IN THE SUPREME COURT OF THE STATE OF OREGON

STATE OF OREGON,

Plaintiff-Adverse Party,

v.

JOSHUA ADAM HEMION, aka Josh Adam Hemion,

Defendant,

and

METROPOLITAN PUBLIC DEFENDER, INC.,

Relator.

Multnomah County Circuit Court
No. 24CR34660

Supreme Court No. S072015

MANDAMUS PROCEEDING

ADVERSE PARTY, STATE OF OREGON'S ANSWERING BRIEF

Appeal from the Judgment of the Circuit Court for Multnomah County
Honorable REBECCA D. GUPTILL, Judge

LAURA GRASER #792463
Attorney at Law
PO Box 12441
Portland, Oregon 97212
Telephone: (503) 287-7036
Email: graser@lauragraser.com

CARL MACPHERSON #120208
Metropolitan Public Defender, Inc.
101 SW Main St., Ste. 1100
Portland Oregon 97204
Email: cmacpherson@mpdlaw.com
Telephone: (503) 225-9100

Attorneys for Relator
Metropolitan Public Defender, Inc.

DAN RAYFIELD #064790
Attorney General
BENJAMIN GUTMAN #160599
Interim Deputy Attorney General
KIRSTEN M. NAITO #114684
Assistant Attorney General
1162 Court St. NE
Salem, Oregon 97301-4096
Telephone: (503) 378-4402
Email:
kirsten.m.naito@doj.oregon.gov

Attorneys for Plaintiff-Adverse Party
State of Oregon

Continued…

DANIEL C. SILBERMAN #194540
Oregon Criminal Defense Lawyers Association
1175 Court St. NE
Salem, Oregon 97301
Telephone: (503) 378 -3349
Email:
daniel.c.silberman@opdc.state.or.us

Attorney for *Amicus Curiae*,
Oregon Criminal Defense Lawyers Association

HON. REBECCA D. GUPTILL
Washington County Circuit Court
150 N First Ave
Hillsboro, Oregon 97124

Circuit Court Judge

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases Cited

Constitutional & Statutory Provisions

Other Authorities

ADVERSE PARTY, STATE OF OREGON'S ANSWERING BRIEF

STATEMENT OF THE CASE

Nature of the Proceeding

This is an original mandamus proceeding pursuant to ORS 34.250. Relator Metropolitan Public Defender (MPD), a nonprofit law firm that contracts with the Oregon Public Defense Commission (OPDC) to provide indigent defense, seeks mandamus relief from a Washington County Circuit Court order requiring it to disclose caseload information about its attorneys.

Procedural Background

1. An attorney at MPD sought appointments to cases in which the defendant was on warrant status and filed motions on behalf of that defendant.

In Washington County Circuit Court Case Numbers 21CR21445 and 21CR33615, defendant Jonah Bregman was charged with various crimes, including several felonies, and failed to appear in 2021. (SER 55, 57; ER 100, 106).[1] In November 2024, an attorney at MPD filed a discovery demand in Case No. 21CR21445, asserting that MPD represented defendant Bregman, and the Washington County District Attorney's Office (WCDA) provided discovery

[1] The dates on the copy of the OECI case registers in the excerpt of record are not legible. Accordingly, the state has included a copy of the relevant registers in the SER. Except for the OECI case register in 21CR22615, the state includes relevant documents only from 21CR21445. The same or similar documents also appear in 21CR33615.

to MPD.[2] (SER 3–8, 39, 58). MPD asked the trial court to appoint it to represent defendant Bregman in both cases, but the trial court rejected that request because Bregman was out of state.[3] (SER 40).

In January 2025, MPD filed a "Motion to Set Remote Appearance on TSI Docket" in both cases.[4] (SER 17–18). In the supporting declaration, MPD informed the court that Bregman was incarcerated in California (and had been incarcerated since October 2021) and had contacted MPD "through a family member" to request that MPD represent him. (SER 19).

In February 2025, MPD filed a "Motion to Produce Defendant from Mule Creek State Prison." (SER 25–26). In the supporting declaration, MPD informed the court that the California prison in which Bregman is incarcerated required an additional order to allow him to appear. (SER 28). At that time,

---

[2] The WCDA accepted MPD's assertion in the discovery demand that MPD represented defendant Bregman when it provided discovery. (ER 4–5, 17–18).

[3] The record does not reflect when the request was made, nor when the court denied that request. Those actions do not appear in the court record and may have occurred by email, as they did in other cases. (*See* ER 12, 25 (discussing the practice of MPD emailing court staff to request appointments)).

[4] The "TSI (turn self in) docket" in Washington County allows eligible defendants to submit a motion to clear a warrant out of custody. *See FTA Turn Self In Docket Procedures*, https://www.courts.oregon.gov/courts/washington/programs-services/Documents/FTA%20TSI%20DOCKET%20PROCEDURES%2009.19.2024.pdf

MPD did not represent the defendant and planned to request that the court appoint him if the court allowed Bregman to appear remotely. (SER 40).

In March 2025, the state filed an objection to allowing Bregman to appear remotely, arguing that he had a lengthy California criminal history, and a history of failing to appear. (SER 29–30). Although the court had initially granted MPD's motions, it ultimately ruled that Bregman could not appear from the California prison. (SER 32).

2. MPD was appointed to represent defendant Hemion even though he was on warrant status.

In June 2024, the state charged defendant Joshua Hemion with first-degree criminal mischief, unauthorized use of a vehicle, and unlawful entry into a motor vehicle, by information (24CR34660). (SER 60; ER 109). Defendant failed to appear at arraignment and a warrant issued. (SER 1, 60; ER 110). Over the next few months, defendant failed to appear twice after being arrested and released with court dates. (SER 2, 9, 60; ER 110). In December 2024, defendant was arrested and released with a court date for January 2025. (SER 60–61; ER 110–11). The trial court entered an order appointing MPD to represent defendant, and MPD filed a demand for discovery.[5] (SER 10, 11–16,

[5] At that time, MPD was also appointed to represent the defendant in 23CR58580, a Multnomah County case.

61; ER 110–11). Defendant failed to appear at the fourth arraignment date. (SER 21, 61; ER 111).

In February 2025, defendant was arrested in another county and released with a Washington County court date. (SER 22, 61; ER 111). MPD filed a motion to allow the defendant to appear by telephone, and defendant appeared in March. (SER 23–24, 51, 61; ER 111). Another hearing was set at the end of March, but defendant failed to appear and a fifth warrant issued. (SER 52, 61; ER 111).

In May 2025, defendant was again arrested in another county and released with a court date. (SER 53, 61–62; ER 112). The defendant failed to appear for the sixth time, and a warrant remains outstanding at the time this brief was filed. (SER 54, 62; ER 113). MPD remains appointed to that case.

3. The state filed a motion to address MPD's actions in filing motions in unappointed cases, and seeking appointment to cases in which the defendant is on warrant status.

In March 2025, the state filed a "Motion to Address Actions of Unappointed Counsel" in the *State v. Bregman* cases. (ER 3–9). The state argued that MPD had obtained discovery without being appointed to those cases, and that, at the time that MPD filed the discovery demand and TSI motions, there were hundreds of unrepresented defendants in Washington County. (ER 6–7). The state asked the court to order that the discovery be returned and destroyed and that MPD have no further involvement in the cases,

that the court appoint MPD to "comparable cases" from the OPDC unrepresented list, and that the court order MPD to "disclose data on the MAC utilization rate" between November 2024 and March 2025, "including a list of active cases assigned" to the attorney who had filed the discovery demand and TSI motions. (ER 8). The state later filed a supplemental motion, adding the underlying case (*Hemion*), and informing the court of other cases in which MPD had asked to be appointed on cases with defendants in warrant status. (ER 10–15).

In April 2025, the court held a hearing on the state's motion. At that hearing, MPD informed the court that it "had a practice" of filing motions for people with outstanding warrants who contacted their office for help, regardless of whether it represented that person. (ER 23–24). It informed the court that it had ceased that practice. (ER 24). MPD agreed to return and destroy any discovery in its possession, and cease work on the *Bregman* cases. (ER 24–25). MPD informed the court that it would continue to request appointments for current clients on warrant status, like defendant Hemion, with open cases in Multnomah and Washington Counties. (ER 25–26). MPD objected to the court appointing it or any of its attorneys to any additional defendants on the

unrepresented list, asserted that it had a caseload of 99% of its MAC[6] capacity, and argued that it was "inappropriate" for the state to request that the court order it to provide additional information. (ER 27–29).

The court took judicial notice that information about how to clear a warrant was publicly available and that defendants with warrants could make that request without an attorney. (ER 34–36). The court also took judicial notice that, at the time of the hearing, there were 777 unrepresented defendants in Washington County. (ER 36).

The court granted the state's motion as to the discovery provided in the *Bregman* cases, and ordered that any discovery be returned and destroyed, and clarified that MPD was not appointed to represent Bregman. (ER 39). The court denied the motion to appoint MPD to other comparable cases, stating that it expected MPD to "cease" filing motions for defendants with warrants. (ER 39). The court took under advisement the state's request that MPD provide data about its MAC utilization rate and allowed the parties to file additional briefing. (ER 40, 46).

---

[6] "MAC" stands for Maximum Attorney Caseload, and is shorthand reference for the number of indigent defense cases that an attorney may handle in a contract with OPDC. *See Oregon Public Defense Commission Contract for Public Services*, at 3 (defining "MAC"), available at https://www.oregon.gov/opdc/provider/pages/contract-terms.aspx (accessed Sep 3, 2025).

The state filed additional briefing asserting that publicly available data on OECI reflected that seven MPD attorneys were assigned to, on average, 30 active cases. (ER 49). The state argued that the court should order MPD to disclose its caseload data because OECI did not reflect accurate appointment information and only MPD could provide data to confirm that its attorneys were at capacity. (ER 48–51).

4. The trial court ordered MPD to produce records demonstrating its attorney's caseloads.

The trial court issued a letter opinion, granting the state's motion in part, and ordering MPD provide caseload information and MAC utilization for all MPD attorneys from November 2024 to April 2025, case data reported to OPDC, as well as a copy of its contract with OPDC. (ER 58). The trial court relied on Article I, section 10, of the Oregon Constitution, in ordering MPD to disclose that information. (ER 57). The trial court analogized its order to an order granting a public records request under Chapter 192. (ER 57–58).

MPD filed a motion asking the trial court to reconsider its order (ER 64–77), and the trial court held a hearing on that motion. (ER 78). At that hearing, the trial court considered whether to narrow its order to require MPD to produce caseload and MAC data only for MPD attorneys practicing in Washington County but ultimately declined to do so because it did not wish to issue an amended order and further delay the proceedings. (ER 88–91).

MPD filed a motion to stay the trial court's order, and it petitioned for mandamus relief. This court granted the stay and issued an alternative writ, without requesting a response from the state, ordering the trial court to withdraw its order or show cause for not doing so.

Summary of Argument

MPD sought assignment to, and conducted legal work in, several cases in Washington County, in which the defendants were in warrant status. The trial court was concerned that those actions prevented MPD from accepting appointments to some of the hundreds of other cases with unpresented defendants who were not in warrant status. Relying on the open courts provision of the Oregon Constitution, it entered an order in an individual criminal case requiring MPD to produce caseload data for its attorneys. That was error.

Article I, section 10, the open courts provision, protects a litigant's access to court and allows members of the public to access court proceedings. But it does not extend to all aspects of court proceedings. Rather, it applies when a court is "administering justice," which means that it is determining the legal rights of a party. Because the trial court was not determining the legal rights of the defendant or otherwise adjudicating the underlying criminal proceeding, Article I, section 10, does not provide authority for the order issued here.

To the extent that the trial court relied on Chapter 192, Oregon's public

records laws, that was also error. No public records request was made in this case, and those statutes do not apply here. Because no public records request is at issue, this court need not decide whether MPD would be subject to a public records request. Moreover, the records sought—a copy of the contract between MPD and OPDC, as well as MPD caseload and MAC utilization rates—can be obtained by a public records request that complies with Chapter 192, directed at OPDC.

Although the trial court erred in entering the order here, that does not mean that trial courts have no role in overseeing public defense services to criminal defendants in their courtroom. MPD and *amicus curiae* are incorrect that OPDC is the only entity that can inquire into its' attorneys' caseloads. Trial courts have wide latitude to appoint attorneys to represent indigent defendants. That authority extends to the court's ability to inquire into, and verify, whether an attorney has the qualifications and capacity to represent a defendant. But because the trial court was not exercising that authority here, its order was not supported by that authority.

The trial court's legal error does not dictate the outcome of this proceeding. Original-jurisdiction mandamus proceedings are rare and should be reserved for the most important and time-sensitive questions. Although the trial court erred, relief may not be warranted here, where MPD created the records at issue and provided them to OPDC, a public body subject to a proper

public records request.

ARGUMENT

The trial court ordered MPD to disclose caseload information about its attorneys because it appeared that those attorneys might have capacity to represent some of the hundreds of currently unrepresented indigent defendants. The trial court incorrectly relied on Article I, section 10, of the Oregon Constitution in issuing that order. To the extent that the court relied on the public records statutes in Chapter 192, no public records request was made in this case and those statutes also do not provide authority for the order at issue here. Although MPD and *amicus curiae* are incorrect that OPDC is only entity that may inquire into its caseloads, this court need not reach that issue because the trial court's ruling was erroneous.

Despite that error, original jurisdiction mandamus relief is extraordinary and reserved for exceptional cases. It may not be warranted here, where MPD created the disputed records and provided them to OPDC, a public body subject to a proper records request. But if this court determines that this error warrants extraordinary relief, it should order the trial court to vacate the challenged order.

A. Article I, section 10, does not provide authority for a trial court to order a non-profit law firm to disclose its administrative records in response to a motion in a criminal case.

The open courts provision in Article I, section 10, provides that "[n]o court shall be secret, but justice shall be administered, openly and without purchase, completely and without delay * * *." That provision "protects both a litigant's access to court to obtain legal redress and the right of members of the public to scrutinize the court's administration of justice by seeing and hearing the courts in operation." *Jack Doe 1 v. Corp. of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints*, 352 Or 77, 93, 280 P3d 377 (2012). Although that provision "is written in broad terms, it does not apply to all aspects of court proceedings" and "generally prohibits a judicial proceeding from being 'secret' (closed to the public), if, in that judicial proceeding 'justice' is 'administered.'" *State v. Macbale*, 353 Or 789, 806, 305 P3d 107 (2013).

This court has held that the administration of justice to which Article I, section 10, applies, occurs "when a court determines legal rights based on the presentation of evidence and argument[,] * * * [*i.e.*] the focus of the open courts provision is on 'adjudications.'" *Id*. (citing *Oregon Publishing Co. v. O'Leary*, 303 Or 297, 303, 736 P2d 173 (1987)). "To the extent that adjudications are not involved, the administration of justice is not governed by it." *O'Leary*, 303 Or at 303. Put another way, although many government actions can involve the administration of justice, (*e.g.* police investigations), Article I, section 10,

applies only to the administration of justice that occurs in a courtroom and involves an "adjudication." *Macbale*, 353 Or at 801.

Here, even assuming that an attorney's caseload and court appointments involve the administration of justice, the record does not support a finding that such information involved an adjudication. An adjudication in a criminal case implicates the legal rights of the defendant or duties of the state, and the trial court's order here was directed at MPD. Because there was no adjudication, Article I, section 10, did not provide authority for the trial court to order MPD to produce records. *See Jury Service Resource Center v. De Muniz*, 340 Or 423, 429, 134 P3d 948 (2006) (agreeing with the Court of Appeals' reasoning that Article I, section 10, did not provide authority for a member of public to obtain jury pool records because those records did not pertain to an adjudication for the purposes of the open courts provision).

B. Chapter 192 does not provide authority for the trial court's order because no public records request was made in this case.

Although the trial court purported to rely on Article I, section 10, it repeatedly referenced the public records statutes in Chapter 192 and ordered MPD to provide records consistent with the timelines provided in those statutes. (ER 58). To the extent that the court relied on Chapter 192 in ordering MPD to produce public records, that was error because no public record request was made in this case.

ORS 192.314 provides that "every person" has the right to inspect public records. ORS 192.324(1)–(7) requires any request to inspect such records be made in writing and requires public bodies to draft and disseminate procedures explaining how a person may make a public records request to that body. And ORS 192.311 defines who may make such a request and what entities are subject to such a request. Because the order at issue did not result from a written public records request, those statutes do not provide authority for the trial court to order the production of records.

Even if such a request had been made, it is not clear whether MPD, a non-profit law firm that contracts with the state to provide a government service and receives funding, is a "public body" subject to Chapter 192, as defined in ORS 192.311(4). Although relator devotes extensive briefing to that issue, this court need not reach it in a case where no public records request was made or at issue.

Moreover, it is undisputed that some (likely all) of the records that the court ordered MPD to produce—a copy of the contract between MPD and OPDC, as well as MPD caseload and MAC utilization rates from November 2024 to April 2025—may be obtained by a public records request that complies with Chapter 192, directed at OPDC. (Op Br 30–31). As a public body, OPDC has a written public records policy (ER 60–63), which provides that records "use[d] or retain[ed]" by OPDC may be disclosed. (ER 60). Per

OPDC's standard public defense contract terms, as well as its caseload and workload reporting policies, contractors must provide caseload and workload reports "detailing assigned and open cases" each month. OPDC Contract for Public Defense Services (2023–25), Section XII, Contractor Reporting and Inspection, 6, https://www.oregon.gov/opdc/provider/SiteAssets/Pages/contract-terms/1%202023-25%20Criminal%20Contract%20Terms.pdf (accessed Sep 18, 2025); OPDC Caseload and Workload Reporting Manual (2023), https://www.oregon.gov/opdc/provider/SiteAssets/Pages/case-load/Caseload%20and%20Workload%20Reporting%20Manual.pdf (accessed Sep 18, 2025). This court need not decide whether MPD is a public body because the records at issue here are held by a different entity—one that is undisputedly a public body.

C. Courts have inherent authority to appoint attorneys to represent indigent defendants, which includes ordering an attorney to demonstrate that their caseload precludes such appointments.

Throughout its brief, MPD criticizes the state for attempting to "audit" MPD caseloads and asserts that OPDC is the only entity that can review a public defense contractor's caseload. (Op Br 19–25). Similarly, *amicus* Oregon Criminal Defense Lawyers' Association argues that trial courts lack statutory authority to inquire into a public defense provider's caseload. (*Amicus* Br 22–23). Although the state concedes that the trial court exceeded its

authority by ordering MPD to produce caseload records under Article I, section 10, and Chapter 192, MPD and *amicus* are incorrect that OPDC is only entity that may require it to disclose attorney caseload information. The court has authority to require attorneys to produce caseload information when it appoints attorneys to represent indigent defendants.

Oregon courts generally have inherent authority to appoint members of the bar to represent indigent criminal defendants, and to compel those members to accept those appointments. "Lawyers have always regarded the acceptance and performance of [representing indigent defendants] as one of the obligations incident to their professional status and privileges." *Spencer v. Gladden*, 230 Or 162, 165, 369 P2d 129 (1962) (quotation marks omitted). For that reason, there is "no doubt that Oregon courts have the inherent power to call upon members of the bar to represent an indigent defendant who has no other means of obtaining counsel." *State ex rel Acocella v. Allen*, 288 Or 175, 180, 604 P2d 391 (1979). Necessarily included in the authority to appoint an attorney is the authority to investigate whether that attorney has the qualifications and capacity to accept that appointment.[7] *Cf. U.S. v. Gonzalez-Lopez*, 548 US 140, 151, 126

[7] Whether a court may appoint an attorney to represent an indigent person over the attorney's objection, where the attorney did not provide caseload information, was at issue before this court in *State v. Guajardo-McClinton* (S070205). This court dismissed the alternative writ when the case went moot.

S Ct 2557, 165 L Ed 2d 409 (2006) (recognizing the trial court's "authority to establish criteria for admitting lawyers to argue before them," which includes the court's interest "in ensuring that criminal trials are conducted within the ethical standards of the profession").

Here, if the court had granted the state's motion to appoint MPD to a "comparable" criminal case, and it had refused the appointment, the trial court would have discretion to inquire into caseload information. Because the court denied the state's motion here, it did not exercise its inherent authority over attorneys who appear before it.

MPD also criticizes the state for attempting to audit MPD because the state cannot be "objective" and "has a forensic interest in the public defenders doing a job that is constitutionally adequate, but no more." (Op Br 40). But the state has an interest in ensuring indigent defendants are represented, because the release of defendants or dismissal of their cases creates significant public safety risks.[8] The state also has an interest in ensuring that state funding allocated to protect indigent defendants' constitutional rights does so effectively. *Cf.*

---

[8] Moreover, because "[i]t is the constitutional obligation of the State to respect the professional independence of the public defenders whom it engages," the state has no interest in inquiring into or intruding upon a public defender's performance *before* a defendant is convicted. *Polk Cnty. v. Dodson*, 454 US 312, 321–22, 102 S Ct 445, 70 L Ed 2d 509 (1981).

Betschart v. Oregon, 103 F4th 607, 628 (2024) (asserting that additional funding from the state "could solve th[e] problem [of unrepresented defendants] overnight").

OCDLA argues that the trial courts lack statutory authority to "supervise" or "oversee" public defense providers, relying on Chapter 151, which sets out the administrative authority of the Oregon Public Defense Commission. (*Amicus* Br 20–22). But the judiciary has "the constitutionally mandated function of adjudicating * * * criminal cases." *State ex rel. Metropolitan Public Defender Services, Inc. v. Courtney*, 335 Or 236, 240, 64 P3d 1138 (2003). And to perform that function, the court must take steps to ensure that indigent criminal defendants have counsel. Nothing in Chapter 151 limits that authority or otherwise transfers the judiciary's authority to try criminal cases to OPDC. Indeed, any statute purporting to do so would violate separation of powers principles. *See Rooney v. Kulongoski*, 322 Or 15, 28, 902 P2d 1143 (1995) (citing *State ex rel. Emerald People's Utility Dist. v. Joseph*, 292 Or 357, 640 P2d 1011 (1982)) (Separation of powers required by Article III, section 1, of the Oregon Constitution, is violated when "one department of government has 'unduly burdened' the actions of another department in an area of responsibility or authority committed to that other department.").

Regardless, because the state agrees that the trial court exceeded its authority here, this court need not reach the issue of whether a trial court may ever order a public defense provider to disclose caseload information.

D. Mandamus is discretionary and may not be warranted here.

This court's decision to accept an original jurisdiction mandamus proceeding is entirely discretionary. ORS 34.120(2); Or Const, Art VII (Amended), § 2. "[M]andamus 'is an extraordinary remedial process which is awarded not as a matter of right, but in the exercise of sound judicial discretion.'" *State ex rel Fidanque v. Paulus*, 297 Or 711, 717, 688 P2d 1303 (1984) (quoting *Buell v. Jefferson County Court*, 175 Or 402, 408, 152 P2d 578 (1944)). That discretion continues after the court has issues an alternative writ. *See HotChalk, Inc. v. Lutheran Church-Missouri Synod*, 372 Or 249, 259, 548 P3d 812 (2024) (concluding that the alternative writ was improvidently allowed and "exercising [the court's] discretion to decline to resolve th[e] questions on mandamus"); *State v. Staudinger*, 332 Or 477, 31 P3d 426 (2001) (issuing an alternative writ after the trail court quashed a subpoena seeking juror source lists, but later concluding that mandamus remedy was no longer appropriate when the legislature enacted a procedure to allow relator to request those records).

Because original mandamus jurisdiction is "extraordinary," this court generally exercises that original-jurisdiction mandamus discretion only when a

case presents a novel legal issue of exceptional public importance, and where this court determines that there is no other plain, speedy, and adequate remedy. *See, e.g.*, *State ex rel. Kristof v. Fagan*, 369 Or 261, 286, 504 P3d 1163 (2022) (exercising discretion to interpret the Oregon Constitution's residency requirement for Governor, but declining to exercise that "extraordinary legal remedy" to address the merits of an Equal Protection claim).

Here, although the state concedes that the trial court's order was error, this court may conclude that its mandamus discretion is not warranted. As argued above, MPD created and provided caseload records to OPDC, a public body subject to the public records law. The prejudice to MPD to produce the records at issue here appears minimal.

MPD asserts that the order will require it to "violate[] privilege in some instances," for juvenile clients and civil clients. (Op Br 41). But OPDC reporting policies require public defense providers to record and submit caseload information, including juvenile case assignments. To the extent that MPD believes disclosure of caseload information might otherwise violate privilege, it can raise that issue with the trial court in the first instance.[9]

---

[9] The trial court was willing to narrow its order when MPD asked the court to limit its order to attorneys and cases that fall under its contact with OPDC and exclude grant-funded attorneys and civil case information because "none of that is within the purview of th[e trial] court and none of those employees work on state contracts." (ER 82, 85). The court ultimately denied

Footnote continued…

Because the court's order requires disclosure of information already provided to OPDC, this court may decline to exercise its discretion to issue a peremptory writ in this case.

CONCLUSION

If this court exercises its discretion to issue a peremptory writ, it should order the trial court to vacate the challenged order.

Respectfully submitted,

DAN RAYFIELD #064790
Attorney General
BENJAMIN GUTMAN #160599
Interim Deputy Attorney General

/s/ Kirsten M. Naito
KIRSTEN M. NAITO #114684
Assistant Attorney General
kirsten.m.naito@doj.oregon.gov

Attorneys for Plaintiff-Adverse Party
State of Oregon

(…continued)
the request when MPD asked the court to enter a new order, rather than clarifying the original order, to allow additional time for MPD to petition for mandamus in this court. (ER 89–90).