



## WSBA COUNCIL ON PUBLIC DEFENSE MEETING AGENDA

NOTICE IS HEREBY GIVEN by the Washington State Bar Association, pursuant to RCW 42.30.080, that the Council on Public Defense meeting will be held on:

**September 11, 2020 | 10:00 am to 12:00 pm**

**VIRTUAL MEETING ONLY**

**For video and audio: <https://wsba.zoom.us/j/99410771479?pwd=djY2YXhNUTJQcEpDVlBBZ0xKK2JVZz09>**

**Zoom Conference Call Lines: LOCAL OPTION: (253) 215-8782 || TOLL-FREE OPTION: (888) 788-0099**

**Meeting ID: 994 1077 1479 || Password: 812254**

The purpose of the meeting is for the Council to discuss, deliberate, and take potential final action regarding the following agenda items:

3 min	<b>Welcome and Roll Call</b>	Daryl Rodrigues	Discussion	
2 min	<b>May, June and August Meeting Minutes</b>	Daryl Rodrigues	Action	pp 2-5
5 min	<b>CARES Act Funding Update</b>	Joanne Moore	Discussion	
45 min	<b>Persistent Offender Guidelines</b>	Bob Boruchowitz	Action	
15 min	<b>Felony Certification</b>	Travis Stearns	Discussion	
10 min	<b>WSBA Equity and Disparity Workgroup</b>	Travis Stearns	Discussion	pp 6-7
10 min	<b>Task Force on Race and Criminal Justice</b>	Travis Stearns	Discussion	
10 min	<b>Thanking Outgoing Members and Welcoming Incoming Members</b>	Travis Stearns	Discussion	pp 8
5 min	<b>Announcements</b>	Everyone		

**The Council will meet next on October 9, 2020.**

Reasonable accommodations for people with disabilities will be provided upon request. Please email [bonnies@wsba.org](mailto:bonnies@wsba.org).

Guests who are not members of the Council are not required to state their name to join this meeting.



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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
MAY 22, 2020, 10:00AM TO 12:00AM VIRTUAL/CONFERENCE CALL MEETING  
MINUTES

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**CPD voting members:** Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Louis Frantz, Justin Bingham, Kathy Kyle, Jaime Hawk, Rebecca Stith, Christie Hedman, Abraham Ritter, Justice Sheryl Gordon McCloud, Joanne Moore, Rachel Cortez, Natalie Walton-Anderson

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

**WSBA Staff:** Diana Singleton, Bonnie Sterken

**Guests:** Jason Schwartz, George Yeannakis, Ali Hohman, Kevin Flannery, Maialisa Vanyo

**Absent:** Judge Patricia Fassett, Kim Ambrose, Deborah Ahrens, Jason Bragg, Eric Hsu, Colin Fieman, Nick Allen, Commissioner Randy Johnson, Judge Drew Henke, Matt Anderson

**January Amended Meeting Minutes:** Rebecca Stith moved to approve the minutes. Louis Frantz seconded. No nays or abstentions. Motion passed.

**Washington Defender Association Update:** Christie reported that WCDL and WDA have a task force that has been working with other stakeholders to make suggestions for Supreme Court orders responding to covid. They have a good working relationship with WAPA, coming to consensus on some orders. A proposed order regarding 7109 cases was submitted last week and they are waiting for a response. WDA has cancelled all in person trainings. They are turning portions of the planned conference into webinars and have increased the number of webinars they are presenting. They are concerned about PPE in the courthouses. Cares Act funding has come through to go to local governments. Some public defenders have been able to request the additional equipment and items needed to social distance and to their work. There are concerns about what is happening now in courts. There are still judges and court staff who are not wearing masks. Christie addressed questions.

**Office of Public Defense Report:** Joanne reported that OPD is consumed with covid matters, and particularly the upcoming budget discussions that will be happening very soon. This afternoon there is a meeting with the Chief Justice and judicial branch agencies to discuss budget issues. The Office of Financial Management has sent out a list of factors to consider by agencies and communicating what kind of budget cuts they can take. One suggestion is 15% cut to agency budgets. On June 17 the revenue forecast will be announced and there is speculations that that the state is facing a \$7bil shortfall over a 3 biennium period. Expecting that some of that can be taken care of by the rainy day fund this year, but that still leaves more cuts. OPD is getting ready for public defense programs to be under scrutiny. They are working on descriptions and analysis for why funds and programs should be maintained. OPD will need help and would like a letter of support the budget from the CPD. There has been talk of having a special session right after the revenue forecast in June. OPD will need the CPD's letter by late June. Joanne addressed questions. The CPD discussed voting on June 19 to present to the BOG the following week, or ask the BOG about getting approval during a special meeting earlier in June. Joanne will draft a letter for the CPD to consider. Staff will enquire if we can ask for early approval from the BOG.

**Standards Committee Update:** Bob presented the standards committee proposed guidelines on persistent offender cases. They have had input from practitioners across the state including WDA. Bob recommended that the full CPD approve the document to submit to the BOG for their approval to send to the Court. The Council had a discussion. There was not a supermajority in attendance to take a vote. The vote was tabled for the next meeting.

**Charter Amendments:** Daryl summarized the proposed edits in the Charter in the materials to make the Justice position a standing position. The Council had a discussion. Rebecca moved to adopt the edits and Justin seconded. The motion passed.

**COVID-19 Issues and Getting Back to Court:** Travis opened up the meeting for a discussion on what people are seeing in their local jurisdictions as courts respond to the pandemic. Folks are seeing a range of courts taking social distancing requirement seriously and others not following the guidelines as closely. Offices are addressing unique challenges and trying to find solutions to keep people out of court when possible. Issues with providing PPE for people who have to come to court are ongoing conversations. Some jurisdictions are accommodating zoom use instead of in person, but some jurisdictions are slow to adopt this option. Conversations are ongoing about how to protect people in court through using technology. The BJA has started a task force to talk about court functions and reopening issues for the short-term and long-term.

**Other Announcements:** The CPD will be presenting to the BOG about its work in June. We will send out the details on how to watch that presentation once we have more information.

Meeting adjourned at 12:00 pm.



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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
JUNE 12, 2020, 10:00AM TO 12:00AM VIRTUAL/CONFERENCE CALL MEETING  
MINUTES

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**CPD voting members:** Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Kim Ambrose, Rachel Cortez, Justin Bingham, Matt Anderson, Colin Fieman, Justice Sheryl Gordon McCloud, Abraham Ritter, Eric Hsu, Rebecca Stith, Christie Hedman, Louis Frantz, Kathleen Kyle, Jaime Hawk, Randy Johnson, Natalie Walton, Jason Bragg

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

**WSBA Staff:** Bonnie Sterken

**Guests:** Kim Hunter, Sophia Byrd-McSherry, Carsen Nies, Dontay Proctor-Mills, Kevin Flannery, Rachel Gluskman, Mynor Lopez, Sam Sueoka, George Yeannakis

**Absent:** Judge Patricia Fassett, Deborah Ahrens, Nick Allen, Judge Drew Henke, Joanne Moore

**CPD Racial Justice Statement Discussion:** Travis led a conversation to discuss the draft statement that had been shared with the Council. He shared additional edits that had been added since the first draft was distributed. Comments and edits were provided and added during the meeting.

Louis moved to approve the letter including the edits provided during the meeting. Rebecca seconded. Motion passed 19 – 0. The CPD will forward the statement to the BOG for approval.



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Washington State Bar Association

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COUNCIL ON PUBLIC DEFENSE  
AUGUST 7, 2020, 10:00AM TO 12:00AM VIRTUAL/CONFERENCE CALL MEETING  
MINUTES

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**CPD voting members:** Daryl Rodrigues (Chair), Travis Stearns (Vice-Chair), Rachel Cortez, Lou Frantz, Judge Patricia Fassett, Judge Henke, Rebeca Stith, Randy Johnson, Justice Gordon McCloud, Justin Bingham, Jaime Hawk, Abraham Ritter, Christie Hedman, Kim Ambrose, Joanne Moore, Nick Allen, Kathy Kyle, Jason Bragg

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

**WSBA Staff:** Diana Singleton, Bonnie Sterken

**Guests:** Mynor Lopez, Kevin Flannery, George Yeannakis, Maialis Vanyo, Carsen Nies, Dontay Proctor Mills, Sam Sueoka,

**Absent:** Deborah Ahrens, Eric Hsu, Colin Fieman, Matt Anderson, Natalie Walton-Anderson

**Minutes:** The July minutes were approved without edits

**Covid Guidance for Public Defense Offices:** Travis shared that it had come to the CPD's attention that courts were not providing guidance on how to implement the standards in light of court changes due to covid. The drafted document in the materials is guidance to public defenders on how to implement the standards at this time. Once complete, WDA will distribute the guidance as a draft with a note that it is pending BOG approval in September. The Council will continue to collect stakeholder feedback on the document prior to the September BOG meeting. Travis will with President Majumdar to confirm which stakeholders to include in the request for feedback, including WDA and the Criminal Law Section.

The Council discussed the draft and provided feedback and edits during the meeting. Christie moved that the CPD approve the updated draft as written for distribution to the parties identified by the Bar Association and that the draft be forwarded to the BOG for approval at their September meeting. The Council has authority to make edits based upon the stakeholder input received without an additional vote. Abe seconded. The motion passed with two abstentions.

**Announcements:** Kathy shared that district courts have gone to zoom hearing. In doing so, they are expecting public defenders to handle all notices to clients as directed in Court orders, as opposed to the court taking on some of that administrative work. Kathy asked if the Court could amend the language to clarify that the courts should take some administrative responsibility for the notices.

The meeting adjourned 11:41 a.m.

# WASHINGTON STATE BAR ASSOCIATION

## Office of the President

**TO:** WSBA Board of Governors  
**FROM:** Rajeev D. Majumdar, President  
**DATE:** June 8, 2020  
**RE:** WSBA's Equity and Disparity Work Group

**ACTION/DISCUSSION :** A 2 year charter for WSBA's Equity and Disparity Work Group – a group empowered to look at concrete solutions through changes in court rules and laws.  
GR 12.2 (2, 6)

Dear Board,

You have all read my [message to the membership](#). The response from the members has been overwhelming positive, with people asking what the next step our WSBA is going to take and how they can help.

The killing of George Floyd at the hands of Minneapolis police officers—who have now been charged with murder or aiding and abetting the same—has stirred all too familiar unresolved tensions and conflict in our society over racism and the use of violence. Faced with weeks of isolation at home due to the coronavirus, a potential economic downturn, rapidly rising unemployment rates, and mistrust and misinformation about legal rights, many people in our country are left feeling hopeless, powerless, and fearful of speaking up. The result is a continued cycle of violence and defensiveness, ever more fraying the fabric of our society.

There is no equity without access to the justice our legal system can provide, and there is no access to justice without our profession doing its part to solve problems. It is up to each one of us to stand up and speak for others who cannot so that we may substitute true dialogue and good policy for violence in our society. That is the very point of an effective legal system, and as officers of that system we bear a large share of the burden in its failures if each of us do not work to ever reform it.

For years, attorneys and other members of the legal community have complained about injustice in our profession and the unequal application of laws to minority members of our community. Although dialogue itself has value, they have not moved the needle from injustice to justice. Therefore, it is time to act. Act in a way that lawyers are best suited to do- with review and analysis.

The action I am recommending is that a special task force to be formed with the specific task to review the rules, regulations, and laws related to the practice of law and the administration of justice, and identify the ones that facilitate injustice and propose remedies that the WSBA can advance pursuant to our mandate in GR 12.2. The goal is to list laws with recommended changes to reduce injustice. The reason for reviewing the laws and recommending changes is that we do not, as a legal community, fall into the trap of recommending that the courts simply ignore or not enforce laws which most people may no longer support. Rather, to move towards real reform it is necessary to identify rules, regulations, and laws creating injustice, and either ensure such laws are repealed by the correct body or rewritten to remove the injustice as it relates to the practice of law or the administration of justice.

The task force could begin with the rules of our own profession, such as the Rules of Professional Conduct, Admission and Practice Rules, and the Court Rules which the Bar Association can recommend that the Supreme Court change.

If this proves successful in advancing equitable reform, then the task force could expand to the examination of the Revised Code of Washington, expressly to make suggestions to the Legislature, of changes needed to ensure justice.

This approach would be substantially similar to the recent Covid-19 task force, which came together quickly to address issues created by the pandemic, but due to the nature of rule and law change is not expected to be rushed work product. Tragedy in George Floyd's death, and our trauma as a people from the resulting debate, does not need to result in inaction.

My intention, with your authority to proceed, would be to create a roster with a chairperson, our At-Large Governors, and then delegates skilled in technical review: five at-large delegates, a delegate from the Civil Rights Section, a delegate from the Committee on Professional Ethics, a delegate from the Court Rules and Procedures Committee, a delegate from the Access to Justice Board, a delegate from the Practice of Law Board, and invite our listed partners in the private minority bar associations to send Delegates:

1. Asian Bar Association of Washington
2. Northwest Indian Bar Association
3. The Cardozo Society
4. Filipino Lawyers of Washington
5. Slavic Bar Association of Washington
6. QLaw – The LGBT Bar Association
7. South Asian Bar Association of Washington
8. Korean American Bar Association
9. Latina/Latino Bar Association of Washington
10. Vietnamese American Bar Association of Washington
11. Loren Miller Bar Association
12. Washington Attorneys with Disabilities Association
13. Middle Eastern Legal Association of Washington
14. Washington Women Lawyers

If this seems like a large body for a committee, it is. I intend for this to be in fact be a convention of underrepresented perspectives. I believe at this juncture in history it will be incredibly important to have many voices and perspectives from underrepresented communities represented, and for those voices to guide us in making our rules and laws more equitable.

The Committee would operate on Robert's Rules of Order and will issue reports with both majority and dissent opinions being moved forward together to advise the BoG. I would expect the Committee to Report to the BoG *at least* once every six months for two years, which I believe is sufficient time for thoughtful and continued work over a range of our wide bodies of laws.

I would like to thank former Governors Michael Cherry and James Doane for continuing to engage on these issues and help form this idea in my mind of a concrete response appropriate for our WSBA to take so that we are better educated and informed on what actions we should take. Special thanks also to our Diversity Committee Co-Chairs Laura Wulf and Governor Jean Kang for their review.

In Service,



Rajeev D. Majumdar

## **CPD Roster Transition Notes**

### **Terminating Off/Not Returning (last meeting as a member: September 11, 2020)**

- Daryl Rodrigues
- Kim Ambrose
- Colin Fieman
- Randy Johnson

### **New to the CPD (terms begin October 1, 2020)**

- Jason Schwarz (incoming Vice-Chair; public defense administrator)
- Matthew Heinz (at large public defender)
- Christopher Swaby (WDA representative)
- Brenda Williams (UW School of Law representative)

### **Returning for Additional Terms**

- Matt Anderson
- Rebecca Stith
- Rachel Cortez
- Kathy Kyle
- Justice Sheryl Gordon McCloud