



August 11, 2021

Public Defense Services Commission (PDSC)
Office of Public Defense Services (OPDS)
1175 Court Street NE
Salem, OR 97301

RE: Request for PDSC to initiate an investigation and audit about concerns of retaliation and pay equity shared by women defense attorneys

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. The purpose of this letter is to share with you serious concerns that we have received from multiple women defense attorneys about OPDS.

The U.S. Constitution and Oregon law guarantee everyone accused of a crime the right to have an attorney – even if they can't afford it. To support this fundamental constitutional right of public defense in the state of Oregon, PDSC has the responsibility of establishing and maintaining the public defense system for the entire state court system in Oregon, which responsibility includes oversight of OPDS, and OPDS has the responsibility of handling the day-to-day management of the public defense system.

Multiple women defense attorneys have spoken with the ACLU of Oregon about their experiences in the following areas: (1) that they 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, and (2) concerns about pay equity, *i.e.*, that there appear to be systemic issues of OPDS paying women defense attorneys less pay than male defense attorneys even though the women defense attorneys are doing comparable work.

We ask that PDSC immediately initiate an investigation and audit of these concerns about retaliation and pay equity at OPDS. An investigation and audit by a neutral investigator are the appropriate and necessary responses when these types of serious concerns are raised about a public agency.¹ As well, under applicable laws and ethical standards, PDSC should ensure that a neutral investigation and audit are conducted in a timely manner in order for PDSC to meet its governance responsibilities.

¹ <https://sos.oregon.gov/audits/Documents/2020-34.pdf>;
<https://www.oregon.gov/boli/civil-rights/Documents/whistleblower-protections.pdf>

Under Oregon's Whistleblower Law, public employees and those under contract with the state or any agency have the right to report waste, fraud, abuse, and other workplace violations without fear of retaliation.² However, the women defense attorneys who spoke to us expressed significant fear that they would be subjected to further retaliation – directly related to their livelihoods and professional reputations – if they spoke publicly or participated in an investigation about their experiences of retaliation and pay inequity with OPDS.

For an investigation to be done effectively, individuals and witnesses must feel safe with their participation in the investigation. In order to encourage individuals to participate in the investigation, we ask that PDSC implement the following best practices and protections against further retaliation³:

- 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.
- Have all investigations and audits done by an independent, third party investigator who is knowledgeable about gender/sex related discrimination, pay equity audits, and trauma-informed investigation practices.

It is extremely concerning that attorneys who are versed in the law and vigorous advocates for their clients are expressing significant levels of fear about sharing OPDS-related concerns. Therefore, it is very important that PDSC share information about the investigator, investigation process, and the protections against retaliation in a public and transparent manner.

We trust that PDSC will take appropriate next steps to investigate the concerns we have shared with you, implement necessary protections against retaliation, and engage in corrective actions as appropriate.

² <https://www.oregon.gov/boli/civil-rights/Documents/whistleblower-protections.pdf>

³ See *id.* for best practices from BOLI.

If you have any questions, please contact us at schung@aclu-or.org or ksimon@aclu-or.org.

Thank you,



Sandy Chung
Executive Director
ACLU of Oregon



Kelly Simon
Legal Director
ACLU of Oregon

Cc: Edward Jones, Interim Executive Director, Office of Public Defense Services

Oregon Bureau of Labor & Industries (Val Hoyle, Commissioner; Cristin Casey, Interim Administrator, Civil Rights Division)

Oregon Secretary of State (Shemia Fagan, Secretary of State; Audits Division)

Oregon State Bar (Helen Hirschbiel, Chief Executive Officer; David Wade, President, Oregon State Bar Board of Governors)

Oregon Legislators (House Speaker Tina Kotek; Representative Janelle Bynum, Chair of House Committee on Judiciary; Senator Betsy Johnson, Co-Chair of Joint Committee on Ways & Means; Senator Floyd Prozanski, Chair of Senate Committee On Judiciary and Ballot Measure 110 Implementation; Representative Dan Rayfield, Co-Chair of Joint Committee on Ways & Means; Senator Elizabeth Steiner Hayward, Co-Chair of Joint Committee on Ways & Means)