



Via email to OPDS Executive Team

October 5, 2022

Public Defense Services Commission (PDSC)
Office of Public Defense Services (OPDS)

RE: Request for PDSC to take immediate actions with investigation and audit of concerns involving retaliation and pay equity shared by women defense attorneys; requests regarding selection process of next Executive Director

Dear Members of the Public Defense Services Commission,

The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights with more than 28,000 members statewide.

In this letter, we share with you information about an investigation started by OPDS leadership in fall 2021, which appears to have stalled sometime in 2022, and request that you take immediate actions to get this investigation re-initiated and finished.

- **In fall 2021, OPDS's interim executive director started an investigation after PDSC was alerted about serious concerns shared mostly by women defense attorneys; that investigation appears to have stalled during 2022.**

During 2021, ten people – mostly women defense attorneys – communicated with the ACLU of Oregon about OPDS culture. Nine of these people shared serious concerns about OPDS based on their personal experiences, and one person shared that a public defense attorney they were familiar with had experienced serious concerns. The concerns shared were in two main areas; (1) that many of these individuals had faced serious situations of retaliation from OPDS, including multiple situations of retaliation by the same leadership-level male employee of OPDS, after they expressed serious concerns about or related to OPDS, and (2) that several of these individuals had experiences indicating pay equity issues at OPDS, *i.e.*, that there appeared to be systemic issues of OPDS paying women defense attorneys less pay than male defense attorneys for comparable work.

More than one year ago – in August 2021 – we communicated with PDSC about these serious concerns, and we asked PDSC to initiate an investigation and audit of these concerns by engaging a neutral investigator.

In response, Edward Jones – the interim Executive Director at that time – engaged an investigator with support from the Oregon Department of Justice. Both Mr. Jones and the investigator communicated with us and others that the concerns were being taken seriously and that people with potentially relevant information were encouraged to speak with the investigator.

Unfortunately, we have received information from several people involved in the investigation process that the investigation appears to have stalled at some point during 2022. When we asked the investigator for a process update, DOJ confirmed to us that the investigation was on pause. It remains unclear why the investigation was stalled or when it will be re-initiated.

- **Under its legal charge, it is important for PDSC to ensure that this investigation is finished and that findings of the investigation are appropriately addressed.**

Under Oregon law, the legal charge of PDSC includes the following:

“Ensure compensation, resources and caseloads are in accordance with national and regional best practices.”

“Establish operational and contracting systems that allow for oversight, ensure transparency and stakeholder engagement and promote equity, inclusion and culturally specific representation ...”¹

To carry out these components of its charge, it is important for PDSC to ensure that complaint and investigation processes at OPDS are working effectively.

Oregon’s Bureau of Labor and Industries also emphasizes the importance of oversight and actions by senior leadership. In a handbook about Oregon’s Whistleblower law – which protects those under contract with a state agency as well as public employees – BOLI strongly encourages the following best practices:

“Only an open commitment from senior leadership and supervisors can provide whistleblowers with effective protection against retaliation.”

“Whistleblowers will only come forward if there is an internal speak-up culture.”

“Anonymous whistleblowing will solicit more frequent high-quality disclosures.”

“A transparent investigative process will instill confidence in whistleblowers and help improve the public agency.”

“Only proactive efforts will prevent retaliation.”

“Whistleblowers will only come forward if they know how.”

“Monitor progress in a way that encourages disclosures.”²

Consistent with PDSC’s legal charge and best practices, we respectfully request that PDSC engage in the following oversight actions as soon as possible:

1. **Request that OPDS’s executive team, Oregon DOJ, and the investigator provide PDSC with information about the current status of the investigation.** PDSC should specifically request the following information: (i) summary of the information gathered thus far by the investigator, including the number of people who

¹ See ORS 151.216; https://www.oregonlegislature.gov/bills_laws/ors/ors151.html

² See *Whistleblower Protections: Uniform Standards and Procedures Manual*, 2022 edition, at pages 13-16; <https://www.oregon.gov/boli/civil-rights/Documents/whistleblower-protections.pdf>

spoke to the investigator and the types of concerns generally shared; (ii) what stalled the investigation, what actions will be taken to re-initiate, and timeline for re-initiation; (iii) whether people have shared concerns about retaliation related to participation in this investigation; and (iv) what, if anything, has been done to address retaliation related to participation in this investigation

- 2. Direct OPDS's executive team to engage in all actions needed for the investigation to be completed in a timely manner.**
- 3. Direct OPDS's executive team to work with Oregon DOJ and the investigator to implement the following protections against retaliation:**
 - Put into place changes in processes or provide accommodations to prevent further retaliation against individuals who participate in the investigation as whistleblowers or witnesses, and provide these protections as well to those who already raised protected concerns and complaints. Such protections include changing processes so that individuals who are alleged to have engaged in inappropriate conduct do not have decision making power related to whistleblowers, witnesses, or their employers or consortia.
 - Protect whistleblowers and witnesses from retaliation by anyone at PDSC and OPDS, not just those individuals with direct decision making ability.
 - Do not disclose the identities of whistleblowers and witnesses without their consent.
 - Create clear reporting and investigation processes for further instances of potential retaliation.
 - To all participants in the investigation and all members of PDSC and employees of OPDS, provide clear information and guidance that retaliation is prohibited by law and policy and that appropriate corrective action, including disciplinary measures, will be taken if retaliation occurs.
 - Make sure there is appropriate and timely corrective action – to mitigate or reverse retaliation and to create accountability – when retaliation occurs.
- 4. Direct OPDS's executive team to work with the investigator to provide to all people who already participated in the investigation, as well as to OPDS's listservs, information about:** (i) the general status and anticipated timeline for the investigation; (ii) the protections that have been implemented to prevent or address retaliation against those who participate in the investigation; and (iii) that anyone with potentially relevant information is encouraged to speak to the investigator.

It is important for PDSC to engage in all of the above actions, including the actions needed to protect investigation participants against further retaliation. The people who spoke to us expressed significant fear that they would be subjected to retaliation – directly related to their livelihoods and professional reputations – if they spoke publicly or participated in the investigation. Unfortunately, after several of these individuals participated in the investigation, they shared with us information indicating that they may have been subjected to further retaliation due to their participation.

- **It is important for PDSC to ensure that OPDS’s complaint processes are working effectively to address all concerns that are received by the agency.**

Treating people fairly and with respect is essential to the recruitment and retention of public defense attorneys, especially attorneys with diverse backgrounds and identities. It is critical that OPDS invest in diverse leaders, employees, and contractors, including those who have received public defense services, who understand how to create a workplace culture that values people.

In addition to looking into past complaints, PDSC should ensure that OPDS establishes and implements clear and consistent policies and practices that create clarity for providers about how to seek review of potential unfair treatment. Another aspect of the complaints we have heard is that a lack of process means that people may be directed to the very person who is causing the harm. Building and implementing a better complaint infrastructure can ensure that concerns raised by providers are reviewed, investigated, and addressed in a consistent, equitable, and timely manner.

- **In selecting the next Executive Director, PDSC should prioritize all the core competencies needed in the position and use a transparent and rigorous selection process.**

As PDSC engages in processes to select the next Executive Director, PDSC should prioritize all of the following core competencies:

1. Demonstrated history of values-aligned work, including direct and substantial understanding and experience with Oregon’s public defense system and supporting the clients the system serves.
2. Proven competent senior-level leadership and management of an agency or organization, including proven ability to effectively design and implement change management processes.
3. Proven ability to establish effective work and professional relationships.
4. Proven ability to communicate effectively.
5. Proven commitment to and competence in implementing policies and practices that improve diversity, equity, belonging, and inclusion in and related to the workplace.

All of these competencies are needed in the Executive Director position, and there must be a careful and intentional assessment about whether a candidate has **proven** experience or ability in each area.

To build understanding, trust, and support for the hiring and selection process — which will also help build trust and support for the person selected for the Executive Director position — PDSC should be transparent about the selection process. This includes sharing information about who will make the final decision, whether persons other than the decision makers will be involved in making recommendations and who those persons are, and what criteria will be used to assess candidates and how the criteria will be prioritized in selecting a final candidate.

PDSC should also ensure that a rigorous reference checking process is utilized, including providing a process for all people with relevant information to provide input as part of the reference process. A rigorous reference checking process is important so that PDSC can assess whether candidates have **proven** abilities in each competency area and whether there are any potential red flags that must be understood and seriously considered.

- **The next Executive Director must be supported for success.**

Our culture has a tendency to expect individual leaders to be saviors to fix an entire system or organization. This is not reasonable or realistic. We cannot expect any one person to fix the consequences of systemic and decades-long underinvestment in public defense and other resources needed by lower-income and other historically-disenfranchised communities, as well as the consequences of over policing and prosecution of these same communities.

The next Executive Director must be provided the support and resources needed for success. This support is needed not just from PDSC and the staff at OPDS but from the State, legislators, the public defense community, and the public at large.

Instead of expecting the next Executive Director to an individual savior, all must be engaged in the efforts to create a just and equitable criminal legal system that meets the constitutional rights of Oregonians.

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We trust that PDSC will take all necessary next steps to investigate the concerns that we have shared with you on behalf of multiple public defense attorneys, implement necessary protections against retaliation, and engage in corrective actions as appropriate.

We also trust that PDSC will prioritize all the core competencies needed in the Executive Director position, utilize a transparent and rigorous selection process, and provide the next ED with the support and resources needed for success.

If you have any questions, please contact us at [REDACTED] or [REDACTED].

Thank you,



Sandy Chung
Executive Director
ACLU of Oregon



Kelly Simon
Legal Director
ACLU of Oregon

Enclosures: Letter to PDSC dated August 11, 2021

Cc: OPDS Executive Team – Brian Deforest ([REDACTED]), Laurie Bender ([REDACTED]), Shannon Flowers ([REDACTED])