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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
JANUARY 20, 9:30AM – 10:30AM SEATTLE AND VIRTUAL/VIDEOCONFERENCE  
MINUTES

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**CPD voting members:** Jason Schwarz (Chair), Maia Vanyo (Vice-Chair), Arian Noma, Christopher Swaby, Anthony Powers, Kevin Flannery, Paul Holland, Larry Jefferson, Judge Drew Henke, Erika Rutter, Christie Hedman, Abraham Ritter, Anita Khandelwal, Jonathan Nomamiukor, Kathy Kyle, Rachel Cortez, Louis Frantz, Justice Sheryl Gordan McCloud, Jason Bragg

**CPD Emeritus members (non-voting members):** Bob Boruchowitz, Ann Christian, Eileen Farley,

**WSBA Staff:** Bonnie Sterken

**Guests:** Taylor Herring, Sarah Hudson, Scott Simpson, Sophia Byrd-McSherry, Stephen Hanlon, Bennett Baur, Geoff Hulsey, George Yeannakis, Sarah Hudson, Molly Sullivan

**Absent:** Judge Patricia Fassett, Mohammad Hamoudi, Leandra Craft, Travis Stearns

**Minutes:** The December minutes were approved without edits. Rachel abstained.

**New Mexico Presentation:** Maia introduced the guest speakers from New Mexico. Stephen Hanlon shared about publishing the new national public defense workload standards, likely in February. The peer review is being completed today. Stephen believes these will be transformational for public defense and can be used in any state with data and analytics. The study addresses the issue that it is against rules for attorneys to take on cases beyond their capacity and to recommend that a client make a plea or go to trial without completing their investigation. Both rules have been in violation for 50 years. These violations disproportionately harm poor individuals who are also disproportionately black and brown. Stephen explained it's a system wide problem to solve. Stephen offered solutions including seeking additional funding from local governments and the federal government, ending the criminalization of poverty, addiction, mental illness, and race, and sentencing reform to stop overcharging cases that use excess resources.

Ben Baur with New Mexico also shared about their local state work to request public defense resources to address workloads. They collected data on their needs and created the New Mexico report that was included in the meeting materials. The report shows they only have about a third of attorneys needed to adequately handle the number of cases. The report came out a year ago and they have been using it as a consistent talking point with decision-makers and addressing the workloads. New Mexico has seen some funding increase based on the study.

Scott Simpson with Moss Adams shared about the New Mexico 5-year plan. The New Mexico project included defining workload standards, a caseload analysis (i.e., categorizing types of cases mapped against the workload standards), calculating the total hours needed in the system across the state, and conducting an FTE analysis. They

found that they only had 30% of the number of attorneys needed to meet the standards. They developed a 5-year plan to address these issues that could be taken to the legislature to fix the problem over a reasonable period. They looked at needed FTE attorneys, identified cases that could be decriminalized, the impact of funding additional core staff. Overall, they found the plan could take the deficiency down from 60% to 17% if approved (decriminalization, reallocating time to other staff, addition to new public defenders). It has been a helpful tool to discuss with legislators. The speakers addressed questions and the Council had a discussion.

**Standards Committee Update:** Bob Boruchowitz presented a revised Standards 15-18 certificate that was included in the meeting materials. Jason asked for a two-part vote to approve the revisions and ask the BOG to send to the Court. The CPD voted in approval by a supermajority that the item is within the scope of GR 12 and to forward the revised certificate to the BOG for approval.

Bob continued to share additional updates. They have been looking at all the Standards except 3 while waiting for additional reports. They will have proposed revisions to send to the CPD within the next 1-2 meetings except edits on Standard 3. He provided additional context for what the Committee is considering for workload standards and have started to narrow down to a number range and will likely recommend specifying based on case type. He also shared how decriminalization or diversion can have an additional impact on reducing workloads. Bob addressed questions. The Subcommittee will need to give significant time to do case type mapping (estimated at 4-6 months meeting multiple times a month, and individuals taking on additional time). Bob noted that client input is included on the Standards Committee. The Council discussed the challenges that will come with a culture change when advocating for the updated Standards and the importance of making the change.

**GR 12 Proposed Revisions:** Eileen Farley shared about the proposed revisions to the GR 12 submitted by the WSBA Equity and Disparity Workgroup. She explained the proposed revisions to remove the language that WSBA cannot take a position on “political and social issues”. Eileen noted that about 60 groups were consulted for input, a smaller amount responded, and of those most were in support of the revisions. Eileen noted her opinions that these revisions are concerning regarding the bar’s mandatory nature, scrutiny around the Keller deduction, and compelled speech. Jason clarified that the Council could provide a comment or others could submit comments as individuals. The Council will discuss this further on the February meeting to give the Council time to review the materials and the issues raised.

**Office of Public Defense Update:** Larry Jefferson reported on bills that they are watching. One is on post-conviction counsel that is moving through committee (SB 5046). The other is for public defense services for people found not guilty for reason of insanity to transfer cases to the Office of Public Defense. They want to add counsel so folks can be safely brought back into the community. On February 10 in Tacoma there is an event where Larry Jefferson will be speaking. Sophia also shared about SB 5463 which is problematic and will add more exceptions to the current right for youth to have access to counsel before discussing with police.

**Race Equity Committee Update:** Abe Ritter reported that the Committee met and are moving forward with the forums. They are finalizing the marketing materials and the save the date for the first forum. The purpose and goal of the forum is to recruit and retain BIPOC legal professionals and discuss strategies to do so. The forum is for individuals who self-identify in the subgroups to share their stories.

**Washington Defender Association Update:** Christie Hedman reported that they are tracking many bills and will be sending out the list to the CPD. She reported that the Counties will be filing their lawsuit soon. They are looking at doing a study on public defense resource needs. The Redemption Project of WA is ongoing to help people with post-conviction resentencing. The Defender Conference will be in April.

**Announcements:**

Jason Bragg reported on a project he is working on regarding SB 5256 relating to child welfare specific housing. They have been organizing public housing agencies and nonprofits to sign on, and are seeking \$30mil additional for housing in the state.

Ann Christian addressed the questions that were brought up at the last meeting regarding Clark County. Ann is working to gather some more information and may be able to report on the issue in February or March. Jason noted there are ongoing discussions about how the CPD can support the conversation.

The next meeting is February 24. One item will be on the Race Task Force 2.0

In April the CPD will be welcoming speakers to discuss disparate outcomes in rural and urban areas.

The meeting adjourned at 11:46am.