

Dear Senators LODGE, Nonini, Burgoyne, and
Representatives WILLS, DAYLEY, Gannon:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of
the State Public Defense Commission:

IDAPA 61.01.01 - Rules Governing the Administration of Training Funds Allocation for Defending
Attorneys - (New Chapter) Temporary and Proposed Rule (Docket No. 61-0101-1601).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 08/30/2016. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 09/28/2016.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Judiciary & Rules Committee and the House Judiciary, Rules & Administration Committee

FROM: Principal Legislative Research Analyst - Ryan Bush

DATE: August 11, 2016

SUBJECT: State Public Defense Commission

IDAPA 61.01.01 - Rules Governing the Administration of Training Funds Allocation for Defending Attorneys - (New Chapter) Temporary and Proposed Rule (Docket No. 61-0101-1601)

The State Public Defense Commission submits notice of temporary and proposed rulemaking at IDAPA 61.01.01 - Rules Governing the Administration of Training Funds Allocation for Defending Attorneys. The Commission is promulgating a new chapter of rules governing the administration of training funds allocation for defending attorneys. Specifically, this rulemaking accomplishes the following:

- (1) Provides for who may receive training funds;
- (2) Provides that the Commission will maintain a roster of defending attorneys;
- (3) Authorizes uses for training funds;
- (4) Provides for the types of training programs such as open enrollment, restricted enrollment, targeted enrollment and application enrollment;
- (5) Allows non-attorney staff of a defending attorney to receive training funds under certain conditions;
- (6) Allows for joint training programs with other organizations; and
- (7) Provides for scholarships to qualified individuals to attend non-Commission training in certain instances.

The Commission states that negotiated rulemaking was not conducted because it needs to use the funds appropriated by the Legislature immediately. There is no fiscal impact associated with this rulemaking.

The temporary and proposed rule appears to be within the statutory authority granted to the Commission in Section 19-850, Idaho Code.

cc: State Public Defense Commission
Kimberly Simmons

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

61.01.01 - RULES GOVERNING THE ADMINISTRATION OF TRAINING FUNDS ALLOCATION FOR DEFENDING ATTORNEYS

DOCKET NO. 61-0101-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2016.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 19-850(a)(i), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 17, 2016.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The State Public Defense Commission has been granted the authority and obligation to provide training to defending attorneys throughout the State. The legislature has appropriated training funds so the Commission may accomplish this task. It is necessary for the Commission to operate under temporary rules at this time to begin immediately providing the requisite training to ensure that defending attorneys are providing constitutional representation.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Promulgation of this rule will have no negative ongoing fiscal impact, but will allow the Commission to disburse appropriated funds immediately, conferring a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

This rule will not require any additional expense beyond the already appropriated training funds.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

There will be no negative fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the PDC needs the ability to use the funds appropriated by the legislature immediately. The PDC believes it is prudent to move forward without negotiated rulemaking to provide the requisite training rather than to continue to operate in the absence of any rules at all. The training is required under the statute and to ensure that the defending attorneys across the state are providing constitutional representation.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kimberly Simmons at (208) 332-1735.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 24, 2016.

DATED this 20th Day of July, 2016.

Kimberly J. Simmons
Executive Director
State Public Defense Commission
816 W. Bannock St. Suite 201
Boise, ID 83702
Tel: (208) 332-1735
Fax: (208) 364-6147

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 61-0101-1601 (NEW CHAPTER)
(Only Those Sections With Amendments Are Shown.)**

**IDAPA 61
TITLE 01
CHAPTER 01**

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

**61.01.01 - RULES GOVERNING THE ADMINISTRATION OF TRAINING FUNDS ALLOCATION
FOR DEFENDING ATTORNEYS**

000. LEGAL AUTHORITY.

Section 19-850 (1)(a)(i), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules regarding the training and continuing legal education requirements for defending attorneys. (7-1-16)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 61, Title 01, Chapter 01, "Rules Governing the Administration of Training Funds Allocation for Defending Attorneys." (7-1-16)T

02. Scope. These rules contain the provision for the allocation of funding designated for training of defending attorneys and staff. (7-1-16)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC's office. (7-1-16)T

003. ADMINISTRATIVE APPEALS.

The PDC's determination to confer training funds is a discretionary exercise of its fiduciary duty to responsibly and prudently manage the funds on behalf of its intended recipients. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-16)T

004. INCORPORATION BY REFERENCE.

Documents that are referred to by these rules are incorporated by reference into these rules, and may be modified or amended as the Commissions deems necessary. (7-1-16)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147.

(7-1-16)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code.

(7-1-16)T

007. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. Defending Attorney. Defined in Section 19-851, Idaho Code, as "any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense" in state courts.

(7-1-16)T

02. Indigent Defense Provider. Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission's action to remedy specific deficiencies pursuant to section 19-861A (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense.

(7-1-16)T

03. MCLE. Mandatory Continuing Legal Education credit as determined by the Idaho State Bar.

(7-1-16)T

04. PDC. The State Public Defense Commission.

(7-1-16)T

05. Scholarship. Any amount of training funds granted by the PDC to a defending attorney or staff member to be used toward the costs of attending a training program not hosted by the PDC.

(7-1-16)T

06. Training Program. Any program, class, conference, seminar, or educational opportunity whose purpose includes the training of those engaged in the representation of individuals at public expense.

(7-1-16)T

07. Training Funds. An amount designated in the annual budget of the PDC designated for the benefit of defending attorneys and those under their employ or supervision. Those funds are dedicated to providing training and education for those servicing indigent clients as designated by law, statute, court rule, or appointment.

(7-1-16)T

011. -- 019. (RESERVED)

020. RECIPIENTS OF TRAINING FUNDS.

01. Intended Recipients. Training money allocated in any given fiscal year through the PDC Budget is designated to train defending attorneys, and those under their regular employ or supervision. With the approval of the PDC, non-attorney staff of Defending Attorneys may qualify for training programs or scholarships.

(7-1-16)T

02. Presumptive Qualification. It is presumed that any attorney who is included on the Public Defense Roster maintained by the PDC qualifies as an intended recipient of training funds for the purposes of these rules.

(7-1-16)T

021. PUBLIC DEFENSE ROSTER.

01. Roster Membership. The PDC will create and maintain a roster of all institutional defender attorneys, and defending attorneys included in primary or conflict contracts with the counties in the State.

(7-1-16)T

a. Maintenance of Roster. The roster will be updated whenever there is a change, in May and may be

updated more frequently in order to accurately reflect anytime there are staff changes at the county level. (7-1-16)T

b. Roster Contents. The roster will include the name of each individual attorney along with their professional contact information, including email address, physical address, and telephone number. (7-1-16)T

02. Application for Roster Inclusion. Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. (7-1-16)T

a. Approval. Inclusion on the Public Defense Roster must be approved by the Executive Director. (7-1-16)T

021. -- 029. (RESERVED)

030. PDC TRAINING PROGRAMS.

01. Use of Training Funds. The PDC may choose to spend training funds to host its own training programs for the benefit of defending attorneys and their staff. (7-1-16)T

a. Equal Access to Training Funds. Where the PDC chooses to host a training program, when determining the allocation of training funds no distinction will be made as to whether the attorney is an employee of an institutional defender, a contract attorney, or an attorney who has qualified for training funds by application. (7-1-16)T

i. Registration Fees and Tuition. Where the PDC provides training programs without a registration fee or tuition, the PDC will provide the same discount to all qualifying attendees. (7-1-16)T

ii. Travel, Lodging, and Per Diem. Where the PDC agrees to provide travel subsidies to attendees, the PDC will establish a minimum travel distance. All those attendees whose residential or office address is located at a distance over the minimum travel distance from the location of the conference will qualify for the same travel subsidies as set forth in the training program announcement. (7-1-16)T

iii. Reimbursement of Expenses. The PDC may determine to provide services, lodging or food in lieu of reimbursement of the same. In the event the PDC determines that any expenses will be provided directly by the PDC, and notifies all registrants at the time of registration, subsequent application of expense reimbursements for the same may be denied. Reimbursement guidelines established by the State of Idaho will apply to all in-state travel. (7-1-16)T

02. Types of Training Programs. PDC Training Programs may be designated as (a) open enrollment, (b) restricted enrollment, (c) targeted enrollment, or (d) application enrollment. Notification will be by email for all training programs. (7-1-16)T

a. Open Enrollment Training Programs. The PDC may host a training program with an open enrollment. All those who qualify and register in advance will be allowed to attend. (7-1-16)T

i. Announcement. The PDC will post available open enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (7-1-16)T

ii. Registration. The PDC will honor the registration of any qualifying recipient who registers prior to the deadline. The PDC will impose a registration deadline and may require advance registration. Any registration received by the PDC after the deadline may be rejected by the PDC. (7-1-16)T

b. Restricted Enrollment. The PDC may host a training program open to all qualifying defending attorney or staff, but impose a registration limit. Targeted invitations may be extended prior to the notification of members of the Public Defense Roster. (7-1-16)T

i. **Announcement.** The PDC will post available restricted enrollment training programs on its website, and will notify members of the Public Defense Roster of the training location, dates, and any details regarding the applicability of training funds. (7-1-16)T

ii. **Registration.** The PDC will impose a registration deadline and may require advance registration. The PDC will honor the registration of any qualifying recipient in the order it receives the registration materials until the enrollment limit is reached. Any registration received by the PDC either after the deadline or after the enrollment limit is reached may be notified by the PDC that they cannot be accommodated. (7-1-16)T

c. **Targeted Enrollment.** The PDC may host a training program that is open to qualifying recipients by email invitation only. The PDC may identify specific individuals for targeted invitations where the PDC believes that such a training program would be of particular benefit to the individual or where there is a specific desire to obtain broad geographic representation at the training program. (7-1-16)T

i. **Invitation.** The PDC may identify specific individuals for invitation to attend the training program due to the person's length or time of service, experience, the particular area of law or representation to be covered, the geographic location of the qualifying recipient, or because the individual has been designated as a representative of an institutional defender office. The PDC will inform the invited individual of the time and location of the training program, along with the availability of any training funds. Invitees will be notified of a registration deadline. (7-1-16)T

ii. **Registration.** Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (7-1-16)T

iii. **Announcement.** If the registration deadline passes and the PDC determines that there is additional space, the PDC will treat the training program as a restricted enrollment program under Subsection 030.02.b. (7-1-16)T

d. **Application Enrollment.** The PDC may host a training program that is open only to those selected by the PDC after application materials are submitted. (7-1-16)T

i. **Announcement.** Where applications are sought for qualifying recipients, the PDC will post the training program on its website and will notify members of the Public Defense Roster of the training subject, location and dates, and the availability of any training funds. The PDC will also make available the application materials, establish an application deadline, decision deadline and notify applicants of how many places are available and whether non-attorney staff will be considered. (7-1-16)T

ii. **Decisions.** The PDC will evaluate all completed applications that are received by the deadline. The PDC will notify all applicants within fourteen (14) days of the application deadline as to its decision. The PDC will fill all available training program places as long as a sufficient number of completed applications are received. (7-1-16)T

iii. **Registration.** Where an individual accepts an invitation to attend and registration materials are received by the registration deadline, that individual will be guaranteed a place in the training program. (7-1-16)T

iv. **Delegation of Review and Approval.** The PDC may delegate review and approval of applications to PDC staff. (7-1-16)T

03. Non-Attorney Staff. Staff and others employed or supervised by a Defending Attorney may qualify as a recipient of training funds. Where a person is not on the Public Defense Roster, that person may still either be identified as a targeted recipient of training funds or apply to attend a PDC training program. (7-1-16)T

a. **Application Necessary.** The non-attorney individual must make an application to the PDC for qualification of training funds. (7-1-16)T

b. **Application criteria.** The PDC will consider (1) whether the individual is full-time staff, (2) the position they hold and the type of assistance they provide in the representation of indigent clients, and (3) the

relevance of the materials presented at the training program to their ability to fulfill their duties. (7-1-16)T

i. Open Enrollment. Where a non-attorney's application for qualification of benefits is approved by the PDC in advance of the registration deadline, a completed registration will be treated if the registration was for an attorney. (7-1-16)T

ii. Restricted Enrollment. Where a non-attorney's application for qualification of benefits is approved by the PDC in advance of the registration deadline, a completed registration of an attorney will be given priority over a non-attorney. (7-1-16)T

iii. Targeted Enrollment. Where a non-attorney has been identified by the PDC as an individual to be invited to a specific training, their acceptance of the invitation will be honored. (7-1-16)T

iv. Application Enrollment. Where applications from non-attorneys is permitted by the PDC, and an application is received by the deadline, the PDC will consider the individual's position in determining whether to accept the application. (7-1-16)T

c. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (7-1-16)T

031. JOINT TRAINING PROGRAMS.

01. Joint Training Programs Permitted. The PDC may choose to partner with other organizations or agencies in hosting and providing training programs to qualifying individuals. The nature of these designated training programs may allow for non-qualifying individuals to also register and attend. (7-1-16)T

a. Qualifying Individuals. In determining whether Training funds can be used, the qualification for receipt of benefits will be the same as established in Sections 020 and 021. (7-1-16)T

b. Application of training funds. Qualified recipients will be treated in accordance with Subsection 030.01. (7-1-16)T

02. Exclusive Use of Training Funds. Where non-qualifying individuals register to attend a Joint Training Program, the PDC shall not use training funds to subsidize the cost of registration or travel, other than unavoidable costs of operation. (7-1-16)T

a. Training Program Fees and Costs. The PDC will determine the approximate cost per individual of the training program. Each non-qualifying individual will be assessed the pre-determined cost of attendance at the time of registration. (7-1-16)T

03. Registration. No priority will be given to defending attorneys over non-qualifying individuals in determining which registrants fill the spaces available. (7-1-16)T

032. SCHOLARSHIPS.

01. Availability. The PDC may expend training funds on qualifying individuals to pay the cost to attend non-PDC training programs, in whole or in part. (7-1-16)T

a. Contingent on Funds. Scholarships in any given fiscal year will depend on the availability of training funds allocated outside of existing training programs. (7-1-16)T

b. Effect of scholarship. Any individual who receives a scholarship will not be eligible to receive a PDC scholarship in the same fiscal year. Preference given to applicants not receiving PDC scholarship in previous fiscal year. (7-1-16)T

02. Application. The PDC will post on its website an application for scholarship funding. (7-1-16)T

a. Deadline. All applications must be received by the PDC thirty (30) days before the end of the fiscal year in which funding is sought. All other scholarships will be considered in the following fiscal year. (7-1-16)T

b. Notification. All applications for scholarships will be reviewed by the PDC according to available funding. The PDC will notify applicants of any scholarship reward at least sixty (60) days before the date of the training program. In the event an application is submitted less than sixty (60) days prior to the training program, the PDC will notify the applicant within ten (10) days of the final application submission. (7-1-16)T

c. Non-Attorney Staff. Applications for scholarship will be accepted for non-attorneys in accordance with Subsections 030.03.a. and b. (7-1-16)T

d. Delegation of Review and Approval. The PDC may delegate review and approval of applications to PDC staff. (7-1-16)T

033. – 999. (RESERVED)