Aaron Bazzoli
CANYON COUNTY PUBLIC DEFENDER
OBJECTION TO PASSAGE OF PUBLIC DEFENSE COMMISSION RULES

Members of the House Judiciary and Rules Committee:

We are here again this year objecting the passage of the suggested Rules under the first and second sections by the Idaho Public Defender Commission.

This objection is not based upon an aversion to rules or because we do not believe that standards, guidelines, and rules. Also, this is not a criticism of the PDC or their staff who work incredibly hard and the Commission members who volunteer their time. We are here again this year because the rules which were presented last year and this year lack significant and compelling protections for the clients that we serve across the State and the attorneys in our charge.

These rules continue to remove or ignore fundamental due process protections including the opportunity to be heard and participate in any removal or denial from either the proposed public defender roster or Capital Defense Roster. The right to appeal the decision is written in but ends there. The right to be present at any hearing, to know why, to answer the questions or challenge the information is entirely absent including time frames. The PDC will have absolute authority of every single attorney who practices public defense with no oversight or meaningful right to appeal any decision they make. This is unacceptable and must be changed.

The workload and caseload requirements continue to be elusive and continue to create an unworkable calculation which is unrealistic of the actual work that public defenders are doing and time spent in our cases.

We all follow the mandates of our bar licenses under the Idaho Rules of Professional Conduct; if we fail to follow those mandates, we will lose our license to practice law. If there is a bar complaint, the process is clear and provides multiple steps, appeals, investigations and hearings with the aggrieved attorney advised of the allegations and statements against them and an opportunity to explain and rebut. Under these rules the PDC can decide that an attorney is not qualified to practice indigent defense without any of the above protections.

These rules must be rewritten and I suggest that a work group be made by the PDC with stakeholders including clerks, commissioners, contract and institutional public defenders and members of the Idaho Legislature sitting together and NEGOTIATING the rules into a workable solution which protect the indigent of Idaho facing the weight of criminal prosecution or child protection actions as well as those that commit their skills in the service of indigent defense.

The process that has been followed, the "negotiated rule making" has been more of a monologue than a dialogue. Many of us participated publicly and privately, and then very little is changed. The PDC did make some minor, rather trivial changes.

What we want is a seat at the table, to bring to you next year a working and fair set of rules, created with the voices of all stakeholders through a work group where a meaningful dialogue ends in a year from now those of us sitting here today encouraging you to adopt these rules.

These rules to not accomplish or effectively support public defense and/or public defenders, money can help reduce case load management, giving attorneys fewer cases but the rules as presented exceed the already established statutory requirements under Idaho Code 19-850 and do not reflect the needs of the key stakeholders, do not protect due process and fail to further public defense in Idaho.

Thank you for your consideration.