

MINUTES  
**SENATE JUDICIARY & RULES COMMITTEE**

**DATE:** Wednesday, February 03, 2021

**TIME:** 1:30 P.M.

**PLACE:** Room WW54

**MEMBERS PRESENT:** Chairman Lakey, Vice Chairman Ricks, Senators Lodge, Lee, Anthon, Thayn, Zito, Burgoyne, and Wintrow

**ABSENT/  
EXCUSED:** None

**NOTE:** The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

**CONVENED:** **Chairman Lakey** called the meeting of the Senate Judiciary and Rules Committee (Committee) to order at 1:35 p.m.

**PASSED THE GAVEL:** Chairman Lakey passed the gavel to Vice Chairman Ricks.

**DOCKET NO.  
61-0101-2001** **Rules Governing Training Requirements for Defending Attorneys and the Administration of Training Funds.** **Kathleen J. Elliott**, Executive Director, Idaho Public Defense Commission (PDC), stated that she had no further presentation since the Committee's last meeting regarding **Docket No. 61-0101-2001**.

**Vice Chairman Ricks** encouraged Ms. Elliott to take the liberty to lead the Committee through the dockets with an overview, following which he would allow for testimony on specific items.

The meeting minutes will not align with the Agenda due to the nature of the dockets.

**DOCKET NO.  
61-0102-2002** **Requirements and Procedures for Representing Indigent Persons.** **Ms. Elliott** emphasized that this section lays out all the stakeholders' responsibilities. Public input confirmed there was concern that the PDC would require counties to purchase separate computer servers and systems to protect client confidentiality. She clarified the new rules do not mandate how the counties provide the confidential protection.

**DOCKET NO.  
61.0102-2002.030.02.A** **Public Defense Independent of Political and Judicial Influence. Independent Committees.** **Ms. Elliott** stated that the independent committee for recommendation in the selection of the lead institutional defending attorney is in the existing rule and authorized by statute. The new inclusion of the primary contracting defending attorney was added. **Ms. Elliott** then explained that the PDC added the review of a primary contracting attorney to the independent committee already required under statute.

**Ms. Elliott** indicated that the Idaho Association of Counties requested certain sections of the docket be struck or revised. The PDC agreed, upon the condition of approval of the pending rules and collaboration to quickly address those sections. The sections were 61.0102.2002.030.02.b, 61.0102.2002.030.05, 61.0102.2002.040.02, and 61.0102.2002.070.03.

**DOCKET NO.  
61.0102.2002.050.01**

**Court Appointment of Competent Defending Attorneys. Appointment in Non-Capital Cases.** Ms. Elliott reiterated that the PDC agreed to the changes in this section in light of the public feedback allowing Court appointments outside the Defending Attorney Roster (Roster).

**DOCKET NO.  
61.0102.2002.060.05**

**Defending Attorney Minimum Requirements. Caseloads and Workloads.** Ms. Elliott stated that the PDC was proposing maximum caseloads and workloads, which are currently in existing rule section (b), to remain in effect with a one-year time extension due to COVID, to April 30, 2023, to be able to obtain an accurate study and data.

**DOCKET NO.  
61.0102.2002.080.04**

**Review of Roster Decisions. Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster for Other Reasons.** Ms. Elliott explained that during rule making, language was added so defending attorneys could remain on the Roster pending resolution of an appeal.

**DOCKET NO.  
61.0102.2002.090**

**Continuing Legal Education.** Ms. Elliott addressed the continuing legal education requirements. She advised that the requirements are contained in the existing rules with the exception of three since removed specialized credit requirements. Ms. Elliott also noted the addition of two credits for defending attorneys with supervisory or management credits has been added.

**DOCKET NOS.  
61.0103.2002 AND  
61.0104.2002**

**Docket Nos. 61.0103.2002 Records, Reporting, and Review, and 61.0104.2002 Financial Assistance and Training Resources** were not heard at this meeting.

**DISCUSSION:**

**Senator Burgoyne** expressed concern with the independent contract review and the potential for conflicts of interest between the county prosecutors and the public defenders. He encouraged a speedy resolution to that potential. Ms. Elliot stated she was in favor of meeting with all involved parties to improve the docket language, make it clearer, and create a collaborative process that will work for all Idaho counties.

**Senator Wintrow** stated she was concerned whether the public defense offered in Idaho meets the standards in the Constitution. Ms. Elliot pointed out that in 2007 the National Legal Aid and Defender Association (NLADA) released an audit of the State Appellate Public Defender (SAPD) and stated that issues facing the SAPD could be remedied with improvements to the county-based indigent defense systems. In 2010, NLADA issued a report finding that Idaho failed to provide Constitutional representation for indigent persons in its criminal and juvenile courts. Direction was given by NLADA and changes were made to accommodate Idaho's rural areas. Three requirements were given to:

- provide national standards, ie. the ones currently being worked on;
- provide oversight of counties to align all departments in working together; and
- provide resources and training which the Legislature has made possible with their financial assistance to counties.

**Ms. Elliott** reiterated that in accommodating all those involved, it is paramount that the defendants' needs are met.

**Senator Anthon** asked if the implementation of standards and rosters have made it more difficult to get attorneys to defend indigent clients, especially in rural areas. **Ms. Elliott** explained that there is no clear way to keep track of indigent providers in the State, even though they are required to do so. PDC's goal is to make a seamless process so judges can appoint an attorney for an indigent defendant. **Senator Anthon** discussed with **Ms. Elliott** that the administrative rules need to be in line with legislative intent, and the difference between policy and statute.

**Senator Lee** and **Ms. Elliott** discussed how the current and proposed rules apply to vertical representation for indigent persons as it is critical to the Sixth Amendment and an important cost component to public funds.

**TESTIMONY:**

**Tony Geddes**, Chief Public Defender for Ada County, testified that he supported a rewrite of these rules as they needed to be refined, clarified, and condensed. He said he appreciated the PDC's efforts to do so.

**Andrew Masser**, a criminal defense attorney residing in Boise, testified against the rules saying he supports improvements to county-based public defense systems. He further stated that the proposed rules were a reorganization of the structure of the current rules. They are approximately one-third the length of the current rules, and significant guidance for counties and public defenders removed. He said the restructuring of the rules changes the PDC's focus from supporting public defenders through grants and training to regulating them through investigations and enforcement.

**Darrell Bolz**, Chair, Juvenile Justice Commission, Public Defense Commission, testified virtually that his goal was for the public defense system to meet both federal and Idaho constitutional requirements, and to improve the professionalism of public defenders. He stated the rules at hand are condensed and will be easier for people to understand, and testified that the PDC has cooperatively worked with all its stakeholders.

**Eric Fredericksen**, Idaho State Appellate Public Defender, fielded questions from the Committee regarding negotiated rule making. He stated the majority of the rules were simplified since they were negotiated over a period of many years.

**MOTION:**

**Senator Burgoyne** moved to postpone consideration of the dockets to the Call of the Chair. **Senator Thayn** seconded the motion. The motion carried by **voice vote**.

**PASSED THE GAVEL:**

Vice Chairman Ricks passed the gavel to Chairman Lakey.

**ADJOURNED:**

There being no further business at this time, **Chairman Lakey** adjourned the meeting at 3:05 p.m.

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Senator Lakey  
Chair

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Sharon Pennington  
Secretary

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Erin Miller  
Assistant Secretary