

**PUBLIC DEFENSE SERVICES COMMISSION - CLACKAMAS COUNTY
SERVICE DELIVERY PLAN – October 2010**

**1. OPDS Report to the Public Defense Services Commission On Service
Delivery in Clackamas County
(July 2009)**

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services.

Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems.

The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report like the initial version of this document.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve another important function. They provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements.

From 2004 through 2010, the Commission completed investigations of the local public defense systems in thirty Oregon counties.

PDSC's Preliminary Investigation in Clackamas County

In February 2009 OPDS Executive Director Ingrid Swenson, accompanied on some interviews by OPDS General Counsel Paul Levy and Clackamas County CBS Analyst Amy Jackson, visited with stakeholders in Clackamas County. In addition to talking to PDSC's contractors in the district, they met or spoke by phone with six of the Circuit Court judges, a pro tem judge, the District Attorney and his chief deputy, the Citizen Review Board coordinator, two DHS managers, the Juvenile Department Director, the CASA director, and one of the Assistant Attorneys General assigned to the area.

The initial version of this report set forth the information obtained in those interviews and recommended areas of further inquiry for Commissioners at the March 12, 2009 meeting in Oregon City. The final version of the report incorporates information provided at that meeting and at a number of subsequent hearings. It also includes a service delivery plan for Clackamas County.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district turns out to be the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for a particular area.

OPDS's Findings in Clackamas County (Judicial District No. 5)¹

The Circuit Court and the District Attorney

There are eleven Circuit Court judges in Clackamas County. Judge Steven Maurer is the presiding judge. Judge Deanne Darling is the primary juvenile court judge. The Trial Court Administrator is Mari Miller. The County has seven specialty courts.

John Foote is the District Attorney and Greg Horner is his chief deputy. There are currently 29 deputies and the number of positions is expected to remain stable. While, as noted below, the defense bar rarely adds new lawyers, the District Attorney's office does have turnover in its staff and has become the point of entry for new attorneys seeking criminal law experience in the county.

Procedure in criminal cases

There are five special courts for criminal cases. The adult drug court is designed for defendants with significant, long-term drug or alcohol addiction. A guilty plea is required for the defendant to participate in the program. One Clackamas

¹ The data and information included in this report was current as of the time it was presented to the Commission and was not updated prior to finalization of the report and approval of the service delivery plan in October of 2010.

Indigent Defense Consortium (CIDC) attorney is assigned to cover the drug court. The mental health court is limited to defendants charged with non-violent offenses whose behavior is principally attributable to mental illness rather than substance abuse or anti-social behavior. There is also a DUI Court, a community court and a domestic violence deferred sentencing program. CIDC lawyers cover these courts as well.

A consortium attorney is present in court for felony and in-custody misdemeanor arraignments. Each case is generally assigned to a particular attorney on the same day as the arraignment. That attorney checks for conflicts, and if a conflict is found the case is reassigned to another consortium attorney.

Arraignments for clients who are in custody, either at the Clackamas County Jail, at the Inverness Jail in Multnomah County or in a state correctional facility², are generally done by video. Only a few prisons (such as the Columbia River Correctional Institute) do not have video capacity.

Three of the Clackamas County courtrooms are fully wired for video appearances and there is a portable "polycom" unit that can be used in other courtrooms. While the capacity for confidential communication between attorneys and clients is limited, the video system is used principally for routine appearances.

The county uses a master calendaring system. There is a court liaison team which includes CIDC, the district attorney's office, the bar president, the trial court administrator and the judges which addresses system issues on a regular basis. Based on the recommendation of this group the county has been using a "case manager" system for scheduling criminal cases since 2003. Except for serious cases such as Measure 11 cases, the parties are expected to resolve cases or set them for trial by the 35th day after the first appearance. The district attorney's office is required to include a settlement offer when it provides discovery to the defendant. Motions must be filed 21 days before trial and are generally heard on Mondays. There is no trial docket call but lawyers are required to notify the court 24 hours in advance whether their cases will actually be going to trial.

The state issues subpoenas in only about 15% of criminal cases. The trial rates in Clackamas County, however, are higher than the statewide average.³

Clackamas County is growing and the court anticipates that the criminal caseload will continue to grow as well. Jail capacity has been an issue in the county. In 2005, the Circuit Court judges sitting en banc issued an order prohibiting the

² Arraignments from the state institutions are usually on warrants.

³ From January 1, 2008 through June 30, 2008 the statewide trial average for felony cases was 5.4% and for misdemeanors, 4.4%. In the same period the trial rates in Clackamas County were 7.1 for felonies (39 to the court and 37 to juries) and 6.7% of the misdemeanors (53 court and 87 jury).

sheriff from closing additional beds. After the voters approved a levy in November of 2006 the Clackamas County Board of County Commissioners unanimously agreed to devote \$50 million towards construction of a new adult jail and to construct the first phase of an expanded jail at another site with a planned completion date of 2010. There are currently approximately 400 jail beds available in the county.

OPDS contracts with CIDC to handle 6,844 cases per year. CIDC is currently just slightly under quota. The district attorney's office notes arrest rates have been fairly constant for the past eight years in Clackamas County even though the crime rate appears to be dropping.

Procedure in juvenile cases

The Clackamas County Juvenile Court is located with other county offices in a group of buildings several miles from the County Courthouse. Mondays and Thursdays are the principal juvenile court days, although preliminary hearings are held daily as needed. There are two juvenile drug courts, the juvenile dependency drug court and the delinquency drug court. Both meet on Wednesdays and are staffed by Independent Defenders, Inc. (IDI) attorneys. Citizen Review Board hearings are held on Tuesdays.⁴

Attorneys are not present for shelter hearings in juvenile dependency cases. Attorneys generally receive notice of their appointment, however, on the same day as the shelter hearing. Dependency cases are scheduled for "judicial review of the petition" 30 days after the shelter hearing. This hearing serves as a settlement conference. Once jurisdiction is established (either by trial or by admission) a review is scheduled before the Citizen Review Board at five months. Upon the court's instruction, the CRB focuses its attention at this hearing on creating a realistic concurrent plan to be implemented if the primary plan (usually of return to parent) cannot. Since these hearings are scheduled with input from the attorneys, attorneys are almost always present. The court then conducts a review at approximately eight months and a permanency review at thirteen months. A second CRB review occurs prior to the permanency hearing at ten months. This hearing is scheduled at the time of the first CRB review, which, again, allows attorneys to participate in the selection of the hearing date. There are two DHS offices in Clackamas County, the North Clackamas office and the Oregon City office. Both DHS offices are reputed to do a good job of transitioning cases from the initial protective services worker to the on-going worker, both of whom usually appear at the dispositional hearing. There is an

⁴ Clackamas County is one of a very few counties where the Citizen Review Board has been able to schedule its hearings to accommodate attorneys' schedules. Instead of having review dates scheduled automatically in accordance with the DHS calendar, the Clackamas Board schedules its hearings at the time of disposition when the parties and their attorneys are present. The second review is scheduled at the time of the first review. The Citizen Review Board of Washington County has also moved to this system and the Marion County CRB is exploring the use of a similar system in that county.

active CASA program in the county and individual CASAs are assigned in approximately 60% of the cases.

Ellen Crawford is the Juvenile Department director. There are twenty-three counselors who work under her supervision. This department makes extensive use of formal accountability agreements and other informal approaches based on a comprehensive case management system. Low risk youth are generally referred to diversion programs. Higher risk youth are referred to juvenile counselors who may still recommend a formal accountability agreement. There are three deputy district attorneys assigned to juvenile court cases. It is the district attorney's office that files the petition after receiving the police reports from the juvenile department in those cases in which adjudication is sought.

An attorney from IDI is present for delinquency preliminary hearings. At the preliminary hearing the court sets an "adjudication and disposition" hearing approximately 30 to 60 days later. If the youth wants a trial the attorney notifies the court of the need for a trial date. Few youth remain in custody pending trial. The county has access to fourteen detention beds at the Donald E. Long facility in Portland. Youth are rarely held for more than a few days.

The delinquency drug court currently has fifteen clients. The program serves youth who are fourteen to eighteen years old. The drug court team continues to refine the structure and operation of the court.

Probation violations are used sparingly in Clackamas County juvenile court, and only after other alternatives are exhausted except in cases of new criminal activity or a significant risk to public safety. Attorneys are notified when informal sanctions are imposed on their clients.

Public defense contractors

There are two public defense contractors in Clackamas County, the Clackamas Indigent Defense Consortium (CIDC) which contracts with PDSC to handle criminal cases, and Independent Defenders, Inc. (IDI) which contracts for juvenile and civil commitment cases.

CIDC

CIDC has 27 members. It has a board of directors, five of whom are permanent members. All members are currently consortium attorneys. The board was recently restructured when two of its permanent members resigned. Their positions were taken by two younger members. The board has a president who serves at the pleasure of the board. The current president is Brad Jonasson. Every year two members of the board are replaced with other non-permanent members. CIDC operates under written bylaws; executes written agreements with members and has a manual for attorneys.

Ron Gray is the administrator of the consortium. Mr. Gray serves on two advisory groups to OPDS, has served on site review teams, and, at OPDS's request, prepared a list of best practices for consortia which is attached as Exhibit A. CIDC uses a portion of its PDSC funds for administrative functions and sets aside a certain amount to cover supplemental compensation for lawyers who handle particularly complex cases. Mr. Gray is assisted by Janan Billesbach, who has worked for the consortium for many years. Currently she is partly retired but continues to work half time from her home where she has a dedicated phone line and computer and is able to make consortium appointments on a daily basis.

The consortium president has assumed responsibility for creating an attorney evaluation process. He has assembled a committee which is working on a questionnaire to be sent to clients and a questionnaire to be sent to system representatives. Among the factors that will be analyzed in terms of attorney performance will be trial rates.

The work of the consortium was reviewed by an OPDS site team in 2004. OPDS has also conducted two statewide surveys that included Clackamas County. In the most recent of those surveys, the respondents were principally the local Circuit Court judges. They described the work of CIDC on average as good. Comments noted that the range of skill varied from one attorney to another and that there was some frustration with the less skilled attorneys.

Comments received by OPDS staff prior to this review from members of the local criminal justice system indicated that: CIDC has a lot of very good, experienced attorneys; they maintain a good relationship with the district attorney's office and the court; the county is fortunate to have them; Ron Gray is responsive to concerns from the bench and court staff; the consortium is able to provide mentoring when attorneys need it; the judges' workload is very high in Clackamas County and it is very helpful to have a provider that is as flexible as CIDC; it would help to have more attorneys; members cooperate with the court to make the system work, as does the district attorney's office; CIDC has also been a "partner" in the creation and operation of the treatment courts. Although there is a range of quality, on the whole it is very good with only a couple of attorneys who are problematic. CIDC attorneys are, on average, significantly more experienced trial attorneys than deputy district attorneys in the county.⁵

IDI

⁵ Only 4 of CIDC's attorneys were admitted to practice within the last 15 years; more than half the members have been practicing for 25 years or longer.

There are currently eleven attorneys in the consortium. Most of them have been part of the consortium for more than 20 years⁶. The consortium has a board of three members, one of whom is not a consortium member. The consortium has hired a former DHS worker who uses her expertise as a child welfare specialist to assess child clients' circumstances, advise attorneys about appropriate services for children, review DHS files and otherwise assist attorneys in representing children. The consortium does not sponsor trainings for its members. Members are active participants in juvenile court system-wide meetings and trainings, however.

Marty Cohen is the administrator of the consortium. Concerns about performance by consortium members are brought to his attention. He handles delinquency cases and staffs the juvenile drug court. He and the attorney with whom he shares office space both have a significant private practice.

In view of the declining juvenile caseload⁷, Mr. Cohen has advised other members of the consortium to take on private cases.

OPDS conducted a quality assessment site review of IDI in 2007. Responses to the 2008 statewide survey indicated that representation provided by this group varied from good to excellent in both dependency and delinquency cases. Caseloads were deemed to be "about right to somewhat too large" in dependency cases and "about right" in delinquency cases. Specific comments noted that most juvenile lawyers were involved in other kinds of practice and that too often they met clients at the courthouse, did not meet with foster parents and didn't have sufficient contact with clients.

Comments received during visits to the county by OPDS staff prior to this review indicated that the juvenile attorneys are "top notch" and do a great job; some of them have too many court appearances although this is getting better as the caseload declines. (It was acknowledged that their income from public defense cases has declined and that they are probably required to do other kinds of cases. It was also noted that they do a good job of making sure that someone appears for them if they cannot be present for a hearing, although the substitute attorney does not always have the needed information.) One commentator said OPDS should make sure attorneys understand the extent of their duties to clients, especially with respect to contacting them and keeping them informed about the status of the case. It was also suggested that OPDS consider changes in how it compensates lawyers in dependency cases. Some attorneys believe they get paid only for attending hearings, not for continuing representation of the client while the case is open. It was also recommended that the consortium consider terminating one of its members. Marty Cohen is generally considered to

⁶ One of the senior attorneys is currently training a new lawyer in juvenile representation however.

⁷ All categories of juvenile cases appear to be declining in the county. In the calendar year 2008, the consortium received credit for a total of 2,574 cases.

be responsive to concerns about members and willing to intervene. Another commentator noted that some of the attorneys are very effective at getting appropriate services for their clients while others seem disengaged. Some attorneys meet with foster parents, others don't. Some children are reportedly not seen by either their attorneys or their caseworkers.

One of the effects of limited attorney availability is the lack of representation at shelter hearings in dependency cases. DHS indicates that this is a disadvantage to the consortium's clients because DHS cannot work closely with the parents until the parents have met with their attorneys and decided whether or not to contest the petition and whether or not to cooperate with DHS in service planning. If attorneys were present at shelter hearings they could also argue against removal or in support of a particular placement.⁸

Many attorneys apparently do not have sufficient time to meet with their clients before the judicial settlement conference. While it is reported that attorneys are generally familiar with the case and the documents prepared by DHS, they often have not discussed the case with their clients before the court hearing.

Attorneys do participate on a regular basis in child safety meetings. Now that the Oregon Safety Model⁹ is in place, decisions about placement are generally not made at these hearings but attorneys who are very committed, especially to child clients, nevertheless attend and participate. It was reported that it would be helpful to have one of the attorneys specialize in the representation of older children who will transition out of foster care to independent living.

In delinquency cases, the quality of representation is rated fairly high even though it was reported that lawyers don't always meet with their clients prior to the adjudication and disposition hearing and that there are few motions filed and few trials. It was also reported that the attorneys' level of experience and good working relations with the juvenile department, the district attorney's office and the court are appreciated.

OPDS's recommendations for further inquiry at PDSC's March 12, 2009 meeting in Oregon City

Based on the information provided to OPDS during its visit to Oregon City, OPDS recommended that the Commission consider the following in developing a service delivery plan for Clackamas County.

⁸ It should be noted that despite the absence of attorneys at these hearings they can sometimes be quite lengthy when the court requires DHS to produce evidence of the need for removal and proof that reasonable (or active) efforts have been made to prevent removal as required by ORS 419B.150.

⁹ The Oregon Safety Model approach to child protection was adopted by DHS in March of 2007.

The structure

The current system includes two consortia, with overlapping membership, that handle criminal and juvenile cases, respectively. The structure appears to be working satisfactorily although a number of commentators point to the need for additional attorneys and for better quality monitoring.

Attorney evaluation

While CIDC attorneys are given credit for providing high quality representation in most cases, some of the judges express concern about the attorneys' availability, about the need to be bringing in and training new attorneys to eventually replace current members, and about the need to consider removing some consortium members on performance grounds. As the Commission is aware from its service delivery reviews in other areas of the state, one of the weaknesses of the consortium model is that consortia often lack a system for evaluating the work of the attorneys and methods for addressing underperformance. It appears that CIDC is undertaking to create such a system. Ron Gray and CIDC have provided statewide leadership on quality assurance procedures. The Commission may want to follow closely the development of an attorney evaluation process in this county as a possible model for use by other consortia around the state.

Need for Additional Attorneys/Compensation

In Clackamas County, there is a significant discrepancy between the general assessment that the lawyers in juvenile cases are skilled and experienced and the frequent observation that they are not having timely and adequate communication with their clients.

In juvenile cases, the need for attorneys to handle cases in addition to their public defense caseloads may affect their availability for court hearings and the ability of some of them to provide appropriate representation. It appears that the principal dilemma for these providers is that PDSC's case rates do not permit attorneys to limit their caseloads and add new members without finding supplementary sources of income. Significant additional funding for juvenile representation as proposed in PDSC's Policy Option Package No. 100 and SB 450 sponsored by Sen. Jeff Kruse¹⁰ may be needed to ensure that attorneys are meeting their obligations to their clients.

While the burden of high caseloads is understood, attorneys should not allow their caseloads to prevent them from attending shelter hearings, meeting with clients before court hearings, meeting with youth, child clients and foster parents,

¹⁰ SB 450 proposes an increase in funding to PDSC specifically for the purpose of improving representation in juvenile dependency cases.

litigating motions to suppress and taking other actions that may be necessary for good representation.

If current funding undermines attorneys' ability to comply with PDSC contract provisions regarding timely contact with clients, representation at hearings and the like, the contractor needs to raise these issues with the Commission and with OPDS prior to and during contract negotiations.

Summary of Testimony at March 12, 2009 PDSC Meeting

Mari Miller, the Trial Court Administrator for the Clackamas County Circuit Court welcomed Commissioners and guests to the court. She noted that her staff was occupied with planning for Friday court closures. She said that the court has worked effectively with public defense providers to resolve issues before they occur. She noted that her court has the highest number of cases per judge in the state.

Chair Ellis said that the Commission is engaged in a process of reviewing the delivery of services throughout the state and has taken the approach that each community is different and its public defense needs may be different too. The Commission's two goals for public defense are quality and economy. He noted that Clackamas County is the only remaining metropolitan county that has a single provider system and the Commission would like to make sure that the single consortium model is the appropriate one.

Barbara Johnson testified that she is the Executive Director of the CASA program in Clackamas County. She said that she has met with the juvenile consortium administrator in the past to discuss issues that arise between CASA volunteers and attorneys for parents and children. She spoke to a number of experienced CASA volunteers to obtain their comments for the Commission. CASA volunteers commented that attorney caseloads are high and that, although attorneys can make a real difference, they sometimes lack passion, don't return calls, are less zealous when they represent children than when they represent parents, often meet their clients just before court and fail to bring any original information to the court. Attorneys don't regularly attend child safety meetings but do attend CRB reviews. Ms. Johnson suggested that a CASA be appointed in every case and that counsel be appointed only upon request of the CASA or other party. Ms. Johnson said that the decline in the dependency caseload in Clackamas County coincides with the implementation of the Oregon Safety Model and that the decline may be the result of the way the model has been implemented in the county.

Commissioner Welch noted that Oregon has a significantly higher rate removal for children from their homes than most states.

Mike Clancy and Gay Canaday testified that they were part of the original group of four lawyers that founded the Independent Defenders, Inc. (IDI), a consortium that is the sole contractor in the county for juvenile public defense cases and civil commitment cases. IDI has a rotating system for case assignments. Most attorneys handle both dependency cases (parents and children) and delinquency cases. Most civil commitment cases are assigned to Ms. Canaday. Consortium attorneys also cover the juvenile drug court. Most members of the group have been practicing for twenty years or more. Consortium members have brought in some younger attorneys recently, however. Mr. Clancy has mentored one of the newer members. He said the consortium needs to do a better job of bringing new people in.

Ms. Canaday said that consortium's eleven members bring with them different kinds of expertise. Some members have expertise in criminal cases or in domestic relations cases; one member has expertise in social security benefits and Ms. Canaday has expertise in handling mental health cases. The benefit of having this expertise available probably outweighs the scheduling challenges that arise with attorneys who have other kinds of practices. She said that IDI attorneys love their juvenile work and that that is a key to good representation. She said that IDI has a board of directors of four members including three senior IDI attorneys and one CASA. The board meets quarterly and IDI members meet at least quarterly as well. She believes IDI attorneys get along well with CASA volunteers, who have a different perspective than the attorneys.

Mr. Clancy said that IDI had met with the CASAs to discuss their relationship and other issues. He said that attorneys sometimes have difficulty reaching their clients before hearings, despite efforts to do so. Time frames for hearings are short and don't always allow the attorney time to meet with the client. Some appointments occur just prior to hearing dates. Most attorneys send letters to clients immediately after receiving notice of appointment by fax.

Chair Ellis inquired how the consortium deals with members who have performance issues.

Mr. Clancy said that they use progressive sanctions. The organization lacks a full-time administrator and probably needs to have better procedures in place. Over the years there has not been a need for progressive sanctions because of the experience level of the attorneys. If there are problems, board members talk to the attorney about them.

Ruth Boen, who serves as administrative staff to IDI said that the consortium is responsive to complaints. After discussing calendar management problems with one attorney and providing him specific guidelines, the board sent him a letter setting forth its expectations. She also noted that in addition to the new attorney who was mentored and trained by Mr. Clancy, another young attorney received the same kind of training in another member's office.

In delinquency cases, Mr. Clancy said that there was a period of time when the district attorney's office was objecting to formal accountability agreements (FAA) even in cases in which DA approval was not needed. After a discussion with the juvenile department, circumstances have improved and juvenile court counselors will sometimes agree to FAAs without the district attorney's agreement. Another approach that attorneys for youth have taken is to ask that a case be set out for trial for a long enough period to complete needed services.

Mr. Clancy said that the perception some people reported about attorneys not having contact with delinquency clients was a misconception. Detained youth are held in Multnomah County which does make it more difficult for attorneys to see clients in person. In dependency cases, IDI has hired a retired DHS worker as an investigator who sees children in foster care and prepares a written report that is provided to the court and DHS. DHS workers are not always seeing children as often as they are supposed to or seeing them outside the foster home.

Both Ms. Canaday and Mr. Clancy said that contact with OPDS has been satisfactory. Ms. Canaday expressed a desire to have access to a list of expert witnesses in termination of parental rights cases to supplement the short list that they are currently working from.

Judge Deanne Darling is the principal juvenile court judge in Clackamas County. She outlined the schedule of juvenile court hearings and noted that attorney availability is a major issue for her in trying to schedule juvenile court matters in a timely way.

She said that the IDI attorneys are very experienced, very efficient and very cohesive in terms of being willing to cover for each other. When lawyers cover for each other, however, they may not know the case. She said that it would help if lawyers in the juvenile consortium were not also taking cases from the criminal consortium because of schedule conflicts. She also suggested that consideration be given to creating a regional contract office that specialized in termination of parental rights. With respect to a public defender office handling part of the juvenile caseload, she said that the consortium has benefits with respect to the management of conflicts.

Judge Darling said that all but possibly one of the consortium attorneys is capable and well informed and that they do a good job of understanding the difference in their role when representing young children and representing older children. She believes they may need to do better outreach in order to have earlier contact with their clients and noted that it is rare that attorneys provide any first hand information or reports to the court regarding any of their clients.

Ron Gray, the administrator of the Clackamas Indigent Defense Consortium (CIDC), said that the consortium was started in 1983 and grew over time. The consortium now has 27 members who are on rotating lists for case assignments. There are separate lists for probation violations, misdemeanors, Ballot Measure 11 cases and homicides. Cases are assigned on a rotating basis, except that if an attorney with special qualifications is available a case may be directed to that attorney outside the rotation. Substitutions do not cost the state any additional funds in Clackamas County since only the second attorney is paid. There is a provision in the CIDC contract that permits attorneys to share the payment but it is rarely used, most attorneys believing it evens out over time. With respect to substitutions due to attorney/client incompatibility, the court usually lets a defendant know when the state will provide one more attorney but only one. Within the consortium there are three members who volunteer to accept appointments for these clients.

Mr. Gray noted that five of the current Circuit Court judges are alumni of CIDC. He said that currently the District Attorney's office perceives the defense as an enemy. CIDC was able to work more effectively with previous district attorneys.

Contrary to a statement in the draft report, Mr. Gray said that CIDC has brought in some new and younger lawyers. The consortium has an apprentice program for new attorneys. New attorneys have to find a mentor lawyer within CIDC to serve as a resource. Only some of the apprentice attorneys are given a position with CIDC.

Five or six of the 27 members handle just criminal cases. Other members have mixed practices and some serve as prosecutors and judges in municipal courts. For most CIDC lawyers 50% or more of their practice is in CIDC cases. This means that most members have a variety of skills that may be needed in particular cases. It also gives members a balanced view of the larger system and makes them more effective in settling cases.

Chair Ellis recalled that several years ago the United States Department of Justice explored the antitrust implications of CIDC being the exclusive contractor for public defense services in criminal cases in Clackamas County. The issue was not pursued by the Department of Justice but Mr. Ellis inquired whether having a single provider was the best model.

Mr. Gray said that the question for the commission should be whether that model provides quality representation. He said a good consortium needs an aggressive manager who is willing to confront attorneys who are not performing satisfactorily. The operation should also be economical for the state and if the state only has to send one check per month to the consortium, it is efficient for the state. Micromanagement by the state is not necessary. If the system isn't broken you shouldn't try to fix it. A public defender office was attempted in Clackamas County in the early 1980s. Consortia have lawyers with broader

experience than public defenders and some public defenders have an adversarial relation with district attorneys.

Mr. Gray said that the consortium does not currently have a succession plan for his position, should he decide to retire. To be effective the administrator needs to be willing to be unpopular and he is not sure where his successor will come from but there are a couple of members of the group who might be good candidates.

The CIDC board of directors has five permanent and four rotating members. There was one outside board member but he retired recently and has been replaced by a CIDC member.

CIDC is working on a questionnaire for randomly polling clients about the performance of CIDC attorneys.

When a complaint is received about a CIDC lawyer, Mr. Gray usually consults immediately with the attorney. If the problem is not resolved Mr. Gray can take the matter to the board and the board decides whether or not the attorney can remain a part of CIDC. In two cases, the members resigned before the matter could be taken to the board.

Mr. Gray said that he and his staff have a good working relationship with OPDS staff.

Mr. Ellis expressed appreciation to Mr. Gray for his contributions to the public defense system as a whole.

Judge Maurer, the presiding judge of the Clackamas County Circuit Court, said that he and his colleagues have a high level of satisfaction with the operation of CIDC, especially their screening system for applicants, their level of competence and their commitment. Judges who are former CIDC members continue to have an investment in seeing that high quality public defense services are provided.

The court has been very comfortable with Mr. Gray's ability to address concerns and the mentoring that is provided by senior CIDC members. There have only been a handful of new members added because of the limited size of the group. The process for training new members is not too dissimilar from public defender office models although the public defender offices can provide a greater level of in house training and mentoring.

There will be a need to bring in more new lawyers as the older ones retire and at some point to bring in a new administrator. A more specific and comprehensive recruitment process will need to be implemented to replace retiring members. A public defender office has some advantages in terms of the incentives it can offer to a new attorney but the consortium model offers some incentives too, such as

the benefit of having a portion of a new attorney's practice guaranteed, to cover office overhead.

On the whole, this county has preferred a single provider approach. The bench in Clackamas County has been very involved in public defense and has been able to work collegially with this group.

Commission Discussion at April 16, 2009 Meeting

Ingrid Swenson summarized the testimony presented to the commission at the March meeting in Clackamas county and noted that she and Kathryn Aylward had met with Judge Deanne Darling and Marty Cohen, the administrator of Independent Defenders, Inc. (IDI), to discuss some of the issues that had been raised about the juvenile consortium, including a proposal to limit the attorneys who would be appointed to represent children to those who had provided the best quality representation. Judge Darling also recommended that PDSC consider contracting with a group of lawyers who specialize in handling termination of parental rights cases. Another proposal made at the meeting was that consortium staff appear at the shelter hearing if counsel cannot and make initial contact with the client, since delay in initial contact is seen as a significant problem. Judge Darling also suggested that the commission consider amending its contracts with providers to clarify the requirement of timely contact with clients.

With respect to Clackamas Indigent Defense Consortium (CIDC), Chair Ellis said that although it may be working well at the present time, in three or four years there might be difficulties since CIDC does not seem to be evolving. They are not bringing in new members. Intervention by PDSC may not be necessary now but might be needed in the future.

Commissioner Ozanne agreed and said that the structure of the board was particularly concerning. He said it might be appropriate for PDSC to become more proactive about board structure in defense organizations. The commission could direct that board members have staggered terms and that some portion of the board be comprised of newer members. Chair Ellis said that the most successful boards have been those whose members were appointed by external sources.

Commissioner Potter suggested beginning with small steps such as bringing in outside board members as Tom Crabtree's office has done.

Commissioner Welch asked if PDSC should include a requirement about the composition of boards in its contracts and Chair Ellis noted that encouragement to use best practices had been the Commission's approach in the past and that he is not certain that a contract provision is necessary at this time.

Commissioner Ozanne said that CIDC could be asked to create a model that could be used by other consortia.

Chair Ellis said that a third area of concern is CIDC's apparent inability to deal with underperforming attorneys. Commissioner Ozanne said that the failure to deal with this issue is usually an indication that the provider's quality assurance process needs to be reexamined.

Commissioner Potter asked if the RFP requested information about a provider's board. Kathryn Aylward responded that only the RFP for new contractors does.

Chair Ellis noted the absence of any representative from Clackamas County at this and other commission meetings and said that it may reflect the self-contained nature of the Clackamas County system. A transcript of last month's meeting and this meeting are to be sent to all consortium members and to Presiding Judge Steven Maurer. Judge Welch observed that the district attorney had not participated in the March meeting either.

Ingrid Swenson and Kathryn Aylward said that CIDC has an active mentoring program for new criminal defense attorneys and that a new lawyer had recently joined the consortium after completing the mentoring program.

With respect to IDI, Commissioner Ozanne noted that members of that group had also been absent from PDSC meetings. Their small board is also concerning. With regard to quality of representation issues, it may be time to amend the qualification standards to require that lawyers actually follow performance guidelines, not just acknowledge awareness of them. The standards should be what the commission expects contractors to do. Commissioner Welch said that quality issues in juvenile cases are of particular concern in the rural areas of the state where lawyers may need to travel long distances to meet with child clients.

Testimony and Discussion at June 18, 2009 PDSC Meeting

Ron Gray testified that nine out of the last ten lawyers who joined the Clackamas Indigent Defense Consortium (CIDC) were under the age of forty. CIDC has an active apprenticeship program with two attorneys currently serving apprenticeships. There are two major benefits to the program. It is a way for new attorneys to engage in criminal defense work and it allows CIDC to evaluate their suitability for membership in the consortium.

Commissioner Ozanne asked Mr. Gray what the Commission's role is in the operation of the consortium.

Ron Gray responded that the Commission's role is to point out areas of concern for the consortium to address. In response CIDC is addressing the structure of the board, the need to plan for a transition in the administration of the

consortium, the graying of the membership, an update and revision of the bylaws and an attorney evaluation process.

Commissioner Ozanne noted that although CIDC has been a leader in developing models for other public defense providers even it has found it difficult to apply these models to its own operation. The Commission may need to be more proactive in this regard.

Ron Gray said that CIDC is undertaking an extensive attorney evaluation process and hopes to complete evaluation of all the attorneys in the fall. The CIDC board is considering the addition of outside board members.

Commissioner McCrea asked Mr. Gray whether the CIDC board was considering eliminating the permanent board terms. He replied that if, for example, CIDC were able to identify an outside board member it should probably be for a permanent position. Permanent board members provide continuity.

Commissioner Potter inquired about the consortium's bylaws. Mr. Gray said the organization has very detailed bylaws that are being revised for the first time since they were developed over twenty years ago.

Benjamin Kim testified that he had practiced law in Los Angeles County for most of his professional career, including eleven years as a Deputy District Attorney. Wanting to move his family out of the area he was drawn to the Northwest and felt that CIDC would be a good fit for him since he did not want to become a public defender but did want to handle some public defense cases as well as start a private practice. He joined CIDC about two and a half years ago and thinks it is a very good model for the delivery of public defense services.

Ron Gray said that whenever a new attorney applies for membership in the consortium, the board has to decide whether it would be appropriate to add another lawyer at that time. Ben Kim applied after another lawyer left so it wasn't a difficult decision. He anticipates that there may be two additional vacancies arising out of the evaluation process.

Commissioner McCrea asked how cases are allocated among members. Mr. Gray responded that there are separate rotations for probation violations, misdemeanors, felonies, Measure 11 cases and homicides. The goal is to get all members qualified to handle all case types except homicides, which are the only voluntary rotation. Cases are distributed evenly for each case type. Once a year a lawyer can opt off a single case but is otherwise expected to handle all cases assigned.

Rhett Bernstein said that he is also a new member of CIDC. He began his legal career as a prosecutor in the Linn County District Attorney's Office but tired of government service and wanted to open his own practice. He enjoys

representing indigent clients but likes being able to take on other kinds of cases. He is a member of the CIDC board and also serves on the Clackamas County Bar Association Board. He has found the consortium open to younger members. With the caseload declining, however, it would be irresponsible to bring in new attorneys at this time. The original model at CIDC was for attorneys to receive no more than 50% of their income from public defense cases. Public defense cases currently account for only about 30% of his income.

Commissioner Ozanne said that he did not believe the Commission was seeking to open a public defender office in Clackamas County. The Commission would like to see the consortium live up to its potential. Without an employee/employer relationship it is difficult to enforce quality standards and it may become more difficult to sustain a mixed practice. The trend in larger urban centers has been for attorneys to specialize.

Commissioner McCrea said that Commission Chair Ellis had questioned whether the model in Clackamas County – a single provider system - was the appropriate one. She said that the Commission’s goal is to achieve quality and economy and that she is pleased with CIDC’s responses to the Commission’s concerns.

Commissioner Ozanne said that one of the benefits of a mixed model is that there is some competition, but there is no Commission agenda to develop a public defender office and he would not support it.

Marty Cohen said that the juvenile caseload in Clackamas County is declining. While attorneys have been added over the life of the contract, currently they are only replacing members who leave. One of the older attorneys recently left the consortium and a new attorney has joined after being mentored by Mike Clancey. None of the eleven current members handle only public defense cases. This gives members more flexibility and allows them to survive periods of declining public defense caseloads. While Judge Darling expressed concern about the attorneys’ availability she is aware of the benefits of having public defense attorneys skilled in other areas. With respect to the composition of the board of directors of Independent Defenders, Inc. (IDI). Three members of the board have been in place since the founding of the board. An outside member was added a number of years ago and they would like to add another non-attorney member with expertise in education issues. IDI is also considering the addition of a rotating position that would allow members to serve one year terms. The board meets quarterly and consortium members meet regularly as well.

Gay Canaday said IDI has initiated a six month pilot project in child representation. Two attorneys will specialize in handling children’s cases. They will be partnering with CASA volunteers in advocating for services for child clients. IDI attorneys are now meeting monthly with the juvenile court judge and DHS representatives. They have been working on resolving scheduling issues with the court. Contrary to a statement in OPDS’s report, attorneys are present

at all delinquency prelims. The court agrees it is not necessary for attorneys to be at dependency prelims but they are present for shelter hearings.

Commissioner Welch advised other Commissioners that she resides in Clackamas County and knows all of the IDI attorneys. She has also sat as a judge from time to time in the Clackamas County Juvenile Court. Her biggest concern has to do with the zealotness of representation in all classes of cases. Having appeared in courts across the state, she noted that there are a lot of very quiet lawyers in the courtroom in juvenile cases.

Ms. Canaday said that much of the advocacy in juvenile courts occurs outside the courthouse. In order for everyone to perform at a higher level, more time would need to be allocated to these hearings.

Mr. Cohen said that hearings that last fifteen or twenty minutes in Clackamas County might last hours in other counties. More zealous representation would require negotiating more hearing time with the court.

Commissioner Ozanne said that part of the problem is the culture that develops in a particular court. The role of attorneys shouldn't be to negotiate with judges but to strongly assert the client's rights.

Ms. Canaday noted that there have been many appeals filed by IDI attorneys in the last year. While it may not be apparent in the courtroom, attorneys are taking appropriate steps. Multiple appeals in civil commitment cases have resulted in the judicial officer now following the letter of the law.

Marty Cohen said that juvenile attorneys have to balance "best interest" and "expressed wishes" representation in juvenile cases. A similar situation exists in drug court and it would be helpful for drug court lawyers to get together to discuss some of the issues that arise there.

Ingrid Swenson said that she and Kathryn Aylward had met with Judge Welch to discuss juvenile representation issues and how to incorporate PDSC's expectations into the contracting process. She said OPDS had issued a statement on the role of counsel in juvenile cases, that the bar had updated the performance standards for juvenile lawyers and the Commission had directed public defense attorneys to observe these standards. A lot of work remains to be done, however. Both of the Clackamas County consortia have been working to address the Commission's concerns. They are both good providers and the Commission would like to help them continue to improve. She said she would prepare a draft service delivery plan for the Commission to consider.

Commissioner Ozanne said that the best plan would be to have Commissioner Welch on a permanent rotation through the state's juvenile courts. Despite his admiration for the Clackamas County contractors, they still have no regular

attorney evaluation process in place and have had difficulty dealing with underperforming attorneys. As to both evaluation procedures and board structure, it might be appropriate for the Commission to develop models. This may be a subject to be considered at the Commission retreat.

PDSC Discussion at September 10, 2009 Meeting

Chair Ellis said that after reviewing the transcript of the June meeting he was encouraged. Although Clackamas County tends to be self-contained, Ron Gray had been more forthcoming. One concern in Clackamas County is that Ron Gray has become almost indispensable. Although they have not been responsive to Commission concerns in the past they now appear more willing to respond. The board continues to be a provider only board with permanent members which is not a preferred model, but he would prefer that the Commission not force change.

Commissioner Ozanne said that Clackamas County had been held up as a model and Ron Gray has been a leader on consortium issues. While they do good work they may be Exhibit A for why the Commission needs to be more prescriptive. The Commission needs to discuss what steps it should take. Clackamas County is still struggling with how to do an evaluation and its board lacks diversity, business expertise and community involvement. At a retreat the Commission should discuss possible prescriptions regarding board makeup and standard evaluations, with accommodations for differences around the state.

Commissioner Stevens asked if there was evidence that board makeup affects a contractor's practice of law, that it affects service delivery.

Chair Ellis said it is intuitive that whoever selects Ron Gray's replacement should be a balanced body rather than a group of providers whose dominant thought is what it will mean for them.

Commissioner Ozanne said that Exhibit B for a more prescriptive model would be Ron Gray's acknowledgment that there was one attorney who shouldn't be practicing criminal law.

Commissioner Stevens said that there is a difference between Commission oversight of board makeup and the need for attorney evaluations. It is heavy handed to tell a business how it should be run but it is appropriate to tell them that they need to evaluate attorneys when we are paying the bills for those attorneys.

Chair Ellis asked if there isn't a difference between private enterprise and public service.

Commissioner Stevens said that unless it can be shown that a particular structure isn't working, the Commission shouldn't be involved with the inner

workings of a contractor.

Chair Ellis said that even evaluations might not serve their purpose if the board were composed of members who didn't want to push too hard for fear that they might be affected.

Commissioner Welch asked if the situation would be the same if we were talking about a law firm, such as the Lillegard firm [in Polk County], instead of a consortium.

Chair Ellis said that if a law firm were the sole provider in a large county, the concerns would be the same.

Commissioner Welch said that Commission Steven's concerns were more persuasive to her with respect to a law firm since in a consortium there is no real business entity or other management structure beyond a system for managing the public funds they receive.

Commissioner Stevens said that this is probably a conversation for the retreat.

Commissioner Ozanne said that in Clackamas County he observed a troubling level of synchronization with the judiciary. It is a best practice to not have the judiciary run the public defense system and we have generally struck the right balance in Oregon but Clackamas may need to be reminded of this.

Chair Ellis said he would like to schedule an updated presentation on Clackamas County to see that they had followed through on the evaluations.

Commissioner Ozanne said that in Clackamas County they seemed to be concerned that the Commission might move to a public defender model. That is not his intention. Chair Ellis said that he is more open to it.

PDSC Testimony and Discussion at January 28, 2010 Meeting

At its January 28, 2010 meeting the Commission continued its discussion on Clackamas County and received testimony from Ron Gray and Brad Jonasson, from CIDC and from Marty Cohen representing IDI. They reported as follows:

Ron Gray introduced Brad Jonasson, the chair of CIDC's board, and reported on what had occurred since PDSC's August 2009 discussion on Clackamas County. He said they had completed a judicial survey on the quality of representation provided by all of the consortium attorneys. Board members met with each attorney and discussed the information received from the survey about the attorney's performance. When the board believed that attorneys needed to improve the quality of their representation, work plans were made with follow up reports to be provided. In some cases if attorneys did not progress it was

expected that they would be terminated from consortium membership. CIDC decided to add an outside board member and selected retired Judge Raymond Bagley. Another CIDC member had recently been appointed to the bench and the consortium was considering filling that vacancy as well as the one created by a previous judicial appointment. There were two apprentice lawyers receiving training. One board member had volunteered to accompany Ron Gray to board meetings and other events in order to learn more about his administrative duties and potentially be available to succeed him as the administrator.

Chair Ellis inquired whether the CIDC board had considered adding a fully independent board member.

Ron Gray responded that there had been discussions at a number of board meetings over the qualifications for membership on the board. They decided to add Judge Bagley. He said that some members had questioned the value of having outside board members who are not familiar with the requirements of good representation, and some questioned why change was needed if CIDC was being held up as a model to others. There had been discussions at board meetings on this issue and PDSC might have to mandate the composition of boards if it is not satisfied with the members chosen by the contractor.

Commission members discussed some of the benefits of having truly Independent members such as bankers and business people. Ron Gray said the CIDC board had previously included a business lawyer. He could not think of a circumstance in which the board needed advice on issues that outside members might be more familiar with. When necessary, CIDC members had hired outside legal counsel to advise them on particular issues.

Brad Jonasson said that he understood the value of having public members on Boards and felt that the CIDC board had taken a major step by recruiting Judge Bagley.

Ron Gray said that with the time and effort that went into the attorney evaluation process the board had not had time to update its bylaws but intended to do so. He also explained how he and the board had responded in the past to reports of lawyers not providing proper representation.

Judge Steven Maurer said that the court was very satisfied with the work of CIDC. The lawyers in the group are capable, competent and committed. Since PDSC's last visit to the area there had been discussion about the composition of the board and other issues. CIDC took those matters to heart and Ron Gray spoke to Judge Maurer at length about them. Judge Maurer had suggested the addition of a senior judge to the board. CIDC surveyed all the judges on the level of competence of CIDC attorneys. This survey represents a more formal process than any used in the past to monitor quality.

Commission Potter inquired about how the court assesses quality. Judge Maurer said that the judges observe the level of professionalism in the relationship between the defense and the prosecution and obtain information about the quality of defense representation not only during trials but during plea discussions in which the court must either approve a plea agreement or not. Sometimes the court does not approve resolutions that appear too favorable to the defense. Early preparation, investigation and negotiation benefit the client because the state's offer is more generous at beginning of the case. Attorneys in Clackamas County are also effective at the disposition stage, bringing new information and recommendations to the court and advancing the client's position in a way that does not ask the court to accept unreasonable options. He said that CIDC had been doing a good job of bringing in lawyers and mentoring them. They brought in new lawyers in the past who are maturing and developing well. Judge Maurer said he thinks that when vacancies do occur, it would not be difficult to fill those positions. The group has significant drawing power.

Marty Cohen said there had been some structural changes in the Clackamas County juvenile court. Judge Darling was no longer hearing dependency cases; Judge Van Dyk was handling them. Attorneys were required to appear in two different courtrooms now, which was taking up more of their time. A meeting had been scheduled with all the stakeholders in juvenile dependency cases for the first week in February to discuss court scheduling and other issues, including setting trial dates that did not conflict with the juvenile court schedule. The juvenile consortium had been recruiting outside board members. It wanted to include a member with a medical or education background but had been unsuccessful in recruiting one. He said that the consortium had only ten members and did not want to expand its board too much. The juvenile delinquency caseload was continuing to fall but the number of dependency cases had been increasing. The consortium needed to add attorneys to reduce workload since some members were taking fewer cases leaving the others with heavier caseloads, but they hadn't been able to retain new attorneys because of the low level of pay. He said that the consortium was experimenting with having two lawyers represent only children in an effort to improve the quality of representation for children. An online evaluation system had been created for the consortium as a whole but an evaluation process for individual attorneys had not yet been finalized.

Judge Deanne Darling said that the juvenile consortium had been very responsive to the concerns she had raised with the Commission. Practice appeared to be improving. The group needed to add some more members, however and, since many of them had been doing this work for 30 years or more, replacements would be needed but two of the younger lawyers they mentored declined to join the consortium because of the compensation. The Commission should look at the payment structure for juvenile dependency cases to see if there isn't a better approach to paying attorneys than the system currently in

place. Permanency hearings require a lot of preparation and consume a large amount of court time. Those hearings may not be receiving proper recognition. Members of the group believe they are not being paid for the things they should be paid to do. She said there were fewer delinquency cases than in the past which might be due to the county's efforts at prevention and family involvement.

Further discussion on a service delivery plan for Clackamas County was deferred until resolution of the question about whether or not boards of directors should be required, and, if so, what the composition and responsibilities of those boards should be.

PDSC Discussion at April 22, 2010 Meeting

At its April 22, 2010 meeting PDSC adopted a policy statement requiring, with respect to contracts beginning in January of 2012, that every public defense contractor (a) be governed by a board of directors with at least two independent members or, in the alternative, (b) demonstrate to PDSC's satisfaction that the contractor has appropriate financial safeguards and quality assurance mechanisms in place.

PDSC Discussion at June 17, 2010 Meeting

Ron Gray said that the Clackamas Indigent Defense Consortium's (CIDC) president has written a proposed revision of the group's bylaws. The new bylaws will allow the group to bring in two outside members. Judge Ray Bagley is still available and when the new bylaws are in place, recruitment for the second member will begin. The board will continue to have nine members, two of whom will be permanent. The others will rotate out of the attorney pool for two-year terms. The President of the board, Brad Jonasson, has recently retired but will remain president for a year. They are still discussing how to recruit the second outside board member. Chair Ellis suggested that they confer with Paul Levy about the method of selecting the outside members since the Commission has defined independent board members as persons who are not receiving public money for cases and who are not selected by those who do.

Mr. Gray said that another CIDC member had been appointed to the bench and one had retired. In seeking to replace those two members, the group received a large number of applications. One attorney with approximately 10 years of practice has been accepted. A second attorney who has been practicing in another consortium is being considered. She was one of three well-qualified attorneys who applied. There are also two new lawyers in the apprenticeship positions. CIDC has now approved a "work up contract" which would allow an attorney to start out taking only misdemeanors and minor felonies. He will continue to work with his mentor from the apprenticeship program and will be reviewed after six months. After six months it will be determined whether he will be a permanent members and, if so, he will continue to "work up" to handling more serious cases. With this

member the group will have 30 members, its highest number. A former court bailiff will be starting the apprentice program.

Chair Ellis commended CIDC for making good progress and responding to the Commission's concerns.

Marty Cohen said that Independent Defenders, Inc. (IDI) had conducted an online survey of judges, CASAs, juvenile court counselors, DHS and OYA workers. More than 60% responded. For the most part respondents thought that the attorneys were doing well. The survey did not identify lawyers by name. Respondents were asked to assess quality of representation by the entire group. Some respondents said that they would prefer to provide information about individual attorneys. Some responses did talk about the work of individual attorneys. Some who provided very negative information did not identify the attorneys about whom their comments were made. Mr. Cohen said he was trying to obtain additional information. Commentators said that communication with the group has improved. IDI members meet annually with the CASAs. The last meeting was very successful. No new members have been added to the board but Mr. Cohen has talked to a retired judge about serving. If independent members must be selected by someone other than the consortium members, the group will have to revise its bylaws.

Mr. Cohen reported that the group's working relationship with the judges is fairly good. Judge Darling seems satisfied with the progress that has occurred. The caseload has fluctuated over the last six months. Delinquency cases are down but dependency cases have gone up. One new attorney has been added to fill a vacancy but no others will be added until it appears that the caseload will require another attorney.

In terms of attorney evaluations, Mr. Cohen said that he does them on an informal basis. The group is planning to create a more formal process.

Ron Gray said that CIDC had evaluated all of its attorneys and included the names of individual attorneys on the questionnaire. Board members were then assigned to attorneys who were criticized. In one case an attorney was reported to be effective in court but very unorganized. That attorney hired a consultant to her to organize her office. There have been reports of significant progress.

PDSC Discussion at August 4, 2010 Meeting

Ingrid Swenson summarized the information previously provided to Commissioners regarding the performance of the two Clackamas County contractors. She said they had both made progress in addressing issues identified by the commission and recommended continuation of the current

service delivery model. Paul Levy reported that representatives of both contractors had spoken with him about the addition of independent members to their boards of directors. Commissioner Welch said it had taken too long for these contractors to make recommended changes. Commissioner Ozanne agreed and said that CIDC had been held up as a model but it had taken them five or six years to adopt recommended best practices for themselves. He said that IDI had made no progress on implementing an attorney evaluation process. The report should reflect that it has taken them too long. Chair Ellis said that Clackamas is the only large county with a single provider model. While it is not necessary to change the model at this time, the Commission may have to revisit the county in the future. Ron Gray has been more engaged in recent discussions about the system and has made a change in the composition of the CIDC board. In two or three years, however, the system may have to be reconfigured. The draft report should be revised to inject a note of caution.

2. PDSC Clackamas County Service Delivery Plan – October 2010

The public defense delivery system in Clackamas County relies on a single provider for criminal defense representation and a single provider for juvenile and civil commitment representation. Lack of competition does not in itself, appear to have negatively affected the delivery of public defense services in the county but when the sole provider is a consortium it is more likely than other types of providers to lack a system for evaluating the work of member attorneys, a method for addressing underperformance and mechanisms for admitting new members and preparing for transitions in leadership.

Overall the representation provided by members of CIDC is rated as “good,” and representation by IDI as “good to excellent.” The quality of representation provided in individual cases, however, is reported to vary from one attorney to another in both consortia.

Neither of these contractors, at the time of the Commission hearing in March of 2009, had in place a process for systematic evaluation of the work of their attorneys and both had sometimes failed to address significant performance issues even when they were well known. After the March 2009 hearing both contractors took some very positive steps to address attorney performance. At the January 28, 2010 PDSC meeting it was reported that CIDC had nearly completed its initial round of attorney evaluations. IDI had begun research on an evaluation process and implemented some quality improvements. One attorney was terminated from IDI consortium membership. Two attorneys began specializing in child representation as part of a six-month pilot project. IDI members met with Judge Darling, with CASAs, and with DHS to discuss ways of enhancing their effectiveness as community partners.

Further progress was reported at the June 17, 2010 PDSC meeting. Ron Gray said that CIDC’s bylaws were being revised to require two independent board

members. The consortium had not had difficulty replacing two members who left, they had created a “work-up” program and added another apprentice. Attorney evaluations were completed and board members were monitoring those with negative performance reports. Chair Barnes Ellis commended CIDC for its progress and for responding to the Commission’s concerns.

Marty Cohen said that IDI had established an evaluation procedure that included obtaining input from a broad group of those involved in the juvenile court system. Unfortunately respondents were asked only to rate the work of the consortium as a whole and no information was sought about performance by individual attorneys. The group has continued to seek an outside member for its board and, in view of the Commission’s new policy on board members, will have to revise its bylaws to meet the new requirements. It is not clear why it had not been possible to recruit one or more outside board members since other contractors have not reported similar difficulties.

It is hoped that [these] positive developments will continue. Both groups have made significant strides towards implementation of more effective quality control mechanisms. CIDC has been able to replace retiring members with qualified attorneys, to continue its apprenticeship program and to implement a new “work-up” program to help attorneys become qualified to handle serious cases. While IDI has not made as much progress on its attorney evaluation process, it has addressed the issues raised by Judge Darling and is clearly striving to meet PDSC’s expectations. Some of the principal concerns identified in the initial report on Clackamas County have been or are in the process of being addressed.

The Commission does not believe that prior to this structural review either contractor made earnest efforts to adopt best practices that had long been recommended by PDSC. The CIDC administrator has been a major contributor to quality improvement efforts statewide and has conferred with other administrators about the effective administration of consortia. Nevertheless, CIDC failed to address its own quality assurance issues. It is hoped that both contractors are now committed to monitoring and ensuring the quality of representation being provided by their members. OPDS is instructed to provide periodic updates on reported performance of both consortia.

While previous efforts made by both these contractors to ensure appropriate oversight of consortium governance and quality of representation has been disappointing, CIDC appears to have made significant progress and IDI has at the very least been made aware of PDSC’s expectations for it and other providers in future contract periods. Structurally, the public defense system appears to be functioning satisfactorily in Clackamas County and no changes will be made at this time. Within the next several years PDSC will consider whether the current system continues to be an appropriate model for this major county

and whether the contractors have been able to evolve to meet changing circumstances.