

## OPDS Complaint Policy

The following OPDS Complaint Policy and Procedures is adopted by the Public Defense Service Commission (PDSC) pursuant to ORS 151.216(1)(f)(j) and (h), effective December 19, 2019.

### Policy

It is important for OPDS to be aware of complaints regarding the performance of public defense providers and the cost of public defense services, to have a policy regarding the process of such complaints, and to address such complaints in a manner that is consistent with its obligation to provide high quality, cost-efficient public defense services. OPDS has an independent duty to oversee quality and cost effectiveness.

This policy governs the procedure for receiving, investigating, and responding to complaints regarding (1) the quality of services provided by public defense attorneys, and (2) payment from public funds of attorney fees and non-routine fees and expenses incurred in cases.

To provide OPDS with specific guidelines for the handling of complaints, the PDSC adopts the following procedures.

### Complaint Policy and Procedures Regarding Quality of Services of Public Defense Attorneys

#### I. Definitions and screening of complaints

- A. “Public defense attorney” means counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.
- B. “Public defense standards” means state and national standards of performance, including those of the Oregon State Bar, American Bar Association, National Juvenile Defender Center, and National Legal Aid Defender Association, and the state and federal constitutional requirements for the provision of adequate and effective assistance of counsel as required in the General Terms of the Public Defense Legal Services Contract.
- C. All complaints about public defense attorneys shall be directed to the General Counsel division of OPDS. Complaints regarding the quality of services provided by a public defense attorney must be made in writing. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.
- D. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient information that the

public defense attorney may have failed to satisfy applicable public defense standards.

- E. If the complaint does not present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards, the General Counsel Division will notify the public defense attorney of the complaint and close the matter. OPDS shall also notify the complainant that the matter has been closed.
- F. If the complaint does present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards, an attorney from the General Counsel Division will begin an investigation and notify the public defense attorney by providing him or her, and their supervisor or consortium administrator (if applicable) with a copy of the complaint.
- G. OPDS reserves the right to investigate any complaint even if it does not present sufficient information to show that the public defense attorney may have failed to satisfy applicable public defense standards.

## **II. Procedure for investigating complaints**

- A. During the course of investigation, if more information is needed, OPDS may contact the complainant. Complaints will not be decided based solely on the assertions of the complainant. OPDS will investigate all complaints by contacting the public defense attorney and discussing the complaint with the public defense attorney and providing the public defense attorney with an opportunity to respond to the complaint. OPDS may gather information from any other source.
- B. When a complaint is received, OPDS will determine whether it is appropriate to refer the complainant to the Oregon State Bar (OSB) or the court. If the complainant has already initiated a complaint with OSB, OPDS will monitor OSB's resolution of the complaint. OPDS may still conduct its own independent investigation.

## **III. Resolution of complaints**

- A. After conducting an investigation and considering the public defense attorney's response, OPDS shall determine whether the public defense attorney's representation failed to satisfy applicable public defense standards. If OPDS determines that the public defense attorney's representation failed to satisfy applicable public defense standards, OPDS may take any action needed including but not limited to the following:
  - 1. Discussion with the public defense attorney and supervisor or consortium administrator (if applicable), with agreement for an appropriate course of action;
  - 2. Written reprimand;

3. Mandatory training and/or attendance at a continuing legal education program;
  4. Require the public defense attorney to obtain a mentor;
  5. Modification of the public defense attorney's qualifications for case types;
  6. Suspension from representation in public defense cases; and,
  7. Take such additional measures as may be appropriate under the circumstances.
- B. OPDS shall notify the public defense attorney and the supervisor or consortium administrator (if applicable) in writing of its findings and of any action taken in response to a finding of unsatisfactory representation.
- C. If the public defense attorney disagrees with OPDS's findings or actions, the public defense attorney may appeal the General Counsel Division's decision to the Executive Director of OPDS, within 30 days of receiving notification of the decision. The appeal must be made in writing.
- D. The Executive Director of OPDS shall review the records of the complaint and the findings of the General Counsel Division and make a final decision as to the adequacy of the representation and any action taken within 30 days of receiving an appeal. The decision of the Executive Director shall be made in writing and is final.
- E. OPDS shall notify the complainant in writing of any action taken as a result of their complaint following investigation.
- F. OPDS shall maintain a record of each complaint filed under this section and of any action and appeal taken in response to the complaint.
- G. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the performance of public defense attorneys and taking such action as it deems appropriate.

### **Complaint Policy and Procedures Regarding Payment from Public Funds of Attorney Fees and Non-routine Fees and Expenses**

#### **I. Definitions and screening of complaints**

- A. "Public defense attorney" means counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

- B. All complaints regarding payment from public funds of public defense attorney fees or non-routine fees and expenses shall be made in writing and directed to the General Counsel division of OPDS. Submissions to OPDS may be made in confidence or may include information submitted in confidence. OPDS will not disclose such information, except as required by law, without the consent of the person making the submission.
- C. After receiving a complaint, an attorney from the General Counsel Division will review the complaint to determine if it presents sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable.
- D. If the complaint does not present sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable, OPDS will notify the complainant and close the matter.
- E. If the complaint does present sufficient information that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable, an attorney from the General Counsel Division will begin an investigation.
- F. OPDS reserves the right to investigate any complaint even if it does not present sufficient information to show that the payment from public funds of public defense attorney fees or non-routine fees and expenses was unreasonable.

## **II. Procedure for investigating complaints**

- A. OPDS shall review records related to the public defense attorney fees or non-routine expense authorization or payment. If the matter complained of is not resolved by a review of the records, OPDS shall contact the attorney or provider for additional information. During the course of investigation, if more information is needed, OPDS may contact the complainant. OPDS may gather information from any other source.

## **III. Resolution of complaints**

- A. After completing its investigation, OPDS shall determine whether all of the information available establishes or fails to establish that the fee or expenditure complained of was unreasonable. If the fee or expenditure was reasonable the matter shall be closed.
- B. If OPDS determines that the fee or expense was unreasonable, it may take any or all of the following actions, unless the fee or expense was specifically pre-authorized by OPDS and used for the purpose authorized:
  - 1. Decline payment for the goods or services in question;

2. Seek reimbursement for any funds determined to have been improperly obtained or used;
  3. Written reprimand;
  4. Modification of the public defense attorney's qualifications for case types;
  5. Suspend the public defense attorney's eligibility for appointment in public defense cases;
  6. Decline to authorize future fees or expenses for the provider; and
  7. Take such additional measures as may be appropriate under the circumstances.
- C. If a fee or expense determined to be unreasonable was specifically preauthorized by OPDS and used for the purposes authorized, OPDS shall review its policies and procedures and take such action as appears appropriate to avoid future preauthorization of unreasonable fees and expenses.
- D. OPDS shall notify the attorney, provider, and the complainant in writing of its findings and of any action taken.
- E. If the attorney or provider disagrees with OPDS's findings or actions, the attorney or provider may appeal the General Counsel Division's decision to the Executive Director of OPDS, within 30 days of receiving notification of the decision. The appeal must be made in writing.
- F. The Executive Director of OPDS shall review the records of the complaint and the findings of the General Counsel Division and make a final decision as to the reasonableness of the fee or expense and any action taken within 30 days of receiving an appeal. The decision of the Executive Director shall be made in writing and is final.
- G. OPDS shall maintain a record of each complaint filed under this section and of any action and appeal taken in response to the complaint.
- H. Nothing in this policy prohibits OPDS from receiving information in any form from any source regarding the cost of public defense services and taking such action as it deems appropriate.