

Strike/Reject PDC Pending Rules Approved on March 5, 2021 for Presentation to Legislature

61.01.01.010.22. Vertical Representation. A Defending Attorney appointed to represent an Indigent Person shall, to the extent reasonably practicable, continuously and personally oversee the representation of the client's case through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make all efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, including but not limited to advising the Court of any conflict at the time of setting, providing accurate unavailable dates and in the case of unforeseen absences, filing a motion or stipulation to continue.

61.01.02.020.01.a. Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or require the attorney to apply for the Roster under Subsection 070.03 of these rules;

61.01.02.030.02.a. The county will use an independent committee from within the county or region for recommendations to the Board of County Commissioners for the selection of the lead institutional Defending Attorney or primary contracting Defending Attorneys as the main providers of public defense services as set forth in Sections 19-859 and 19-860(2), Idaho Code; and

61.01.02.030.02.b. Each judicial district will establish an independent committee of one (1) attorney for each county who practices public defense in or who is familiar or will become familiar with public defense in the county and who is not a Defending Attorney for the appointing county and who is not a prosecutor, to act as a liaison in independence issues between Defending Attorneys and county stakeholders. The Administrative District Judge (ADJ) or Trial Court Administrator (TCA) will identify the members of the committee for their District, and if the ADJ or TCA does not, the Commission will identify committee members.

61.01.02.030.05. Independent Contract Review. The county should engage independent legal counsel to negotiate Defending Attorney Contracts.

61.01.02.040.02. Pay. Defending Attorneys and their staff will receive similar compensation as a properly funded prosecutor and staff with similar experience.

61.01.02.050.02.a.ii. Assess the Defending Attorney's Workload to ensure compliance with the Public Defense Rules;

61.01.02.060.03. Qualifications. Have demonstrated ability, training, experience and understanding regarding representing Indigent Persons and do the following:

- a. Apply laws, rules, procedures and practices to the case and perform thorough legal research and analysis;
- b. Protect client confidentiality, and if breached, notify the client and any other entities when necessary to preserve the client's constitutional and statutory rights;
- c. Ensure Vertical Representation from the time a Defending Attorney is appointed in each Case. Defending Attorneys who are unable to comply with this rule will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources;
- d. Dedicate sufficient time to each Case;
- e. Promptly and independently investigate the Case;
- f. Request funds as needed to retain an investigator;
- g. Request the assistance of experts where it is reasonably necessary to prepare the defense and rebut the prosecution's case;
- h. Continually evaluate the case for defense investigations or expert assistance;
- i. Be present at the Initial Appearance and available to the Indigent Person in person or via technology, and:
 - i. Preserve the client's constitutional and statutory rights;
 - ii. Discuss the charges, case and potential and collateral consequences with the client;
 - iii. Obtain information relevant to Idaho Criminal Rule 46 (bail or release on own recognizance) and if appropriate, seek release;
 - iv. Encourage the entry of a not guilty plea at Initial Appearance except in extraordinary circumstances where a guilty plea is constitutionally appropriate;
- j. Work within Caseload or Workload limits, defined in Subsection 060.05 of these rules. If a Defending Attorney's Caseload exceeds the numeric standard, the attorney must disclose this in the Annual Report. The Report must include the reasons for the excessive Caseload or Workload, and if and how the representation met constitutional standards;
- k. Have sufficient time and private space to confidentially meet with Indigent Persons;
- l. Have confidential and secure information systems for Indigent Person's confidential information;

- m. Identify and resolve conflicts of interests in compliance with Idaho Rules of Professional Conduct (IRCP) and other applicable laws and rules;
- n. Be familiar with and competent to identify or use:
 - i. Forensic and scientific methods used in prosecution and defense;
 - ii. Mental, psychological, medical, environmental issues and impacts;
 - iii. Written and oral advocacy;
 - iv. Motions practice to exhaust good faith procedural and substantive defenses;
 - v. Evidence presentation and direct and cross examination;
 - vi. Experts as consultants and witnesses and expert evidence;
 - vii. Forensic investigations and evidence;
 - viii. Mitigating factors and evidence;
 - ix. Jury selection methods and procedures;
 - x. Electronic filing, discovery and evidence and systems;
 - xi. Constitutional representation; and
 - xii. Understand their own professional limitations and seek the advice of experienced attorneys or decline appointments when necessary.

61.01.02.060.04.a. Have advanced familiarity and competence with the above minimum requirements for Defending Attorneys; and

61.01.02.070.01. Defending Attorney Roster

- a. For inclusion on the Defending Attorney Roster, attorneys must:
 - i. Have an active license to practice law in Idaho;
 - ii. Attest they are in compliance with the Public Defense Rules or will comply with the Rules when appointed and representing an Indigent Person;
 - iii. New attorneys admitted to the Idaho State Bar within the previous year will name and be mentored by an experienced Defending Attorney on the Defending Attorney Roster;
 - iv. Have completed the minimum continuing legal education (“CLE”) requirements in Paragraph 090.03 of these rules within the previous year or within the next sixty (60) days of being placed on the Roster;
 - v. Have completed the Defending Attorney Roster application and authorization forms.
 - vi. Attorneys on the Defending Attorney Roster will complete Annual Reports as set forth in IDAPA 61.01.03, “Records, Reporting and Review,” Paragraph 020.01.a. Attorneys who at the time of inclusion on the Defending Attorney Roster are not under contract with a county will promptly provide PDC Staff notice and copy of any county contracts entered after inclusion.
- b. Attorneys who meet the requirements in Subsection 070.01.a. of these rules will be included and remain on the Defending Attorney Roster until they request removal or are removed for failing to comply with Public Defense Rules under written findings of the Executive Director;
- c. Continuing Eligibility. To remain on the Defending Attorney Roster attorneys must comply with the Public Defense Rules and:
 - i. Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and
 - ii. Have completed an Annual Report.

61.01.02.070.02.a.iii. Have completed Capital Defending Attorney Roster application and authorization forms.

61.01.02.070.03. Attorneys Engaged Prior to Roster Membership. Attorneys who are not on the Defending Attorney Roster at the time of employment or contract to provide representation at public expense must apply for Roster membership within thirty (30) days from the date of their employment or contract. Except as provided in Subsection 050 of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense.

61.01.02.080.03.a. To prevent or avoid immediate danger when:

- i. An attorney’s Idaho license to practice law is suspended;
- ii. An attorney is disbarred in Idaho;
- iii. An attorney’s Idaho license status is inactive; or
- iv. An attorney is convicted of a serious crime as defined in IRPC 501(p);

61.01.02.080.03.c. An appeal of the removal under Subsection 080.03 of these rules, may be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code;

61.01.02.090.01. Approval. CLE credits that meet the requirements in Subsection 090.02 of these rules will count toward minimum requirements. Courses that are not pre-approved by PDC Staff will not be approved in they do not meet these requirements.

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