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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE

JANUARY 24, 2020, 12:00PM TO 2:30PM AT THE WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA  
MINUTES

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**CPD members in person:** Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Louis Frantz, Joanne Moore, Justin Bingham, Jason Bragg, Kathy Kyle, Jaime Hawk

**CPD voting members on the phone:** Judge Patricia Fassett, Christie Hedman, Matt Anderson, Judge Drew Henke, Nick Allen, Abraham Ritter, Colin Fieman, Kim Ambrose, Justice Sheryl Gordon McCloud

**CPD non-voting members:** Bob Boruchowitz, Ann Christian

**WSBA Staff:** Diana Singleton, Carolyn MacGregor

**Guests:** Sophia Byrd McSherry, Barbara Harris, Jason Schwartz, George Yeannakis, Maya Ramakrishnan

**Absent:** Commissioner Randy Johnson, Rebecca Stith, Natalie Walton-Anderson, Eric Hsu, Deborah Ahrens, Rachel Cortez, Eileen Farley

**November Meeting Minutes:** Justin moved to approve the minutes. Louis seconded. No nays or abstentions. Motion passed.

**Office of Public Defense Report:** Joanne introduced Barbara Harris as new to OPD, serving as Disproportionality Legal Training Coordinator. Barbara has an extraordinary background for this position and is helping to launch all the initiatives affecting indigent individuals.

**Washington Defender Association Report:** Skipped.

**Proposed Changes to Standards in Death Penalty-Related Court Rules (CrR3.1, CrRLJ 3.1, JuCR 9.2):** Travis referred to proposals to remove all references to death penalty in these court rules, which all affect indigent defense standards. Travis is concerned that the death penalty could be reinstated, so asked for a discussion. Comments close in April. Justice Gordon McCloud feels able to join in discussion. She is concerned with removing these references as well and sees the standards as protective; many agreed that it would be difficult to reinstate references once removed. Bob worked on and is proud of rules in question and is very concerned, as they led to removal of the death penalty and Gregory. Frantz says only if legislature removes the death penalty, would removing the references be okay. Travis will draft comments in the next few days, and the required supermajority vote on submitting them will be held at Feb. 7 meeting. At least 17 members must participate in some portion of discussion and vote in order to submit.

Travis said that indigent appellate guidelines were approved by the WSBA Board of Governors with two edits to remove the words "zealous" and "courage and devotion" from the first section. Travis asked if there was any concern from CPD on these edits. No one objected so Travis confirmed he would move forward with working with the WSBA to submit the guidelines to the Supreme Court.

**Recommendations from OPD Report on Standards Implementation:** Sophia has collected comments. There is consensus to amend the certification form, requiring attorneys to be certified in every court they practice in. There is agreement to change “should” to “shall” with regard to caseload limits. The question of creating an enforcement mechanism came up—perhaps add a new paragraph stating that courts shall require attys. to certify compliance with applicable standards. Also question of which entity should do enforcing? Travis wants the end user to have an entity that would help clients to determine if they are appropriately represented. Bob suggested that for those with mixed practices it’s important to make sure that the percentage of time the public defense attorney spends matches the number of cases assigned. Travis is concerned that anything put in comments section of certification form will not be read. Bob says to indicate at top of form that this applies to all public defense. Travis notes the goal is making it as easy as possible to ensure compliance.

There was discussion of how to enforce without creating undue fear and worry for those in the position of taking on these jobs without sufficient resources. Can focus be on persuasion and encouragement? Joanne suggested adding the term “in good faith” to the form. Bob suggested the sentence: “timely and truly file a certificate of compliance in conformance with the form,” which could address folks not filing or lying on forms. Daryl said that there’s no entity to help those working within larger agencies with compliance.

Sophia noted that forms are submitted one quarter per year with applications for grant funding and reviewed for anything concerning. Travis noted that OPD is not an enforcement agency but still has influence. Bob asked if OPD can share information of concern with CPD to follow up on, if communities are used to certain practices. Travis suggests carrot approach with offering more funding.

Sophia’s committee will discuss further and present two options for another discussion. She will also will draft comments re certification issues.

**Independence Committee Report:** Sophia said that comments were generally favorable to Standards 18 and 19 re public defense contracts. There was discussion as to whether a judicial member should be involved, even if not controlling the process—that it’s helpful to hear judges’ views but it should not be part of decision making. Judge Fassett pointed to comment from Judge Hancock regarding a conflict with constitution. Bob doesn’t think this precludes the Perala case and is aware of a judge misusing appointments. Ann suggests that there be more discussion with the Independence committee around Judge Hancock’s concerns.

**Standards Committee Report re Persistent Offenders:** Bob said that the committee asked for a lot of input from practitioners around state regarding 7.1. He would like CPD to vote on March 27 and asked for questions from council members in advance to help expedite the vote during the meeting. Kim asked if there are other areas to address now as well, such as cooperation post-conviction. Bob said that the next priority after persistent offender is re-examining misdemeanor standards. Travis asked Bob to recruit someone with experience in misdemeanor court to join the committee.

**Legislative Agendas:** Christie reported that this is a short 60-day session and they are working fast and furious. There is more positive legislation this year due to it being an election year. Most hard-on-crime bills are not likely to move. Rep. Irwin agreed to sponsor a county bill to have the state take over public defense completely but the bill hasn’t been scheduled for a hearing. He is committed to work on the issue further during the interim and willing to introduce a bill striker or budget proviso this year to create a statewide public defense workgroup and study. Christie is looking at developing language (possibly using the WA State Institute for Public Policy for the study) by early next week and would welcome CPD input and comments. Sophia and Daryl volunteered to assist

with the language and OPD would want to be part of the task force. She noted that WDA does not take position on what the model for provision of public defense should look like as long as there is appropriate accountability. Currently, WDA supports 50% state and 50% local funding which keeps both sides honest and provides flexibility at the local level.

Others legislative items:

- Christie also shared about a bill re indigent defense funding would expand the number of people who can be with their children and get early release. Prosecutors are neutral on it. Hoping the bill will move but may need to start over next year.
- Three strikes bill—if it's removed, would be retroactive, but it's not clear whether it's likely to go through.
- Bill 2231 is expected to be voted out of committee next Thursday. The standard ranges are greater than that of original charges.
- Regarding sexual violence cases, they are trying to get more folks out into the community. Bills in the past have been costly and restrictive to clients. There are changes that the AG and others all agree on in favor of more releases and safe housing in the community.
- Death penalty bill is expected to take three hours of floor time, so it's not a priority this session with so many other bills active.
- Bill 2277 is trying to end juvenile solitary confinement. There are many bills sponsored by this one legislator, so it's not clear which will have enough votes to get through the House.
- Bill 1814 re Involuntary Treatment Act would extend allowable time period to detain someone from 72 hours to 5 days. Jaime noted that the additional time is not necessary and detrimental to clients.
- Jaime spoke about the bill on voting rights restoration. She said there was a great hearing, but Senator Kuderer wants to delay implementation for a year. There is a lot of Republican pushback, asking for carve outs. This bill would restore voting rights as soon as a person is let out of custody.
- Sophia spoke about Bill 6215, sponsored by Senator Braun, which would amend indigent statute to require DSHS to establish whether someone is receiving public assistance to determine whether they would get public defense. An electronic verification system already exists.
- Jason Bragg has been really active in child welfare reform and commented on Bill 5533 regarding a certificate of parental improvement which is critical for parents seeking restoration. A finding of abuse and neglect can stick forever.

**CPD Committee Engagement Survey:** Travis is waiting for approval on survey so he can circulate soon. He is hoping for thoughtfulness in responses for improving council.

**Announcements:** There is a conflict with April meeting, so it was decided that March 27 will be a full council meeting at WSBA and that committees would meet in April sometime during the week of April 20. Committee chairs will send out information about planning the committee meetings.

Bob mentioned his upcoming conference: [The Defender Initiative 10<sup>th</sup> Annual Conference on Public Defense](#), on Feb. 28, focusing on race.

Meeting adjourned at 2:37 pm.