the qualifications for either juvenile murder cases as specified in Standard IV, section 7A(d), or criminal murder cases as required by Standard IV, section 1(4); or
 - (2) Upon request, can present a showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle major felony cases involving the potential for commitment to a youth correctional facility until age 25 as well as the potential for adult criminal court consequences.

B. Juvenile Dependency Cases in Trial Courts

Meets the qualifications for appointment to juvenile delinquency misdemeanor cases as specified in Standard IV, section 7A (a) or has had equivalent civil or criminal experience involving complicated child-custody issues and satisfies at least one of the following:

- a. Has served as counsel, co-counsel or associate counsel in at least two dependency cases adjudicated before a judge; or
- b. Has observed at least five dependency cases adjudicated before a judge.
- C. Termination of Parental Rights Cases in Trial Courts
 - Meets the qualifications for appointment to juvenile dependency cases as specified in Standard IV, section 7B for at least six months or has had equivalent experience, civil or criminal, involving complicated child-custody issues, and
 - (1) Has served as co-counsel or associate counsel in at least one termination of parental rights trial that resulted in an adjudication; or
 - (2) Upon request, can present an additional showing of expertise and competence in the area of juvenile trial practice by submitting at least three letters of reference from other lawyers or judges the attorney has appeared before on juvenile cases. The letters must explain why the attorney has the requisite experience and competence to handle trials resulting in the termination of parental rights.

8. <u>Appeals in Misdemeanor Cases. Misdemeanor Probation Violations Proceedings.</u> and Contempt Proceedings

The minimum qualifications for appointment in appeals in misdemeanor cases, misdemeanor probation violation proceedings, and contempt proceedings require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS 138.005 138.504, ORS 33.015 33.155, and ORS Chapter 19;
 - b. Oregon State Bar, <u>Criminal Law</u> (current edition);
 - c. The Oregon Rules of Appellate Procedure;
 - d. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - a. Has been certified under the Oregon Supreme Court Rules on Law Student Appearances to represent clients on behalf of an attorney in public or private practice in appeals in criminal or juvenile delinquency cases; has undertaken such representation for at least 12 months; and can present a letter from the person's immediate supervisor certifying the person's knowledge of applicable

appellate procedure and criminal law;

- b. Has served as counsel or co-counsel in at least two appellate cases which were briefed on the merits and argued to the court under the supervision of an attorney eligible for appointment to appellate cases under this standard;
- c. Has observed oral argument and reviewed the appellate record in at least five appeals in criminal cases;
- d. Has significant experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
- e. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

9. Appeals in Lesser Felony Cases. Felony Probation Violation Proceedings. Judicial Review of Parole Cases. and Post-Conviction Relief Cases

Lesser felony cases include all felony drug cases and all Class C felonies other than sexual offenses.

The minimum qualifications for appointment in appeals in lesser felony cases, felony probation violation proceedings, judicial review of parole cases, and post-conviction relief cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:
 - a. ORS Chapter 144;
 - b. The Oregon Felony Sentencing Guidelines (OAR Ch 213); and
 - c. The Rules of the Board of Parole and Post-Prison Supervision (OAR 255).
- C. Meets at least one of the following criteria:
 - a. Has served as counsel in at least five appeals in criminal cases which were briefed on the merits and argued to the court:
 - b. Has significant and extensive experience in written motion practice and arguments in state circuit court or federal district or appellate court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience.

10. Appeals in Non-Capital Murder and Major Felony Cases

Major felony cases include all A and B felonies other than drug cases, all felony sex offenses, and all homicides other than capital murder cases.

The minimum qualifications for appointment in appeals in major felony cases require that an

attorney:

- A. Meets the qualifications specified in Standard IV, section 9;
- B. Has served as counsel in at least 10 appeals in criminal cases which were briefed on the merits and argued to the court; and
- C. Has demonstrated proficiency in appellate advocacy in felony defense.

11. Appeals in Capital Murder Cases

The minimum qualifications for appointment in appeals in capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 10;
- B. For appointment as lead counsel, is an experienced and active trial or appellate lawyer with at least three years' experience in criminal defense;
- C. Has demonstrated the proficiency and commitment necessary for high quality representation in capital murder cases.
- D. For lead counsel in capital murder appeals, within two years prior to the appointment has attended and completed a legal training or educational program on defending capital cases. A substantial portion of the program must have been directly relevant to appeals in capital cases; and
- E. For co-counsel in capital murder appeals, has attended and completed a legal training or education program on appellate advocacy in criminal cases within two years prior to the appointment.
- F. Alternate Procedures for Establishing Equivalent Skill And Experience in Capital Appeals. The Office of Public Defense Services may determine that an attorney with extensive criminal trial or appellate experience, or both, or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel in appeals of capital cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital appeals. For qualification under this paragraph, attorneys must have either:
 - a. Specialized training in the defense of persons accused of capital crimes; or
 - b. The availability of ongoing consultation support from other capital murder qualified attorney(s).

12. Appeals in Juvenile Delinguency Proceedings – Misdemeanor Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of misdemeanor offenses require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 8;
- B. Has reviewed and is familiar with:

- a. ORS 419A.200 419A.211; and
- b. Oregon State Bar, <u>Juvenile Law</u>, (current edition).

13. Appeals in Juvenile Delinguency Proceedings – Felony Equivalency

The minimum qualifications for appointment in appeals in juvenile delinquency cases adjudicating the equivalent of felony offenses require that an attorney:

Meets the qualifications specified in Standard IV, sections 10 and 12.

14. Appeals in Juvenile Dependency and Termination of Parental Rights Proceedings

The minimum qualifications for appointment in appeals in juvenile dependency and termination of parental rights cases require that an attorney:

- A. Has reviewed and is familiar with:
 - a. ORS Chapter 419B;
 - b. ORS Chapter 419A;
 - c. ORS Chapter 19;
 - d. The Oregon Rules of Appellate Procedure;
 - e. Oregon State Bar, Juvenile Law (current edition);
 - f. Oregon State Bar, Appeal and Review (current edition); and
- B. Meets at least one of the following criteria:
 - Has served as counsel or co-counsel in at least five appeals in juvenile dependency or termination of parental rights proceedings including briefing the cases on the merits and arguing the cases to the court;
 - b. Has significant and extensive experience in written motion practice and arguments in state trial court and appellate court or in federal district court; or
 - c. Will be working under the supervision of an attorney who does have the requisite qualifications or experience and who will attest to the quality of the attorney's work by appearing as co-counsel on all filed briefs.

15. Post-Conviction Proceedings Other Than in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in cases other than murder and capital murder cases require that an attorney:

A. Meets the qualifications for appointment to an original proceeding involving the highest charge in the post-conviction proceeding;

- B. Has reviewed and is familiar with:
 - a. The Oregon Post-Conviction Hearing Act, ORS 138.510-138.686; and
 - b. The Oregon State Bar's performance standards for counselrepresenting petitioners in post-conviction relief proceedings, and the authorities cited therein.
- C. Has served as co-counsel or observed proceedings and reviewed the record in at least two post-conviction relief proceedings in which a trial court entered a judgment on the petition;
- D. Has attended and completed a legal education and training program on postconviction relief proceedings within two years prior to appointment.

16. Post-Conviction Proceedings in Murder and Capital Murder Cases

The minimum qualifications for appointment in post-conviction proceedings in murder and capital murder cases require that an attorney:

- A. Meets the qualifications specified in Standard IV, section 4;
- B. Meets the qualifications specified in Standard IV, section 15;
- C. For appointment as lead counsel, has prior experience as post-conviction counsel in at least three major felony cases; and
- D. For capital murder cases, meets the qualifications specified in Standard IV, section 5 for co-counsel in capital cases in the trial courts. If more than one attorney is appointed, only one of the attorneys must meet the qualifications specified in Standard IV, section 5.
- E. Alternate Procedures Establishing Equivalent Skill And Experience in Post-Conviction Cases. The Office of Public Defense Services may determine that an attorney with extensive criminal trial, appellate, or post-conviction experience or extensive civil litigation or appellate experience, or both, meets the minimum qualifications for appointment as lead or co-counsel for post-conviction relief proceedings in capital murder cases, if the attorney clearly demonstrates that the attorney can and will provide competent representation in capital murder cases. For qualification under this paragraph, attorneys must either:
 - (1) Specialized training in the defense of persons accused of capital crimes; or
 - (2) The availability of ongoing consultation support from other capital murder qualified attorney(s).

17. <u>Habeas Corpus Proceedings</u>

The minimum qualifications for appointment in habeas corpus proceedings require that an attorney meet the qualifications specified in Standard IV, section 2.

STANDARD V: QUALIFICATION CERTIFICATE AND APPOINTMENT OF COUNSEL

1. Certificate and Supplemental Questionnaire

In order to receive an appointment to represent a financially eligible person at state expense, an attorney must submit a certificate of qualification together with a completed supplemental questionnaire, and be approved by the Office of Public Defense Services for appointment to the case type for which the appointment will be made. The certificate and supplemental questionnaire must be in the form set out in Exhibit A to these standards, or as otherwise specified by the Office of Public Defense Services.

2. Submission Requirements

- A. Contract Attorneys. Contract attorneys must submit their certificates of qualification and completed supplemental questionnaires to the Office of Public Defense Services (OPDS) prior to the execution of the contract and thereafter as necessary to ensure that OPDS has current information for each attorney who performs services under the contract.
- B. Assigned Counsel (for all Non-contract Appointments). Certificates of qualification and completed supplemental questionnaires may be submitted to OPDS at any time. OPDS will periodically require re-submission of certificates of qualification and completed supplemental questionnaires as needed to document that an attorney continues to meet ongoing training requirements and other standards.

3. Supporting Documentation

- A. An attorney must submit supporting documentation in addition to the certificate and questionnaire:
 - a. At the request of OPDS; or
 - b. When the attorney seeks to qualify for appointments based on equivalent skill and experience.
- B. Supporting documentation requested by OPDS may include, but is not limited to:
 - a. A written statement explaining why the attorney believes that he or she has the qualifications required to handle the case type(s) selected by the attorney; and
 - b. Written statements from those with direct knowledge of the attorney's practice explaining why they believe that the attorney is qualified to handle the case type(s) selected by the attorney. Written statements may include those from persons in the following three groups:
 - (1) Judges before whom the attorney has appeared;
 - (2) Defense attorneys who are recognized and respected by the local bar as experienced trial lawyers and who have knowledge of the attorney's

practice; and

- (3) District attorneys or deputies against whom or with whom the attorney has tried cases.
- C. Contract providers seeking to qualify attorneys pursuant to the Public Defense Organization provision of Standard III, section 3.C, shall submit prior to execution of its contract with OPDS and update as necessary:
 - a. A description of the organization's management, supervision, evaluation and training procedures, along with an explanation of how these procedures will ensure adequate and competent representation by the organization's attorneys;
 - b. Certificates of Attorney Qualification, with supplemental questionnaire, from the organization's supervisory attorneys;
 - c. A Certificate of Attorney Qualification for each attorney qualifying pursuant to Standard III, section 3.C, signed by an authorized representative of the organization that states the type of cases for which the attorney is eligible to receive appointment; and
 - d. A supplemental questionnaire for each attorney qualifying pursuant to Standard III, section 3.C, completed and signed by each attorney.

4. Approval for Appointment

- A. Review of Submitted Certificates. OPDS will review the qualification certificates and may request supporting documentation as needed. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type. OPDS's goal is to select attorneys who:
 - a. Are more than minimally qualified;
 - b. Have specialized skills needed in a particular community;
 - c. Are available to cover cases in the appropriate geographic area:
 - d. Are able to meet specific needs of the court such as availability at specific times:
 - e. Are able to effectively and efficiently manage a law practice, observing appropriate fiscal and organizational practices; and
 - f. Have other qualities that would benefit the court, the clients or OPDS.

At the completion of the review, OPDS shall notify the attorney of the case types for which the attorney has been approved for appointment and the reason for its decision not to approve the attorney for appointment in any case type for which certification was submitted.

B. Request for Reconsideration. An attorney who is not approved for appointment in case types for which the attorney has certified qualification may request reconsideration by submitting to OPDS, within 21 calendar days of the notice of

- approval/disapproval for appointment in particular case types, additional information, including supporting documents, if any, which the attorney believes demonstrates that the attorney meets the criteria for selection set forth in Paragraph 4.A.
- C. Review of Request for Reconsideration. Within 21 calendar days of OPDS's receipt of a request for reconsideration the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. OPDS shall notify the attorney of its final determination.
- D. Extension of Time for Good Cause. The time for requesting reconsideration and for issuing a final determination may be extended for good cause.
- E. Provision of Lists to the Courts. OPDS will prepare a list of attorneys approved for appointment for counties that routinely appoint attorneys who do not provide public defense services pursuant to a contract with OPDS. Other courts should contact OPDS for assistance in identifying attorneys available for appointment.
- F. Updating Lists. OPDS will update lists as necessary.

5. Suspension from Appointment

- A. Suspension from Future Appointments. If OPDS obtains information that calls into question an attorney's ability to provide adequate assistance of counsel, OPDS shall notify the attorney of the information and shall perform such investigation as is necessary to determine whether the attorney is able to provide adequate assistance of counsel. After completing its investigation and reviewing any information provided by the attorney OPDS shall have authority to suspend the attorney from future appointments for any or all case types until OPDS is satisfied that the attorney is able to provide adequate assistance of counsel. When OPDS suspends an attorney from future appointments OPDS shall notify the attorney and the court of the suspension and the reason(s) for the suspension.
- B. Suspension from Current Appointments. The court, after reviewing the reason(s) for the suspension, shall consider whether the attorney should be relieved as counsel in any pending court-appointed cases. The court shall consider with respect to each open case: the reason for the suspension, the needs of the client, and the ability of the attorney to provide adequate assistance of counsel under all of the circumstances. The court shall comply with the Paragraph 1.7 of OPDS's Public Defense Payment Policies and Procedures relating to substitution of counsel.
- C. Request for Reconsideration. An attorney who is suspended from future appointments may request reconsideration by submitting to OPDS, within 21calendar days of the notice of suspension, additional information, including supporting documents, if any, which the attorney believes establish the attorney's ability to provide adequate assistance of counsel.
- D. Review of Request for Reconsideration. Within 21 calendar days of OPDS's receipt of a request for reconsideration, the executive director of OPDS, or a person designated by the executive director, shall review the request and issue a final determination. In reviewing the request, the executive director or the executive director's designee may select and empanel a group of public defense attorneys to advise the executive director about the attorney's ability to provide adequate

- assistance of counsel and whether the attorney should be suspended from future appointment for any or all case types. OPDS shall notify the attorney and the court of its final determination and the reasons for its final determination.
- E. Extension of Time for Good Cause. The time for requesting reconsideration and for issuing a final determination may be extended for good cause.

PUBLIC DEFENSE CERTIFICATE OF ATTORNEY QUALIFICATION FOR NON-CAPITAL CASE TYPES

Name:		Bar Number:		
Address:		Vendor or Tax ID#:		
		Email:		
		Foreign language fluency in:		
Phone Number:				
Mobile Phone Number:		Practice of Law	Criminal	
		Juvenile	Appellate	
For appointments in the following co	ounty(ies):			
TRIAL LEVEL Murder		APPELLATE LE Murder	VEL	
Lead Counsel Co-counsel Major Felony Lesser Felony Misdemeanor		Lead Cou Co-couns Major Felony Lesser Felony Misdemeanor	= =	
Juvenile Delinquency Waiver Counsel Waiver Co-counsel Major Felony Lesser Felony		Juvenile Delinc Major Feld Lesser Fe Misdemea	ony 🔲	
Misdemeanor Juvenile Dependency Juvenile Termination		Juvenile Deper Juvenile Termi		
Civil Commitment Contempt Habeas Corpus		Civil Commitme Contempt Habeas Corpus		
Post-Conviction Relief Murder Other Criminal		Post-Conviction Murder Other Crir		
that I meet the requirement case types checked above experience, pursuant to Stanow I am qualified for those or	d the PDSC Qualifications of those standards at the standard standard and the standard III, section 3.B, the case types.	on Standards for Court-Appointend wish to be listed as available to case types because I believe I point I have submitted supporting documents working under the supervision of from the attorney or contract pro	to accept appointment to the possess equivalent skill and umentation and explained of an attorney as described in	
Signature		 Date		

Submit signed certificates together with the supplemental questionnaire, and any supporting documentation to: mail@opds.state.or.us

SUPPLEMENTAL QUESTIONNAIRE TO CERTIFICATE OF ATTORNEY QUALIFICATION

If this questionnaire does not address important aspects of your experience, please feel free to attach additional information. If more space is needed to answer any of the questions below, please do so on additional pages.

- 1. Name (please print):
- 2. Date admitted to Oregon State Bar:
- 3. Oregon State Bar number:
- 4. Number of years and location(s) of legal practice in Oregon:
- 5. Number of years and location(s) of legal practice outside Oregon:
- 6. What percentage of your present practice involves handling criminal cases? juvenile cases? (or other cases as appropriate, such as civil commitment, habeas corpus, post-conviction relief)
- 7. What percentage of your present practice involves handling public defense cases?
- 8. Do you meet the stated minimum qualifications for the case types selected on your certificate of attorney qualification? If you answer no here, proceed to Question 9. If you answer yes, describe in detail below and on additional pages if necessary, how you satisfy each of the minimum qualifications for the case type(s) that you have certified.
- 9. If you answered No to Question 8, are you certifying qualification on the basis of equivalent skill and experience? If no, proceed to Question 10. If yes, please separately attach the following: 1) A statement explaining why you believe equivalent skill and experience qualifies you to handle the case types you have certified; and 2) At least two letters or statements from persons familiar with you legal experience and skill that describe why they believe you are qualified to handle the case types you have certified.
- 10. If you answered No to Question 9, are you certifying qualification because you will be working under the supervision of an attorney who meets the qualifications for the case types that you have certified? If yes, attach a statement from the supervising attorney, pursuant to Standard III.3.C or Standard V.3.C, describing the supervision that the attorney will perform?
- 11. What has been the extent of your participation in the past two years with continuing legal education courses and/or organizations concerned with law related to the case types you have certified?

12.	List at least three names and addresses of judges and/or attorneys who would be able to comment on your experience in handling the case types you have certified.
13.	List the most recent two cases by county and case number that have been tried and submitted to a jury, or if the attorney is certifying qualification for juvenile delinquency or civil commitment cases, tried and submitted to a judge, in which you served as counsel or co-counsel.
14.	Have you ever been convicted of a crime? If yes, please provide the crime(s) of conviction, date and jurisdiction. (Do not answer yes or provide information for convictions that have been expunged or sealed.)
15.	Are there any criminal charges currently pending against you? If yes, please identify the charges, the jurisdiction and the status of the proceedings.
16.	Is there any complaint concerning you now pending with disciplinary counsel of the Oregon State Bar, or otherwise pending formal charges, trial or decision in the bar disciplinary process?
17.	Has the Oregon Supreme Court, Oregon State Bar or any other bar association ever found you in violation of a Disciplinary Rule or Rule of Professional Conduct? If yes, please describe the violation and provide the date of decision.
18.	Has a former client ever successfully obtained post-conviction relief based on your representation? If yes, please describe and cite to opinion, if there is one.
	fy that the above information is true and complete.
SIGNA	ATURE



Thanks, Eric

Eric J. Deitrick
General Counsel
Oregon Office of Public Defense Services
eric.j.deitrick@opds.state.or.us
503-378-2750
503-910-0434 (cell)

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Thank you!

From: Eric J. Deitrick

Sent: Monday, April 11, 2022 10:57 AM

To: Wendy E. Heckman < Wendy. E. Heckman@opds.state.or.us>

Cc: Judy <judy@jdsnyder.com> **Subject:** RE: Investigator Requests

Wendy -

I am not sure where things stand, but I wanted to forward along the attached information for the investigator in response to her request. To emphasize what I told the investigator, I have specific authority in my role as general counsel, and below is a summary of action I have taken in my role. There are other investigator requests outstanding, but I am awaiting direction from you and Steve on how to proceed.

Thanks, Eric

Contracts:

I play in role in contracts, but I do not decide who gets or loses contracts. To that end, the following contracts have not been renewed since I've been in my role:

• ence

•	
•	

Complaints Received:

The agency receives complaints about attorneys, and there is a policy on how the agency adjudicated complaints. Attached is the policy, along with some examples of recent agency responses to complaints. In my role, I can take agency action in response to complaints. Since being here, the agency has taken the following action:

•	
•	
•	

Non-Attorney Experts and Vendors:

Attorneys need non-attorney professionals to help them work cases, and OPDS funds that work. In my role, I can decide whether the agency should fund a particular vendor. Since being here, the agency has taken the following action:

•	
•	

Bar Complaints:

I have filed two formal bar complaints since being in my role at OPDS:

•	
•	

Eric J. Deitrick
General Counsel
Oregon Office of Public Defense Services
eric.j.deitrick@opds.state.or.us
503-378-2750
503-910-0434 (cell)

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From: NOTES:CN=Elizabeth N Wakefield/O=OPDS

To: <u>Eric J. Deitrick</u>

Cc: Shelley A. Dillon; Stephanie R Petersen

Subject: Re: [FWD: Re: New Attorney -

Date: Tuesday, August 28, 2018 1:09:42 PM

Well, as it stands, she is not qualified. She needs to practice under someone.

Sent from my iPhone

On Aug 28, 2018, at 1:04 PM, Eric J Deitrick < <u>Eric.J.Deitrick@opds.state.or.us</u>> wrote:

I guess my question is, if they need an attorney, why don't they just bring her into the consortium? The ONLY reason not to is so that can take a cut off the top.

Eric J. Deitrick
Deputy General Counsel
Office of Public Defense Services
503-378-2750

eric.j.deitrick@opds.state.or.us

Elizabeth N Wakefield---08/28/2018 12:18:55 PM---From: Elizabeth N Wakefield/OPDS To: Eric J Deitrick/OPDS@opds

From: Elizabeth N Wakefield/OPDS To: Eric J Deitrick/OPDS@opds

Cc: Shelley A Winn/OPDS@opds, Stephanie R Petersen/OPDS

Date: 08/28/2018 12:18 PM

Subject: Re: [FWD: Re: New Attorney -

I was googling and looking at oeci.

She might have been at a firm for a brief time. Passed the bar in 2017.

It might be a very thin felony qualification. I can't tell.

Sent from my iPhone

On Aug 28, 2018, at 11:49 AM, Eric J Deitrick < <u>Eric.J.Deitrick@opds.state.or.us</u>> wrote:

Last week, she wanted to be appointed on a case. She was retained, but said that tried the case once, it was a mistrial, and she wasn't required per her retainer agreement to retry the case, so she wanted to be appointed. When I explained that her continuation as counsel, or withdrawal as counsel, was a court matter, and that she could move to withdrawal, and ask to be appointed, she seemed perplexed. Anyway, it was an odd phone call with her being frustrated that we weren't solving her problem . . .

Eric J. Deitrick

Deputy General Counsel Office of Public Defense Services 503-378-2750

eric.j.deitrick@opds.state.or.us

Elizabeth N Wakefield---08/28/2018 11:45:46 AM---From: Elizabeth N

Wakefield/OPDS To: Eric J Deitrick/OPDS@opds

From: Elizabeth N Wakefield/OPDS To: Eric J Deitrick/OPDS@opds

Cc: Shelley A Winn/OPDS@opds, Stephanie R Petersen/OPDS

Date: 08/28/2018 11:45 AM

Subject: Re: [FWD: Re: New Attorney -

How were they weird?

Sent from my iPhone

On Aug 28, 2018, at 11:42 AM, Eric J Deitrick

< <u>Eric.J.Deitrick@opds.state.or.us</u>> wrote:

I agree. I don't believe 's going to have an office anymore, so I don't know who will be sharing space with.

Plus, I have already had two interactions with that were not normal, including one last week . . .

Eric J. Deitrick Deputy General Counsel Office of Public Defense Services 503-378-2750

eric.j.deitrick@opds.state.or.us

Elizabeth N Wakefield---08/28/2018 11:39:47 AM---From: Elizabeth N Wakefield/OPDS To: Eric J Deitrick/OPDS@opds

From: Elizabeth N Wakefield/OPDS
To: Eric J Deitrick/OPDS@opds
Cc: Shelley A Winn/OPDS@opds, Stephanie R Petersen/OPDS
Date: 08/28/2018 11:39 AM
Subject: Re: [FWD: Re: New Attorney -

I'm worried that she will get tons of cases and little guidance. I wonder if this is a call to the contract administrator?

Sent from my iPhone

> On Aug 28, 2018, at 10:30 AM, Eric J Deitrick < Eric.J.Deitrick@opds.state.or.us> wrote:

> Shelley -- Can you reply that subcontracts need

approval from OPDS, and we will be reviewing whether a subcontract is appropriate. > Stephanie -- Can we add this to the next contracts meeting? > Thanks, > Eric > Eric J. Deitrick > Deputy General Counsel > Office of Public Defense Services > 503-378-2750 > eric.j.deitrick@opds.state.or.us > > From: Shelley A Winn/OPDS > To: Eric J Deitrick/OPDS@OPDS, Elizabeth N Wakefield/OPDS@OPDS > Date: 08/28/2018 10:22 AM > Subject: Fw: [FWD: Re: New Attorney -> > Shelley Winn > Senior Contracts Analyst > Office of Public Defense Services > 503-378-2355 > ----- Forwarded by Shelley A Winn/OPDS on 08/28/2018 10:08 AM -----> From: " "Shelly Winn" <Shelley.A.Winn@opds.state.or.us> > Date: 08/27/2018 04:06 PM > Subject: [FWD: Re: New Attorney -> > Please see the attached Attorney Qualification who will be a contract form for attorney working with > The contents of this e-mail message and any

From: NOTES:CN=Elizabeth N Wakefield/O=OPDS

To: <u>Eric J. Deitrick</u>
Cc: <u>Shelley A. Dillon</u>

Subject: Re: Follow up conversation concerning qualifications

Date: Monday, November 19, 2018 7:59:43 AM

It is my understanding that she was qualified sometime early in 2018 and received appointments per Washington county court appointments. This includes juvenile dependency cases. I'm not sure she is getting anything that is not a dependency case. She is listed as juvenile lesser felony and juvenile midso. I'm less worried about that since I know that some spractice is to keep most delinquency matters herself. I think she probably is lesser felony qualified. She has tried at least one case as attorney to a jury.

I'd like to see her in action. I haven't heard anything from anyone that specifically questions her ability. Shelley and I are in Multnomah county the week after the holiday. Maybe she will have some court hearings that we can observe.

Liz

Elizabeth N. Wakefield

Deputy General Counsel

phone: 503.378.2700

cell: 503.949.0836

Office of Public Defense Services

1175 Court Street N.E.

Salem, OR 97301

From: Eric J Deitrick/OPDS

To: Shelley A Winn/OPDS@opds

Cc: Elizabeth N Wakefield/OPDS@opds

Date: 11/16/2018 03:37 PM

Subject: Re: - follow up conversation concerning qualifications

I don't understand - is she taking cases she is not qualified for?

Sent from my iPhone

On Nov 16, 2018, at 2:46 PM, Shelley A Winn < Shelley.A.Winn@opds.state.or.us > wrote:

Had a conversation with Ms. this afternoon- and let her know that we are aware of her qualifications and are aware the case types she is taking at this time.

Perhaps we should revisit an official notice from our office when folks rank up or add casetypes.

Thanks.

Shelley Winn Senior Contracts Analyst Office of Public Defense Services 503-378-2355 From: <u>Eric J. Deitrick</u>

То:

Cc: Shelley A. Dillon; NOTES:CN=Elizabeth N Wakefield/O=OPDS@OPDS

Subject:

Date: Thursday, January 3, 2019 2:24:32 PM

AI --

This is a follow-up to our conversation this morning about OPDS's position on Ms. scurrent caseload.

We have entered into a contract with the and to provide legal counsel to clients over a two year period, and Ms. scases were assigned to additional funding to Ms. to continue working on those cases, either by contact or statute, and we do not intend to.

Additionally, our correspondence regarding Ms. squalifications and subcontracting with the PDC makes it clear that we approved her qualifications for juvenile representation on the condition that she receive mentorship and supervision. It does not simply qualify her to handle juvenile cases, and based on our initial considerations, as well as the information we have gained about her performance over the past several months, we would not authorize her for these case types unless she continued to be mentored and supervised by a qualified juvenile dependency attorney.

I hope things work out smoothly on your end. Please let me know if you need additional information.

Thanks,

Eric

Eric J. Deitrick
General Counsel
Office of Public Defense Services
503-378-2750
503-910-0434 (cell)
eric.j.deitrick@opds.state.or.us
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From: NOTES:CN=Elizabeth N Wakefield/O=OPDS To: Eric J. Deitrick; Shelley A. Dillon, Subject: update Monday, January 7, 2019 2:23:11 PM Date: t/c with I returned a call to asserted that she accepted a job on Thursday. She said that she was called on Friday by the firm and told that OPDS had said she could not do any juvenile cases. I told her that OPDS had certified her to do dependency work under the supervision of an experienced dependency lawyer. She asserted that Eric Detrick had told the potential employer that OPDS would not certify her to do any juvenile work. I repeated the above. I asked if she had spoken directly to Mr. Detrick. She said she had not. I clarified that she was relying on the statement of the prospective employer. She said that she believed that they were disappointed to not be able to hire her but that they told her they had talked to OPDS and that they were told that there was an investigation underway in Multnomah and could not hire her. She would like OPDS to reach out to her possible employer to clarify her qualifications. seemed to confuse the issues of certification and the issues of keeping her old cases. I said that these were two separate issues. I reminded her that OPDS deals with qualifications to represent court appointed cases. I reminded her that separate contracts govern the business practices and appointments. I told her that OPDS had been assured by the that they would be keeping the juvenile cases. could not manage all these cases. I told her that our She became a bit upset that information was from the consortium as a whole would be keeping the cases.



3. I asked Ms. about her appointment to (multiple Robb 1 w/FA, burg case with 2 codef.) I asked if she had been appointed to a M¹¹ case. She said the court appointed her because she was already appointed on several cases for the client. She told me that she had been retained by the client on a misdo and then the court kept appointing her on other cases. She said that she was not present at the arraignment when the court appointed her on this M11 cases. She said she had spoken to "Shelley" about this and thought it was clarified.

I told her that OPDS did not believe that she was qualified to represent a client on a M11. I told her that I was letting her know that we would be contacting the court to notify the court of the mistaken appointment. She said the client would be retaining her. I said that a client has the right to make that decision. I reiterated that I was letting her know as a courtesy so she wouldn't be surprised by any communication from the court about this appointment.

She eventually asked how I found out about the M11. I told her that OPDS had received information on Friday that she was appointed to a M11. I told her that I ran a report in OECI under her name and was surprised to see her appointed to a multiple count M11 case. I told her that I was aware that she was not qualified for M11. She let me know that she really cares about her clients. I told her that it was not my impression that she didn't care about her clients. My concern was that she is a very new attorney and not experienced enough to handle M11 cases. She said she thought she would be certified after the beginning of February when she has another felony trial. I again told her to review the certification rules. She assured me that she has a group of experienced attorneys in Washington County who she can go to with questions.

She asked if she was going to be blackballed by OPDS because she worked for a local I told her that OPDS is interested in the qualifications and certification of representation. We want lawyers who are motivated to do this work and who are interested in developing their legal skills to pursue the best outcome for their clients. OPDS is not interested in blackballing any lawyers.

we signed off.

Elizabeth N. Wakefield

Deputy General Counsel

phone: 503.378.2700

cell: 503.949.0836

Office of Public Defense Services

1175 Court Street N.E.

Salem, OR 97301



From: Eric J. Deitrick

Sent: Wednesday, May 20, 2020 2:22 PM

To: Caroline Meyer < Caroline.E.Meyer@opds.state.or.us>

Cc: Erica Herb < Erica. Herb@opds.state.or.us>; Whitney A. Perez < Whitney. A. Perez@opds.state.or.us>

Subject: RE: Attorney Qualifications and Standards -

Well, since we did approve her, let's just keep it as is until something in writing causes us to change our mind. I am going to do my follow up . . .

Eric J. Deitrick
General Counsel
Office of Public Defense Services
eric.j.deitrick@opds.state.or.us
503-378-2750
503-910-0434 (cell)

From: Caroline Meyer < Caroline.E.Meyer@opds.state.or.us>

Sent: Wednesday, May 20, 2020 2:20 PM

To: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us >

Cc: Erica Herb Erica.Herb@opds.state.or.us; Whitney A. Perez WhitneyA.Perez@opds.state.or.us;

Subject: FW: Attorney Qualifications and Standards -

This is the email I sent her confirming the change to add major felonies. We don't have a separate category for M11 in the database. Is she okay to take A&B felonies?

Caroline

From: Caroline Meyer < Caroline.E.Meyer@opds.state.or.us>

Sent: Wednesday, November 6, 2019 10:15 AM

То

Subject: Re: Attorney Qualifications and Standards -

Hi

Your qualifications in our database have been updated to include major felonies.

Regards,

Caroline

Caroline Meyer Senior Public Defense Analyst Office of Public Defense Services (503) 378-2508

From:

To: <u>Caroline.E.Meyer@opds.state.or.us</u>, <u>Caroline.meyer@opds.state.or.us</u>, <u>Billy.J.Strehlow@opds.state.or.us</u>,

Eric.J.Deitrick@opds.state.or.us, Attorneys Opds Attorney@opds.state.or.us>

Date: 10/21/2019 11:25 AM

Subject: Attorney Qualifications and Standards -

Hello,

Please find attached my updated application for Attorney Qualifications and Standards. Because of the precarious nature of our consortium contracts, time is of the essence.

Please let me know if you have any questions.

Sincerely,

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[attachment "Attorney Qualification - PUBLIC DEFENSE SERVICES COMMISSION.pdf" deleted by Caroline E Meyer/OPDS]

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From: Eric J. Deitrick Er c.J.De tr ck@opds.state.or.us

Subject: RE: Attorney Qua ficat ons and Standards -

Date: May 20, 2020 at 2:00 PM

To: Er ca Herb Er ca.Herb@opds.state.or.us, Wh tney A. Perez Wh tney.A.Perez@opds.state.or.us, Caro ne Meyer

Caro ne.E.Meyer@opds.state.or.us

I think one of us should reach out to

the TCA. I can do that. I will report back . . .

Eric J. Deitrick General Counsel Office of Public Defense Services <u>eric.j.deitrick@opds.state.or.us</u> 503-378-2750 503-910-0434 (cell)

From: Erica Herb < Erica. Herb@opds.state.or.us>

Sent: Wednesday, May 20, 2020 1:36 PM

To: Eric J. Deitrick <Eric.J.Deitrick@opds.state.or.us>; Whitney A. Perez

<Whitney.A.Perez@opds.state.or.us>; Caroline Meyer <Caroline.E.Meyer@opds.state.or.us>

Subject: RE: Attorney Qualifications and Standards -

Here is her qualification pdf from the database. I think that I approved her for major felonies last fall – I am almost positive that we chatted about it when you got back before I approved her because I knew that you had concerns about her. I am sorry if I didn't. Should we take more formal steps to reduce her qualifications?

Erica Herb
Deputy General Counsel
Office of Public Defense Services
198 Commercial St SE, Suite #205
Salem, OR 97301
erica.herb@OPDS.state.or.us
503-378-2447
971-600-4032 (cell)

From: Eric J. Deitrick < Eric J. Deitrick@opds.state.or.us>

Sent: Wednesday, May 20, 2020 1:32 PM

To: Erica Herb < Erica. Herb@opds.state.or.us>: Whitney A. Perez

<Whitney.A.Perez@opds.state.or.us>; Caroline Meyer <Caroline.E.Meyer@opds.state.or.us>

Subject: RE: Attorney Qualifications and Standards -

I can't remember honestly. Maybe we did say it was ok. But the longer she stays somewhere, the more the complaints follower her. Honesty is currently a concern in Also, she has a '17 bar number . . .

Exhibit 13, Page 1 of 3

ED

Eric J. Deitrick General Counsel Office of Public Defense Services eric.j.deitrick@opds.state.or.us 503-378-2750 503-910-0434 (cell)

From: Erica Herb < Erica.Herb@opds.state.or.us>

Sent: Wednesday, May 20, 2020 1:30 PM

To: Eric J. Deitrick < Eric J. Deitrick@opds.state.or.us >; Whitney A. Perez

< <u>Whitney.A.Perez@opds.state.or.us</u>>; Caroline Meyer < <u>Caroline.E.Meyer@opds.state.or.us</u>>

Subject: RE: Attorney Qualifications and Standards -

Wait, did I end up approving her for BM11 cases? Remember when she hounded me in the fall about her qualifications and then I chatted with one of the judges out there, who proceeded to pick me apart for wanting to check on her references? I didn't check the database, but I might have approved her to handle them...I don't remember what she requested. I do remember that the judge was highly complimentary of her and thought that she was a great attorney. I am checking the database now.

Erica Herb
Deputy General Counsel
Office of Public Defense Services
198 Commercial St SE, Suite #205
Salem, OR 97301
erica.herb@OPDS.state.or.us
503-378-2447
971-600-4032 (cell)

From: Eric J. Deitrick < Eric J. Deitrick@opds.state.or.us>

Sent: Wednesday, May 20, 2020 1:27 PM

To: Whitney A. Perez < Whitney.A.Perez@opds.state.or.us >; Erica Herb

<<u>Erica.Herb@opds.state.or.us</u>>; Caroline Meyer <<u>Caroline.E.Meyer@opds.state.or.us</u>>

Subject: RE: Attorney Qualifications and Standards -

Caroline -

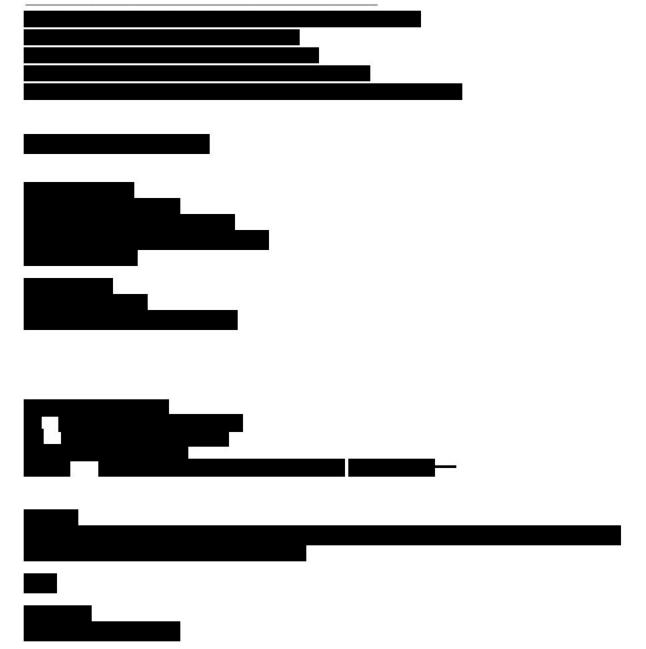
Please don't share with but the County DA has contacted me about She's been on our radar since she was practicing in Washington County. She then went to Multnomah, and then We have had a ton of issues with her, particularly on the issue of honesty.

The DA let me know that is doing BM11 cases. I remember saying that she wasn't qualified. But as I searched my emails, the below thread is what I found. Maybe we forgot to address it.

I don't want her handling BM11 cases. There are far too many red flags right now. Can you contact the TCA or whoever does case assignment?

Thanks, Eric

Eric J. Deitrick General Counsel Office of Public Defense Services eric.j.deitrick@opds.state.or.us 503-378-2750 503-910-0434 (cell)





Fwd: **County OPDS Defense Contracts**

2 messages

Fri, Feb 7, 2020 at 2:05 PM

FYI

Get Outlook for iOS

From: Eric.J.Deitrick@opds.state.or.us < Eric.J.Deitrick@opds.state.or.us >

Sent: Fridav. February 7, 2020 1:45 PM

Subject: Fw: County OPDS Defense Contracts

As you represent I am responding to you. We are not going to be conducting any sort of investigation on this matter. Let me know if you have any questions . . .

Thanks, **Eric**

Eric J. Deitrick General Counsel Office of Public Defense Services 503-378-2750 503-910-0434 (cell)

eric.j.deitrick@opds.state.or.us





FW: OPDS Letter to Ms.

Follow up

Wed, Mar 24, 2021 at 11:15 AM



From: C. Lane Borg <Lane.Borg@opds.state.or.us> Sent: Wednesday, March 24, 2021 11:08 AM



Based on my review of our records I believe that the \$100/hr as was previously being billed is appropriate and so I am gran ing that request and directing our staff to note hat for hourly billing on these cases after the contract time expires, April 30th. As we discussed on the phone Ms. will need to submit an NRE request if appropriate for legal assistant time that is beyond normal office support. Those request will be evaluated on their own merit.

Lane Borg

Executive Director

OPDS

[Quoted text hidden]

Subject: Date: From:	Fwd: TIME SENSITIVE Re: Notice of Adjustment on VP Tuesday, January 11, 2022 at 10:23:39 AM Pacific Standard Time
From: Date: Tue, Ja Subject: TIM To: Accounts	an 4, 2022 at 10:22 AM IE SENSITIVE Re: Notice of Adjustment on VP S Payable Mailbox < Accounts Payable@opds.state.or.us > , Sandra R. Warden Varden@opds.state.or.us > , Megan A. Doak < Megan.A.Doak@opds.state.or.us > < Stephen.I.Singer@opds.state.or.us >
Hello.	
drops my pro	e attached adjustments with an incorrect rate applied in case eviously agreed \$100 hourly rate to \$75 for work on that case beginning 7/21 on the reported direction and her supervisor.
4/30/21, wh on 3/31/21 t Deitrick and	cases beginning after contract I worked under was ended. Please see attached email from Lane Borg sent to my counsel, confirming the \$100 rate effective after 4/30/21. As you can see, Mr. other OPDS staff were cc'd on this communication with confirmation from Mr. Borg staff would to follow the \$100 rate.
corrected im	534,000 in pending billing with OPDS, and anticipate this same error will be applied to those cases unless nmediately. I rely on this billing to be paid to pay my bills. Without payment, my personal and business e jeopardized.
women cont	lirector Singer, given there is an ongoing current investigation regarding disparate treatment and pay for tractors with OPDS currently underway, and he should be aware of the ongoing exposure. Please provide n of receipt of this information and resolution of the billing rate error.
On Tue, Jan	4, 2022 at 9:13 AM Accounts Payable Mailbox < <u>AccountsPayable@opds.state.or.us</u> > wrote:
Dear Pro	vider:
	nd attached to this email a Notice of Adjustment to a fee statement you recently submitted to the Public Defense Services for payment.
Reconsid	deration Requests can be submitted within 60 days of the date your Notice of Adjustment

Billy Strehlow

From: Eric J. Deitrick

Sent: Thursday, January 28, 2021 2:08 PM

To: Billy Strehlow
Cc: Megan A. Doak
Subject: RE: PCR Appointment

I don't have a problem with it . . .

Eric J. Deitrick
General Counsel
Office of Public Defense Services
eric.j.deitrick@opds.state.or.us
503-378-2750
503-910-0434 (cell)

From: Billy Strehlow <Billy.J.Strehlow@opds.state.or.us>

Sent: Thursday, January 28, 2021 2:08 PM

To: Eric J. Deitrick < Eric.J.Deitrick@opds.state.or.us> **Cc:** Megan A. Doak < Megan.A.Doak@opds.state.or.us>

Subject: RE: PCR Appointment

What about the rate increase to \$105?

Billy Strehlow
Program Analyst 4
Office of Public Defense Services
Contract Services
198 Commercial Street SE, Suite #205
Salem, OR 97301
www.oregon.gov/OPDS/
(503) 910-5049

. ,

From: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us>

Sent: Thursday, January 28, 2021 2:07 PM

To: Billy Strehlow < <u>Billy.J.Strehlow@opds.state.or.us</u>> **Cc:** Megan A. Doak < <u>Megan.A.Doak@opds.state.or.us</u>>

Subject: RE: PCR Appointment

I think OPC is probably at capacity with Ramos work, so routing this somewhere else is probably a good idea . . .

Eric J. Deitrick
General Counsel
Office of Public Defense Services
eric.j.deitrick@opds.state.or.us
503-378-2750
503-910-0434 (cell)

From: Billy Strehlow < Billy.J.Strehlow@opds.state.or.us >

Sent: Thursday, January 28, 2021 1:29 PM

To: Eric J. Deitrick < Eric J. Deitrick@opds.state.or.us <a href="mailto:Cc: Megan A. Doak < Megan.A.Doak@opds.state.or.us">Megan.A.Doak@opds.state.or.us

Subject: FW: PCR Appointment

Hi Eric and Megan, Thoughts? Does OPC need cases? Regards, Billy

Billy Strehlow
Program Analyst 4
Office of Public Defense Services
Contract Services
198 Commercial Street SE, Suite #205
Salem, OR 97301
www.oregon.gov/OPDS/
(503) 910-5049

From:

Sent: Thursday, January 28, 2021 1:20 PM

To: Billy Strehlow < Billy.J.Strehlow@opds.state.or.us >

Subject: PCR Appointment

Hi Billy,

I represented in federal court on a gun charge that was inextricably tied to an Attempted Murder charge in Multnomah County. His state case () went to trial, is close to concluding direct appeal () and is headed to PCR. Ideally, I would like to get appointed on his PCR but I am not able to work for the guideline rate. Is it possible to get appointed to his PCR and also to request a rate increase to \$105? I have a very good working relationship with as well as an understanding of the state case, which I believe will result in a savings to OPDS.

Finally, if you are not the one to speak to about this will you please direct me to the appropriate person.

Thank you,



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From: "Stephen I. Singer" < Stephen.I.Singer@opds.state.or.us>

Date: January 5, 2022 at 8:05:16 PM PST

Cc: "Megan A. Doak" < Megan.A.Doak@opds.state.or.us >, "Ralph H. Amador"

< Ralph.H.Amador@opds.state.or.us >, "Karla A. Bethell" < Karla.A.Bethell@opds.state.or.us >, "Eric J.

Deitrick" < Eric.J.Deitrick@opds.state.or.us>

Subject: RE: Billing Issues

Ms. at this point we are just going to have to agree to disagree. I have carefully reviewed Mr. Borg's March 24, 2021 email and thoroughly reviewed the matter with OPDS staff. I interpret Mr. Borg's reference in the March 24, 2021 email to "these cases" as referring to cases that you were assigned pursuant to the contract that expired on 4/30/21. To interpret it the way you suggest would mean that Mr. Borg's email would bind the Agency to pay you at the rate of \$100/hour for any work you do on any OPDS cases forever. I do not believe that is a correct interpretation. In any event, I do not believe that Mr. Borg or any Agency E.D. has the authority to bind a state agency including OPDS in that way essentially to a contract at a particular rate "forever" out into the future.

I also want to assure you that I have no reason to disagree with you regarding your qualifications, experience, skill and success as an attorney litigating habeas and pcr conditions cases. If you want to take a stab at drafting a proposal for a contract going forward in order to handle these cases on a longer term basis (e.g. for 1 year, 6 months or 2 years or whatever time period you believe makes sense) please feel free to do that and submit it to me and I'd be happy to review it myself as well as with others internally and externally and then schedule a time to sit down with you and discuss your proposal. I obviously can't promise that we'll be able to ultimately reach an agreement but I am more than happy to entertain any reasonable proposal, evaluate it as thoroughly as I can and then sit down with you and discuss it. Just let me know.

So that summarizes where we stand and how we are currently going to proceed going forward. Again, if you want to come up with an alternate proposal for handling cases going forward, please do so and send it to me and I will evaluate it and be happy to discuss it with you. I very much appreciate the work you do on behalf of your and OPDS clients and hope that we can continue to work together going forward. Best,

Stephen Singer (he/him)

Executive Director

Office of Public Defense Services

198 Commercial St. SE #205

Salem, OR 97301

Cell: (503) 871-0987

From:

Sent: Wednesday, January 5, 2022 1:09 PM

To: Stephen I. Singer < Stephen.I.Singer@opds.state.or.us

Cc: Megan A. Doak < Megan.A.Doak@opds.state.or.us >; Ralph H. Amador

< Ralph.H.Amador@opds.state.or.us >; Karla A. Bethell < Karla.A.Bethell@opds.state.or.us >; Eric J.

Deitrick < Eric. J. Deitrick@opds.state.or.us >

Subject: Re: Billing Issues

You don't often get email from

Learn why this is important

d you

and OPDS with the March 2021 confirmation email from Lane Borg yesterday which states I would be paid \$100 per hour for habeas covid cases in recognition of my expertise. There was no time-based qualification the rate would change, as stated in your email. To now pay me a lesser rate retroactively would renege on this agreement and deprive me of payment for my labor as agreed.

On the basis of the March 2021 agreement for a \$100 rate, I took habeas covid cases I would not have at \$75 per hour. I would not have turned down more lucrative work in reliance on the agreement with OPDS in March 2021 that appears from your email to now be the plan with retroactive application.

The \$100 rate was agreed to because I am the most experienced and successful attorney in the state litigating habeas cases. I have changed the law during my short time in this practice area, and am more than deserved of the \$100 rate previously agreed to for this case type. Refusing to honor prior agreements regarding my pay rate would be a mistake.

I understand you are new to OPDS, and receiving information that may not be accurate internally. I have reached out to speak more with you and hope to develop a better relationship with you than your predecessors. I hope that can happen.

On Wed, Jan 5, 2022 at 12:41 PM Stephen I. Singer < Stephen.I.Singer@opds.state.or.us wrote:

Ms. — I am communicating with you directly because I and others within OPDS have received communications directly from you. In addition, although I understand that Ms. at some point represented you in connection with some matter involving OPDS but I have no idea whether Ms. or any other attorney currently represents you. If you are represented and would like us to communicate directly with that person, just have that person send me an email directly letting me

know that and I and OPDS will communicate directly through that person.

That said, here is where we are at. I need you to send a list of the open cases that you had through OPDS as of 4/30/21. I emphasize that the list needs to be only open cases as of that date. All of the cases that you got through OPDS that were open as of 4/30/21 and that you performed legal work on after 4/30/21 you will be paid at the hourly rate of \$100/hour. Any cases that you got through OPDS after 4/30/21 you will be paid at the hourly rate of \$75/hour. For all cases that you got through OPDS after 4/30/21 it is YOUR responsibility to submit to OPDS through Megan Doak the appointment order from the Court. We cannot pay you for any of your bills for any of your case after 4/30/21 without an appointment order in our files so you will need to provide that in order to any payments to be approved for cases that you got after 4/30/21. This is not necessary for cases that you got prior 4/30/21.



PLEASE NOTE: I am out of the office due to the current installment of the apocalypse. Any communications intended to reach me timely should be sent by email. Thank you and take care.

Page 3 of 4



Covid 19 cases going to

Eric J. Deitrick < Eric J. Deitrick @opds. state.or,us>

Wed, Apr 29, 2020 at 3:23 PM

To: Kaila A Beine Kkaila A Beine Mopds state oruse.

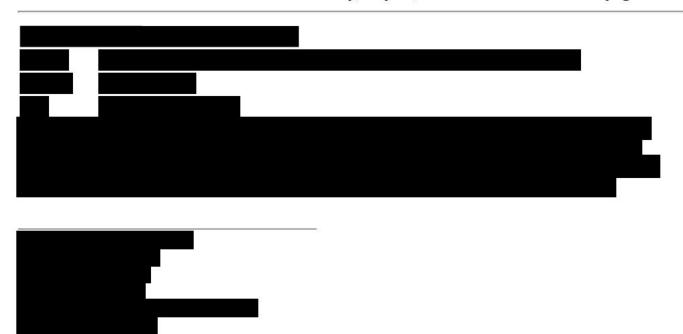


Yes. You can bill on an interim basis for the Habeas cases you are being assigned. And we did agree on \$100/hour. The attorneys who pick up the slack on these cases can bill at \$75/hour. I have cc'd our accounts payable peeps to let them know...

Thanks,

Eric

(Quoted text hidden)



Pronouns: She/Her/Hers

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From: Sent: Wednesday, May 31, 2023 9:55 AM

To: Laurie Bender < Laurie. Bender@opds.state.or.us>

Subject: Re: you're it

Hi Laurie.

I realized after receiving your message yesterday I have already relied on the permission granted to receive attny fees by OPDS and taken actions based on that representation from OPDS. It would be detrimental to the case to have to undo the actions taken and would be used by the defendant's counsel to disadvantage the attorney fees application. I will need to continue to rely on the prior practice and your initial affirmation of that practice to avoid disadvantage.

let me know if you have any questions or we should talk more by phone. Thank you.



Pronouns: She/Her/Hers

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From:

Sent: Tuesday, May 30, 2023 2:43 PM

To: Laurie Bender < Laurie.Bender@opds.state.or.us >

Subject: Re: you're it

Thanks for letting me know the updates. My application for the attny fees is due next week, so request an answer asap.

Given the deadline, the review process likely needed for a policy change would not be complete in time. I would ask OPDS to continue its prior de facto policy in the meantime of the attny fee award going solely to me, in this case.

Thanks.



Pronouns: She/Her/Hers

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From: Laurie Bender < Laurie. Bender@opds.state.or.us>

Sent: Tuesday, May 30, 2023 11:45 AM

To:

Subject: RE: you're it



I need to walk back my earlier email (see below) on the attorney fees award in your habeas case. There is some question about whether there is a policy in place for this circumstance. I understand that you did receive the attorney award in a case you handled under an agreement with OPDS. I will keep you apprised of the situation.

Also, for your information, I did submit a request for funding under this grant program for a habeas training. I will also let you know if this idea gets any traction from the Executive team.

Laurie

From: Laurie Bender

Sent: Tuesday, May 23, 2023 3:49 PM

To:

Subject: RE: you're it



Yes, you are entitled to the attorney fees awarded by the Court. I confirmed with Budget and Finance that you should receive the attorney fees awarded by the Court associated with the noncompliance litigation and the finding of bad faith on the part of the state.

Sorry for the delay.

Laurie

From:

Sent: Tuesday, May 23, 2023 3:41 PM

To: Laurie Bender < Laurie.Bender@opds.state.or.us >

Subject: Re: you're it

Hey Laurie.

Any word yet? Working on a deadline so appreciate letting me know soon as can.

Thanks!



Pronouns: She/Her/Hers

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From: Laurie Bender < Laurie. Bender@opds.state.or.us>

Sent: Friday, May 19, 2023 12:01 PM

To:

Subject: Re: you're it



Let me check with General Counsel on the fee issue. I will get back to you on Monday.

Laurie

Get Outlook for iOS

From:

Sent: Friday, May 19, 2023 8:50:25 AM

To: Laurie Bender < Laurie.Bender@opds.state.or.us >

Subject: Re: you're it

Hi Laurie.

Good talk yesterday. Excited for the prospect of offering a solid habeas training. Would this be a CLE? Or training for newbies? Or combo? I think would be able to cover material in under 3 days, but will get better sense once work out an outline.

I forgot to also bring up that I was awarded attny fees in a habeas case where ct found ODOC acted in bad faith by refusing to implement terms of habeas settlement. J. Souede allowed for 60 % of attny fees for associated noncompliance litigation. I won the same type of award in another case, a couple years ago. The agreement with OPDS was that the fee award would all go to me, not OPDS. Wanted to confirm that is still the case.

Thanks!



Pronouns: She/Her/Hers

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From: Laurie Bender < Laurie. Bender@opds.state.or.us >

Sent: Thursday, May 18, 2023 3:31 PM

O Initial D

Subject: Re: you're it

I will try to call you after 4 pm. I am in the PDSC Meeting, which may go beyond 4. I will keep

Subject: RE: Declaration for Habeas case -

Date: Thursday, June 1, 2023 at 1:48:12 PM Pacific Daylight Time

From: Eric J. Deitrick

To: Hall David

Attachments: 2023_Hourly Agreement.pdf

Here you go . . .

It says in paragraph 4 that the rate is \$105/hour, although I think she accepted the case the year before at a rate of \$100/hour.

Eric

Eric J. Deitrick General Counsel Oregon Public Defense Services Commission eric.j.deitrick@opds.state.or.us 503-378-2750 503-910-0434 (cell)

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Thank you!

From: Hall David <david.hall@doj.state.or.us>

Sent: Thursday, June 1, 2023 11:34 AM

To: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us>

Subject: RE: Declaration for Habeas case -

Hi Eric -

Are you willing to sign a declaration as to the \$100 rate? Or provide the contract?

Thanks, David

David Hall

Senior Assistant Attorney General Oregon Department of Justice Civil Litigation Section Trial Division

Work Cell - 971-375-5410

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From: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us >

Sent: Thursday, June 1, 2023 11:18 AM
To: Hall David < david.hall@doj.state.or.us >
Subject: RE: Declaration for Habeas case -

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David -

I cannot sign a declaration in this case. We do not have a contract term or a written policy addressing the issue of attorney fees. Additionally, prior to our talking, our office had already communicated to that we were ok with her receiving the fees, rather than the agency. If this continues to be an issue, we should consider creating a policy or contract term to address it. But absent that, and given our prior communication with we cannot weigh in.

I can confirm for you that her public defense hourly rate for this case is \$100/hour.

Thanks, Eric

Eric J. Deitrick General Counsel Oregon Public Defense Services Commission eric.j.deitrick@opds.state.or.us 503-378-2750 503-910-0434 (cell)

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Thank you!

From: Hall David <<u>david.hall@doj.state.or.us</u>>
Sent: Thursday, May 25, 2023 4:38 PM

To: Eric J. Deitrick < Eric J. Deitrick@opds.state.or.us

Cc: Albee Cole I < cole.i.albee@doj.state.or.us >

Subject: Declaration for Habeas case -

Hi Eric -

I've attached a draft copy of the declaration you indicated you'd be willing to sign for this case. Please let me know if you have any questions and of course feel free to change, add or omit anything you want. I've attempted to draft this in accordance with our conversation last week but I may have some of the details wrong. I've also attached the attorney fee statement Ms. has sent me for fees related to the motion in this case. If you are able to share any other information with me, I'd appreciate it but I want to make clear that I'm not asking for anything that may be confidential. I haven't practiced in this area before so I'm not sure of how OPDS works in regards to paying attorneys for their work.

Thanks, David

David Hall

Senior Assistant Attorney General Oregon Department of Justice Civil Litigation Section Trial Division Work Cell - 971-375-5410

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From: <u>Laurie Bender</u>
To: <u>Jessica Kampfe</u>

Subject: FW: Declaration for Habeas case - **Date:** Monday, July 10, 2023 3:32:00 PM

Jessie -

I don't believe that I was provided the declaration prepared for Eric to sign, but it was determined that he should not sign any declaration, and further that he should respond that our agency had already approved her receiving the award. Eric provided the DOJ attorney with the rate of compensation for Ms. work in this habeas matter. In hindsight, it would have been best if we had included Ms. in the communications.

Laurie

From: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us>

Sent: Thursday, June 1, 2023 11:18 AM **To:** Hall David <david.hall@doj.state.or.us>

Subject: RE: Declaration for Habeas case -

David -

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Thanks, Eric

Eric J. Deitrick
General Counsel
Oregon Public Defense Services Commission
eric.j.deitrick@opds.state.or.us
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Thank you!

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Sent: Thursday, May 25, 2023 4:38 PM

To: Eric J. Deitrick < Eric.J. Deitrick@opds.state.or.us> **Cc:** Albee Cole I < cole.i.albee@doj.state.or.us>

Subject: Declaration for Habeas case -

Hi Eric -

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Thanks, David

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