

Tracy A. Prall

Presiding Circuit Court Judge

Office Location:

100 High Street

Salem, Oregon

Phone: 503-585-5030



Circuit Court of Oregon

Third Judicial District

Mailing Address:

Marion County Courthouse

P.O. Box 12869

Salem, Oregon, 97309-0869

June 14, 2022

Stephen Singer, Executive Director
Office of Public Defense Services (OPDS)
198 Commercial Street SE, Ste. #205
Salem, OR 97301
VIA FAX ONLY

RE: OPDS Appointments

Dear Mr. Singer,

Thank you for responding to my June 13 letter so promptly. I appreciate the attention you are paying to issues in Marion County and understand you have many other pressing issues to attend to. I also appreciate that you found an additional resource for court appointments. Please let me know as soon as possible the number and type of cases Mr. Obert is qualified to take, and when he will be available for appointment.

After receiving my letter, you indicated that you were still unclear about what the judges were expecting from you and OPDS. The judges of the Marion County bench are complying with their constitutional and statutory obligations to appoint suitable counsel to indigent defendants. We are only asking that you, as the Director of OPDS, do the same.

The Sixth Amendment to the United States Constitution provides that “In all criminal prosecutions, *the accused shall* enjoy the right to...*have the Assistance of Counsel...*” Similarly, Article I Section 11 of the Oregon Constitution provides “In all criminal prosecutions, *the accused shall have the right...to be heard by himself and counsel...*”

ORS 135.050(2) states, “*the court shall appoint suitable counsel* for a defendant if the defendant qualifies for court-appointed counsel.” Pursuant to ORS 151.211(5), the office of public defense services means “the office established by the commission under the director *to handle the cases assigned* and to carry out the administrative policies and procedures for the public defense system.” Finally, ORS 151.219(1)(b) and (e) states, “it is the *responsibility* of the public defense

services executive director to “Implement and ensure compliance with contracts, policies, procedures, standards and guidelines adopted by the commission or required by statute” and to “*employ personnel or contract for services as necessary* to carry out the responsibilities of the director and the office of public defense services.”

Please tell us who you have employed or contracted with that will carry out the responsibility of representing indigent defendants in Marion County. The list you previously sent was not a list of attorneys available for appointment, and so is incomplete and insufficient.

OPDS’s and the director’s failure to fulfill their constitutional and statutory obligations does not obviate the judges’ from fulfilling theirs.

If you are unable to identify suitable counsel ready, willing, and able to represent indigent defendants in Marion County, then the judges will identify and appoint suitable counsel pursuant to their constitutional and statutory obligation to do so.

Any attorney appointed to a case, including OPDS staff and appellate counsel, may then file a Motion to Withdraw if they believe the appointment would violate their contractual or ethical obligations pursuant to Oregon Rules of Professional Conduct, Rule 1.16 (Declining or Terminating Representation) and Rule 5.4 (Professional Independence of a Lawyer).

We continue to be willing to work with you, but we and the defendants being held in custody without lawyers need solutions, not barriers.

Sincerely,



Tracy A. Prall, Presiding Judge
Marion County Circuit Court

TAP:cd

Cc: Marion County Circuit Court Judges
Linda Hukari, Trial Court Administrator
Chief Justice Martha Walters
Nancy Cozine, State Court Administrator
O’lcott Thompson, MCAD Executive Director
Shannon Wilson, PDMC Executive Director