



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:

October 18, 2019 | 12:00pm to 2:30pm
Washington State Bar Association, 1325 4th Ave, #600, Seattle, WA
Call: 1-866-577-9294; Access: 52874#

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

3 min	Welcome and Roll Call	Travis Stearns	
New Member Orientation			
10 min	Brief History and Accomplishments of CPD	Christie Hedman	
10 min	Overview of CPD's Recent Accomplishments and Work	Travis Stearns	Orientation Packet pp 473-480
10 min	Current Initiatives and Committees	CPD Committee Chairs	
15 min	WSBA Policies	Lisa Amatangel, WSBA Associate Director Litigation and Internal Operations Szilvia Szilágyi, WSBA Public Records Counsel	Orientation Packet pp 485-491
25 min	Council Roundtable: Why do you serve on the CPD and what are your personal goals?	All Council Members, new and returning	
Regular Business			
2 min	Minutes	Travis Stearns	Action
10 min	Office of Public Defense Report	OPD Staff	Discussion
10 min	Office of Public Defense Standards Audit	OPD Staff	Discussion
10 min	Washington Defender Association Report	Christie Hedman	Discussion
10 min	Pre-Trial Reform Committee Update	Jaime Hawk and Justin Bingham	Discussion View online here
10 min	Announcements	Everyone	

The next Council on Public Defense meeting is Friday, November 1, 2019 from 12:00 to 2:30 p.m. at WSBA.

Reasonable accommodations for people with disabilities will be provided upon request. Please email bonnies@wsba.org or call 206-727-8293.

Some Council members may participate via conference call. A speakerphone will be available at the meeting location noted above for members of the public to attend and hear statements/discussion of those members participating by phone. In addition, call-in instructions are pasted below for members of the public who would like to attend telephonically.

Instructions for public call in: 866-577-9294, access code 52874#.

You are not required to state your name to join this meeting. If the conference call provider message asks that you state your name, you may press #, without stating your name, and you will be connected to the meeting.



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE

SEPTEMBER 20, 2019, 12:00PM TO 2:30PM AT THE WASHINGTON STATE BAR ASSOCIATION, SEATTLE, WA
MINUTES

CPD members in person: Daryl Rodrigues (Chair), Justin Bingham, Joanne Moore, Rebecca Stith, Hon. Drew Henke, Christie Hedman, Jaime Hawk

CPD voting members on the phone: Kathy Kyle, Justice Sheryl Gordon McCloud, Deborah Ahrens, Travis Stearns (Vice-Chair), Natalie Walton-Anderson

CPD non-voting members: Eileen Farley, Ann Christian

WSBA Staff: Diana Singleton, Bonnie Sterken, Shanthi Raghu

Guests: Eric Hsu, Abraham Ritter, Dave Ingman, Jason Bragg, Sophia Byrd McSherry, Jason Schwartz

Absent: Commissioner Randy Johnson, Dani Casselman, Colin Fieman, Nick Allen, Kim Ambrose, Hon. Johanna Bender, Michael Killian, Ping Lau, Marc Boman, Jason Gilmer, Rachel Cortez, Bob Boruchowitz

1) Minutes

The August minutes were approved without edits.

2) Office of Public Defense Update

Joanne reported that OPD had a statewide conference for the Parents Representation Program with 230 people in attendance. Today and tomorrow are the final days of the Trial Academies in Spokane and they will give out about 30 certificates. The Court asked OPD to synthesize the comments from the CPD regarding the Standards audit along with OPD's recommendations, noting who should be responsible for taking action. That will be completed the following week but it appears that the recommendations are in harmony with each other.

3) Spokane County Public Defender's Office

Daryl reported on the issue addressed in the news article that was included in the meeting materials. Spokane County is considering a switch to a nonprofit or other model other than a county run public defense office in order to address huge caseloads and other obstacles that have led to a lack of consistency in providing casework and individuals being held pretrial for a significant amount of time. Daryl asked if the Council could discuss the issues in light of the Standards and provide feedback to the County Commissioners in Spokane. The Council had a discussion. Justin shared background information about caseload issues in the Spokane area on both the city and county side. Members expressed agreement that it is appropriate for the CPD to reach out to the Commissioners and offer their expertise on this matter. Various Council members might engage in conversations with people in Spokane around this issue.

4) CrR 4.1/3.3 and CrRLJ 3.2.1

Daryl summarized the background information about the CrR 3.3 rules proposal that the CPD had submitted and the Court's subsequent rejection of the proposal. The materials included follow up information from the individual who suggested the original rule change and his continued efforts effect change. Kathy provided

information about what happened in Snohomish County relating to the issue, largely dealing with pretrial incarceration and other defense issues. The issue remains unchanged. Daryl asked if the Council had ideas on what to do next to address the underlying issues. There was agreement to gather more information and continue the conversation. Eileen will ask Judge Kessler for his thoughts, and Daryl will ask Justice Johnson for feedback on the rule proposal that was previously submitted.

4) Washington Defender Association Update

Christie reported that WDA has been conducting trainings, including a four-day training with the National Association of Public Defenders. They've hosted webinars on traffic violations and DUIs and have upcoming in person CLEs on mental health advocacy and the annual ethics CLE. WDA continues to work on a fiscal note analysis and they are looking at additional funding from the state. They are moving forward on a failure to appear bill that is moving and are participating in a coalition addressing ICE in courthouses.

5) Committee Updates

Standards – Bob had submitted a written report for the materials. Eileen added that additional conversations have been taking place. They are in consensus that before submitting case load standards they first need to develop performance guidelines. Once the performance guidelines are completed, the Committee will circle back to the standards. The Council discussed the need for the guidelines and the standards. The Council also discussed broader issues with resource limitations in following the Standards and potential new standards, such as adequate staffing and qualification requirements.

Independence Committee – Sophia reported that the Committee has not been meeting actively lately but will continue to find time to meet. They are looking at updating standards, creating new standards, and a proposed court rule.

Public Defense Structure – Eileen reported that they are gathering information from OPD via their evaluation forms. Katrin is helping to gather the information and present it back to the Committee. Once they have the information, the Committee will review staffing levels and other infrastructure needs.

Pre-Trial Reform – Justin reported that the CPD has submitted the Public Defense Packet to the BOG for their approval. Jaime is presenting to the BOG on September 27th. WDA is ready to help distribute the packet after the BOG gives their approval. The Council had a discussion about the issues being addressed by the packet.

LFO Reform – Daryl noted that the Committee's chair, Nick Allen, is on sabbatical and asked for a brief conversation on next steps for the Committee. Daryl asked if the Committee should be suspended until Nick returns. Eileen noted that LFO reconsideration days are happening around the state and suggested the Committee look at those days to see if there is a model or roadmap that other counties could use. Judge Henke shared about the planning for the Pierce County event coming up. There was also a suggestion to continue to receive updates on what is happening regarding LFOs around the state. Jaime reported that an LFO consortium has been meeting and a report is being drafted that will summarize the data and work that's been done on LFOs. She will see if recommendations will be included in the report. There is also a court rule that a judge is working on that the CPD might be able to weigh in on. Other problems include DWLS3 issues, debt collectors and a mandatory a \$500 assessment fee when data shows most people cannot afford to pay that. There is a lot of work going in this area. Instead of suspending the Committee, a better next step should be to review the LFO workgroup report (chaired by Justice Yu) and then come back together in October when Nick returns from sabbatical.

6) WSBA Structures Workgroup

Eileen referenced the report and the minority report, which is in the materials. She noted the minority report she and Hunter Abel wrote. The materials were sent to the Court for their September 4th meeting and now we are

awaiting a response from the Court. No longer need to make updates on this for future meetings. The Council discussed the issue that legislation is still alive to repeal the bar act and will be addressed at the start of the next session.

7) WSBA Updates

Diana reported that there are staffing transitions in our department. Diana will be taking over the Diversity, Equity and Inclusion portfolio work in addition to the access to justice team, which staff the Council, Access to Justice Board and pro bono and public service activities.

Daryl noted that he has been in conversations with members of the ATJ Board about projects to look at bridging the civil/criminal divide. He has also been in discussions with the VLP group in Snohomish about models where civil legal attorneys are housed in public defense offices and establishing best practices. Diana noted that Francis Adewale is asking the ATJ Board to put together a workgroup to discuss civil/criminal issues. She invited people to come to the October 11 ATJ Board meeting to provide thoughts.

8) Announcements

Daryl reported on CPD membership changes starting in October. The next meeting on October 4th will include an orientation.

Eileen reported that on November 15th there is an interpreter training.

Sophia reported that the DSHS is launching a tool to review if someone is receiving state benefits. Sophia will send a one pager to Bonnie to distribute to the Council.

The meeting adjourned at 2:07pm



COPY

Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

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September 23, 2019

The Honorable Mary Fairhurst
Chief Justice
Washington Supreme Court
Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

Dear Chief Justice Fairhurst:

This letter is in response to your letter of September 13, asking the Office of Public Defense (OPD) to respond to comments submitted by the Washington State Bar Association's Council on Public Defense (CPD) regarding the 2019 Audit of Trial-Level Compliance With The Standards For Indigent Defense. As you requested, the table below presents OPD's response to each CPD comment and identifies a recommended action and responsible entity.

In addition, in the process of discussing the CPD comments, OPD managing attorneys recommend two priorities: Make the Standards for Indigent Defense mandatory; and establish an enforcement process. Implementation of these two recommendations will effectively address several of the issues identified in the Audit and in the CPD comments.

CPD Comment (8/28/19 letter)	OPD Response	Action Required / Responsible Entity
CPD opposes alternative certification for public defense agencies	OPD believes the CPD makes good points about retaining individual attorney certification on a quarterly basis, regardless of the local public defense structure in place. OPD withdraws its previous recommendation to	No action needed

	allow annual agency certification	
CPD supports judicial education	OPD agrees	OPD has submitted proposals to the SCJA and DMCJA for a session at the 2020 Spring Conference, regarding the trial court's role in implementing the Standards for Indigent Defense
CPD supports the editing of certification forms	OPD agrees – Audit recommendation Courts # 3	CPD drafts proposed amendment for the Court's consideration
CPD recommends that Standard 3.4 should be changed from "should not exceed" to "shall not exceed"	OPD agrees – Audit recommendation Courts #6	CPD drafts proposed amendment for the Court's consideration
CPD recommends that there be statewide education clarifying the meaning of the caseload limits	OPD agrees	OPD implements webinar education for jurisdictions on the caseload limits
CPD recommends that a consistent guideline for case weighting be developed	OPD agrees – Audit recommendations OPD #3(d) and #5	OPD drafts checklist based on OPD Model Case Weighting Study
<p>CPD recommends that alternative pathways be developed for attorneys to gain requisite qualifications under Standard 14 for more difficult cases:</p> <ul style="list-style-type: none"> • Modify Standard 14 to allow trial practice training by OPD/other purveyor to substitute for trial experience, in part or in full • Standards should allow case credit for co-counsel • Public Defender Districts should be encouraged • CPD recommends that enforcement of Standards should be addressed, and recommends possible enforcement methods be considered, including WSBA licensing 	<p>OPD agrees.</p> <p>OPD agrees – such credit is now available</p> <p>OPD agrees – Audit recommendation Courts #7 – especially adding questions about</p>	<p>CPD drafts proposed amendment for Court consideration and OPD provides comprehensive training if sufficient additional resources</p> <p>OPD addresses this in education for jurisdictions webinar</p> <p>OPD acknowledges availability in education for jurisdictions webinar</p> <p>WSBA edits licensing form and Court considers RPC amendment</p>

form, creation of an Ombudsman position, and amending the RPCs	public defense representation on the licensing form and possible RPC amendment	
CPD recommends that all courts must provide confidential meeting space	OPD agrees – Audit recommendation OPD #7	OPD includes in trial court education

Thank you for offering us the opportunity to refine the recommendations. Please let me know if other questions arise or there is further discussion.

Best regards,


Joanne Moore
Director

cc: Daryl A. Rodrigues, Chair, WSBA Council on Public Defense