

Notes from 5/18/2021 Negotiated Rulemaking Meetings – Meeting 1 of 2

Start 12:00 pm MT via Zoom

PDC: Kathleen Elliott, Chair Bolz, Jennifer Cichocki, Mark LaSalle, Jared Ricks, Jennifer Roark, Tammy Zokan (took notes)

RJ Hoopes
Brent Mendenhall
Steve Frampton
2082702260 (no name)
Tony Geddes
Anne Taylor
Leslie Duncan
Angela Barkell (Note she is a County Clerk and a PDC Commissioner)
Nancy Austin
Manuel Murdoch
Deborah McCormick
Jeanne Howe
Mark Bolduc
Jordan Crane
Lauren Bramwell
Courtney Gillihan (Courtney Riffle)
Aaron Bazzoli
Christopher Schwartz
Mark Bolduc

Kathleen Elliott (KE): started meeting at 12 pm MT. She said in respect of everyone's time, we will get started and reminded all there is another meeting starting at 4 MT today. She mentioned the benefit of Zoom because it allows everyone to hear from others across the state. She said text reflects changes PDC worked through with stakeholders during legislative review and are the 21 areas we will focus on. She said she can bring these up on the screen and everyone's input is welcome. She asked if anyone would like to get us started today with discussion. Hearing none, she asked Tammy Zokan to screen share.

61.01.01.010.22

KE asked if anyone had questions or comments about this section.

Manuel Murdoch asked about the language saying a client can consent to another attorney.

Ms. Elliott said this change reflects feedback received. She gave the example of a 2-attorney firm, and the handling attorney is unavailable, but the client does not want to move hearing. This allows the client to consent to the other attorney in the firm representing them at the hearing. This allows flexibility with understanding everyone should be trying to do vertical representation.

Commissioner Leslie Duncan asked about counties providing support and resources to prove for vertical representation.

KE asked Commissioner Duncan if she has any suggestions for this. She said the language was included because defending attorneys expressed concern that they do not have resources to do vertical representation.

Commissioner Duncan said if that means the county has to tell judge what to do, she can't. She said she has no suggestions for language and asked if the sentence has to be included.

KE said it is not for her to say whether it must be included. She asked if the county is willing to provide resources for an extra attorney to do vertical representation, if for example, that is the resource needed for vertical representation.

Commissioner Duncan said there is a nationwide labor shortage, and the county should not be found not compliant because it can't hire.

KE asked Commissioner Duncan why she thinks the county is unable to hire.

Commissioner Duncan said Kootenai County used to get 60 applicants per open position and it is now only 3 or 4. She said she doesn't know if there are fewer law school graduates. She said her concern is that the sentence is vague.

KE said if anyone has thoughts or ideas to please share them. She said written comments will be accepted until close of business on May 31, 2021. And she said commenters can call anytime. She said she appreciates Commissioner Duncan's comments and ideas she may have about ways to phrase this.

Anne Taylor asked if going to continue getting workload financial assistance to allow for vertical representation and about adding reference to workload financial assistance to the end of the vertical representation definition.

KE said Chapter 2 of the rules continues to have previous language about workload compliance assistance to meet workload rules. She said if there is a need tied to workload the PDC would consider awarding workload compliance assistance.

KE asked Anne Taylor is she has any sense or idea of reason for the county's hiring struggle.

Anne Taylor said she thinks it is the cost of living. She said costs are skyrocketing and the market for housing is outrageous and said a small apartment is going for \$1,400 per month. She said she thinks the county is looking at this issue because housing costs are more than county wages.

Commissioner Duncan said even if the county increase salaries, there's no housing available. She said builders are building as quickly as they can there are supply chain issues slowing them down. She said since they don't have homes higher wages would not fix the problem.

KE asked if Kootenai County was experiencing issues with both housing costs and availability.

Commissioner Duncan said yes.

KE if there were any other comments about this section.

61.01.02.020.01.a

KE asked if there are questions or comments about this section.

Tony Geddes said it just reminded him to have his new attorneys sign up. He said he has about 5 new attorneys who have joined. He said he echoes Anne Taylor's concerns about housing costs and supply. He said he is talking to Ada County Commissioners about higher pay.

61.01.02.030.02.a

KE said this adds a title to help eliminate confusion between it and subsection b and asked if there are comments about it.

61.01.02.030.02.b

KE said this is a concept raised during the 2020 negotiated rulemaking and asked if there are any comments about it.

Commissioner Duncan said she is much happier with 61.01.02.030.02.b.

61.01.02.030.05

No comments

61.01.02.040.02

KE said this allows counties to use prosecutors to review contracts when appropriate and encourages counties to consider independence when negotiating contract terms.

Manuel Murdoch asked what Bar counsel said about this.

KE said she can share what she heard but she does not have a written opinion and has heard different interpretations of Bar counsel's statements, so she encourages Mr. Murdoch to contact Bar counsel directly.

Deborah McCormick said her staff don't get paid what prosecutors' staff get paid and asked how she can get what she needs and find out what they are paid.

KE said those are good questions and asked if she has any ideas.

Deborah McCormick asked if she should ask what they are being paid and ask for resources. She said they may not like her asking.

KE said this is part of resource equity. She said counties have different models so different factors weigh into equity but that it is geared toward institutional and contract attorneys.

Tammy Zokan said the "so far as possible" language comes from existing statute and some counties wanted the rules to read like statute. She said the PDC is open to ideas and comments about making the provision make sense to all.

KE reminded everyone they may share ideas now and later until May 31, 2021.

61.01.02.050.02.a

No comments

61.01.02.050.04

No comments

61.01.02.060.03

No comments

61.01.02.060.03.c

No comments

61.01.02.060.03.i.iv

No comments

61.01.02.060.03.n.xii

Tony Geddes said the sentence is awkwardly written. He suggested making it more grammatically correct and read better.

61.01.02.060.04.a

No comments

61.01.02.070.01.a

Tony Geddes said the roster form provision raises a question for him because he said he poached an attorney from Canyon County and wanted to know if the attorney needs to fill out a new roster form.

KE asked that the attorney please complete a new form so that the PDC has updated information for the attorney. She noted it is a short simple form.

61.01.02.070.01.a.iv

No comments

61.01.02.070.01.a.v (deleted)

No comments

61.01.02.070.01.b (deleted)

No comments

61.01.02.070.01.b

No comments

61.01.02.070.02.a.iii

No comment

61.01.02.070.03

No comments

61.01.02.080.03.a.iv

No comments

61.01.02.080.03.c

No comments

61.01.02.090.01

No comments

KE asked if anyone has additional comments about any of the sections we've talked about today. She said again that negotiated rulemaking comments are welcome until May 31, 2021.

KE said if there are no additional comments at this time, she would make a couple plugs: She mentioned PDC's First Friday meetings/CLEs for defending attorneys and asked the group for ideas of issues or topics they'd like PDC to cover.

She mentioned the upcoming PDC2 trial college and application deadline this Friday. She highlighted the amazing faculty doing the college. She said applications are available on the PDC website and the PDC is happy to answer any questions.

KE asked if anyone in the meeting joined us after we got started who would like to talk about what we may have already covered. She asked if anyone has additional questions about the information we covered.

KE said the PDC will remain in the meeting for the scheduled 2 hours. She said if anyone would like to join us for a second meeting, there is another at 4 pm.

Commissioner Duncan thanked Ms. Elliott and said she was signing off and planned to submit written comments before deadline.

KE asked if anyone wants us to go back to any of the referenced rules for further discussion.

KE asked if anyone has topic ideas for PDC First Fridays they would like us to cover. She said the PDC is interested in what attorneys want us to cover. She said she can answer any questions about PDC2 trial college.

KE asked again if anyone would like us to go back through any of the rules that we are negotiating.

KE asked about if anyone has signed up for PDC2 trial college.

Jordan Crane said he has directed all his new attorneys to sign up but he is not sure if they have.

KE said the trial college is open to all experience levels. She told Mr. Crane if he sent her their names, she would reach out directly.

Jordan Crane said he would send KE 4 names of the attorneys he really wants to be there. He said he did encourage all to attend. He said he hopes coverage of those at PDC2 does not create a vertical representation issue.

KE said she knows folks are tired of Zoom but PDC2 is going to be amazing and include things not ever seen as part of trial college.

KE asked Aaron Bazzoli if anyone from his office signed up (and he did not respond).

Anne Taylor said Mr. Bazzoli may be in court; and she thinks her office has at least 3 signed up and a fourth may attend.

KE said PDC is like NCDC, that any experience level is welcome, and people are matched with similar experience levels.

Anne Taylor said she will look again and see if any others can be absent for a full week. She said she looks forward to hearing about it on the back end. She said she will tell contract defenders about it and saw some of them on this call, so she hopes they are hearing this information. She said she is signing off now but will be on the next call to hear any comments.

No comments from about 12:55 to 1:22 pm
1:22 pm

Aaron Bazzoli asked if he missed anything.

KE said she had a question about PDC2 and participants from his office.

Aaron Bazzoli said he thinks at least 2 attorneys from his office are doing it. He said he has concerns about time commitments because 2 new attorneys are joining his staff and the college is about the time of the July 4th holiday.

KE said it runs up to the holiday weekend. She said the college is made up of exciting faculty and participants and participants will receive tools they can use in the courtroom.

Bazzoli said he has sent information around and reminded attorneys to submit applications.

KE said PDC2 will include some changes from faculty to improve on the NCDC model. She said if anyone has any contract attorneys who may be interested, we would like to have them. She said contract attorneys are on the roster and the PDC is sending information to them but may be more likely to read emails from the offices they contract for.

Aaron Bazzoli mentioned some contract attorneys who may benefit but noted it may be harder for them running a private office and being absent a whole week.

KE said she hopes virtual makes it easier access for some because it saves travel time and expense.

KE asked Mr. Bazzoli if he has any suggestions for First Friday monthly topics he would like the PDC to cover.

Mr. Bazzoli said maybe 1 hour leadership credits, which are required by the rules.

KE said for information ELI (executive leadership institute) is planned for later this year and will also be virtual. She said it is a good idea to have leadership CLEs during First Friday.

Aaron Bazzoli asked if the comment deadline is May 31.

KE said May 31, 2021 is the deadline for comment for this negotiated rulemaking phase. Information will then be considered, and proposed rules adopted by PDC Commission, then the PDC will have public hearings on proposed rules and then come up with pending rules. She mentioned the text has already been through a lot of comment and modification.

Aaron Bazzoli said individuals give their comments, but he does not feel like there is a next step. He said he understands the PDC can't have meeting after meeting but suggested the PDC come up with multiple options and ask about them. He said this would be like a probation hearing and the PDC would provide access to all comments and some options for change and ask for input on each.

KE said the PDC did that with vertical representation. She said vertical representation has been around about 5 years. This year, in response to comment, the PDC Commission chose from 2 options for this version. She said this process has highlighted that the rules are a living thing. She said the rules and related information are always available and everyone is always welcome to share their comments and ideas about them. She said this is ongoing and the PDC wants collaboration.

Aaron Bazzoli said he plans to submit written comments. He mentioned his office is dealing with two murder cases right now, one of which may have to conflict out.

KE asked Mr. Bazzoli if he would like to go over the negotiated rules and his comments now. She said we have time to do so.

Aaron Bazzoli said he does not have time now because he needs to get to a county meeting.

KE reminded Mr. Bazzoli that the PDC is holding another negotiated rulemaking meeting at 4 pm today.

Aaron Bazzoli said thank you and signed off.

No comments 1:34 pm – 1:59 pm

1:45 pm – I noticed all but Lauren Bramwell and PDC had left the meeting. Ms. Bramwell commented at 1:54 pm that she was signing off.

2:00 pm MT PDC team only ones on the line and KE ended the meeting.

Notes from 5/18/2021 Negotiated Rulemaking Meetings – Meeting 2 of 2

Start 4:00 pm MT via Zoom

PDC: Kathleen Elliott, Jennifer Cichocki, Mark LaSalle, Jared Ricks, Jennifer Roark, Tammy Zokan (took notes)

Dori Smith

Jolene Maloney (Note Judge Lee was with her for at least a portion of the meeting)

Mark Coonts

Jessica Lewis
Anne Taylor
Lauren Bramwell
Jessica Lewis

David Martinez (Note Scott Andrew was with him for at least a portion of the meeting)

Kathleen Elliott (KE): Started the meeting at 4 pm MT. She said in respect of everyone's time, we will get started. She summarized the pending rules and the text with the changes we worked through with stakeholders during legislative process. She said these are the 21 areas negotiated rulemaking is focused on. She said the PDC is happy to go through all and get comments and the PDC welcomes everyone's input.

KE reminded participants about PDC's First Fridays for defending attorneys and desire to do topics attorneys are interested. She asked that attorneys please let the PDC know what they are interested in. She reminded participants about PDC2 trial college. She said it is a first in Idaho and exciting opportunity. She said to tell others who may want to join and to contact the PDC if need information or help with scheduling.

KE said there is 1 change in 61.01.01 and 20 in 60.01.02. She asked if anyone wanted to comment on any of these. She said we can walk through one by one.

61.01.01.010.22

KE asked if anyone has comments or ideas about this definition.

Mark Coonts said he appreciates it as a member of a small shop. He said it gives us flexibility to deal planned absences or if someone is sick. He said it allows him to inform the client and the client to decide to go forward. He said he is in a small office and county and only sees judge once a month, so a continuance can be a month. He said this also emphasizes that one attorney should handle a case.

Jolene Maloney said she echoes Coonts' comments. She said she is also from a small county and limited hearings. She said this keeps things moving forward and focuses on continuity.

Dori Smith said she has never had an office that did not do vertical representation so not sure if larger offices may not do this.

KE said that in earlier meeting there were comments about the last sentence regarding county responsibility. She asked if there are any comments about that or any other part of definition.

Jolene Maloney said last sentence shifts some issues to the County BOCC and a defending attorney may not have control over this.

KE said the change reflects comments heard and is what it is intended to do.

Jolene Maloney said delete all together since workload requirements address those requirements.

KE said workload can impact vertical representation but that it is not the only thing that can. She said the concern is that an attorney could be seen as noncompliant when doing their best and have adequate attorneys but still can't meet requirement.

Mark Coonts said judges don't always like it but this may help them understand their role, and excuse attorneys who are trying but court won't help scheduling. He asked if the rules have any influence over judges.

KE said the PDC has met with some judges and the rules do have effect of law but this one specifically references the county. She asked for any other comments about this definition. She stressed that all are welcome to provide comment after this and until 5 pm on May 31, 2021. After that, the rules process will continue and there will be a public hearing on the proposed rules. She said everyone is also welcomed to call anytime.

61.01.02.020.01.a

No comments

61.01.02.030.02.a

No comments.

61.01.02.030.02.b

Mark Coonts said he like how these have been split and my Commissioners like making selections using people from their own area. He said 02.a and 02.b are clearer now.

61.01.02.030.05

KE said is to be clear about independent negotiation versus review of contracts.

Lauren Bramwell asked why it says "should consider" rather than "should engage".

KE said this is an ethics issue. She said it is also an issue for counties and each may do it differently with their counsel. She noted some counties don't involve prosecutors at all.

61.01.02.040.02

KE said this change makes words more consistent with statute as requested by some. She asked if any comments questions or ideas about this.

Dori Smith said she doesn't understand how that is going to happen when many counties have contract attorneys. She asked how counties can provide same benefits to contract attorneys.

KE asked Ms. Smith if she has any ideas of how to address this.

Dori Smith said it was hard for her to leave an office that had benefits and go to one that does not. She said health Insurance is important. She asked why defending attorneys do not have a group health insurance policy available to everyone, for economies of scale.

KE asked for ideas about how it may work, and if IACDL could assist.

Dori Smith said she hasn't looked into it and is unsure about how many members we have in group who would participate if offered. She said that will tell us whether office costs versus or group costs are better.

KE asked Ms. Maloney or Mr. Coonts to talk about what county does for their offices.

Jolene Maloney said the county contracts contemplate the potential cost of insurance and is incorporated into our wage. She said their County Commission is great and interested in the equity aspect of this. She said the county did not want to take attorneys in-house because of potential costs so she kept contract office. She said she had a candid conversation with county that county needs to account for actual contract attorney expenses.

Mark Coonts said he asked for it specifically. He said his predecessor did not have insurance and Mr. Coonts did not think that was fair. He said the county made it a priority when he put together options for them. He said county policies are pretty generous because of the number of county employees. He said he shopped for rates and found some comparable to the county policy. He said he needed to provide for and keep good people. He said the county had not realized disparity in insurance before he brought it to their attention and the county was very receptive once they found out. He noted in his county he is the primary and does most cases and has 4 conflict attorneys to assign cases to.

Dori Smith she is not the person who does the contracts and she will talk to her supervisor about this.

Lauren Bramwell asked about “so far as is possible” language.

KE said this was requested to mirror statute.

Lauren Bramwell asked whether equity is possible with permissive language and if there is a tiered pay scale for accountability to ensure pay and resource equity is happening.

KE said rules still subject to final action by end of the legislative session so some counties may not have something in place yet. She said each county system is different and pay scales will reflect each county. She said the PDC is helping counties work on this.

Jolene Maloney said she did public records requests for similar sized counties for comparison.

Mark Coonts said he did that with his staff as well. He said he used the information to show an assistant who had been with the office for 9 years needed more pay and he got her a well-deserved raise.

Lauren Bramwell thanked group for the information.

61.01.02.050.02.a

No comments

61.01.02.050.04

Jolene Maloney said she is concerned about possible capital cases and requirement they appoint death qualified counsel up front. She said she doesn't know if we have the people. She said the practicality of it is troublesome.

KE said court rules address this as well and is why counties reach out to other counties for assistance with capital cases. She said the concern is that we do not lower standards because there are not

enough capital attorneys. She said this section addresses comments we received about having a roster from which to appoint attorneys.

Mark Coonts said practically speaking he understands because of what he is dealing with. He said he would love to have 2 death qualified attorneys. He said CCDF doesn't chip in until the notice of death penalty has been filed. He said it could get quite expensive even if turns out not to be a capital case. He said if capital eligible, it is going to be expensive. He said he understands why want those people on those kinds of cases but he is concerned about finding them and paying for them.

KE directed Mr. Coonts to capital roster on website.

61.01.02.060.03

KE said this addresses non-capital defenders which have additional qualifications they must meet.

61.01.02.060.03.c

Jolene Maloney said this is necessary for all jurisdictions and appropriate as amended and she supports this.

KE reminded everyone that PDC will be taking comments on negotiated rulemaking until May 31, 2021.

61.01.02.060.03.i.iv

Dave Martinez commented on "constitutionally appropriate" language as potentially unwieldy.

KE asked Mr. Martinez if he had more explanation.

Dave Martinez said not really. He said attorneys take action on what's legally appropriate. He said he is was just throwing thought out there but not sure he has better words.

KE asked Mr. Martinez to help her understand concern. She said she believed the rule comes from concerns about limiting "milling".

Dave Martinez said constitutionally appropriate is too broad but then too unwieldy to say when attorney believes. He said he understands why saying it.

Judge Lee suggested removing word "constitutionally" and instead saying "when circumstances [I was not able to capture his complete suggestion]. He said he sees this in DUIs when there are multiple priors.

KE asked Judge Lee to help us understand and what would not be constitutional about Judge Lee's example.

Judge Lee said he thinks it is constitutional but to address Mr. Martinez concern, he wants to make sure people understand everything before pleading guilty. He said many people there on first charge and he wants to make sure that person understands what they're doing, their rights and the impact and make sure people examining these carefully.

Dave Martinez said he encourages attorneys to spend adequate time explaining to clients.

Judge Lee said he will think about more.

Dori Smith said if strike “constitutionally” it causes a problem not having something qualifying “appropriate”. She said something missing if remove “constitutionally” resulting in a broad interpretation of what appropriate.

Judge Lee said should encourage entry of a not guilty plea except when it seems legally and practically appropriate.

KE asked if that language does enough to get away from “milling”.

Judge Lee said based on his experience in the 3rd district, Judges are reminding people about their rights and not rushing to guilty plea.

Dave Martinez said we have some judges who direct defendants to public defenders even if not appointed. He said he likes “practically” better.

KE asked about juveniles and others. She asked if that would be enough direction for attorneys who are “milling”.

Dave Martinez said his office does all the review and advice and makes sure proper representation is always our goal but not sure constitutional is what we do.

KE asked who practically refers to.

Dave Martinez said it’s the client not us.

Judge Lee said it’s client’s practically. He said defense attorneys do best to evaluate information they have and can only give advice based on info they have at the moment. He said could go too far and get into the way of people who have the right and want to plead guilty. He gave example of out of area defendants who had to make a second trip back to the jurisdiction to plead guilty. He thinks practically takes this into account.

Dave Martinez said he’d rather them come back because there are so many bad decisions made. He said he would rather know more before a client pleads guilty. He said he knows the PDC has spent quite a bit of time coming up with appropriate language.

KE thanked Mr. Martinez for recognizing PDC efforts but said this language is currently in rule, it is not new. She said the PDC would have to understand reasons for changes before changing the rule. She said “constitutionally” seems to include right to plead guilty.

Martinez said “constitutionally” is such a big tent and he doesn’t know if any attorney would allow a client to plead guilty under it.

KE said she is trying to understand where trying to go and be able to draft a change and explain the reasons for it. She said expectations for attorneys versus practical for client. She said a valid legal determination must be based on enough information.

KE asked the group to continue to think about and submit additional comments.

Scott Andrew said a decision must be voluntary, must know what doing, must be intelligently made meaning they understand consequences and other available options. He said if an out of state of defendant and is a drug paraphernalia charge, the prosecutor may allow a bond forfeiture and the person may not have to return. He said it is about voluntary, intelligent and knowing and is the attorneys' obligation in help them understand. He asked, isn't that constitutional.

KE said so that we are not putting words in his mouth, what would he change.

Scott Andrew said if client understands what rights are and if going to enter guilty plea, make sure knowing, intelligent and voluntary and know what options are and what consequences, and that really know what they are doing.

KE asked for any other thoughts or ideas.

61.01.02.060.03.n.xii

Mark Coonts appreciates that and said not a day goes by that he doesn't run something by another attorney.

KE mentioned earlier comment about adding another "seek".

Dori Smith said sentence structure wise is a good change.

61.01.02.060.04.a

KE said this change made because removed "demonstrated" from defending attorney roster section.

Dave Martinez said that is a good idea because is a different case.

Judge Lee said missed earlier discussion about practicality of appointment of two capital qualified attorneys. He said they talked to prosecutor and asked him when possible to make determination of pursuing death penalty or not, sooner. May reduce costs. Share that as an idea – have discussion with your prosecutor.

KE said that is a really good idea. She said notice is a good thing but a lot can happen before the notice is filed.

Judge Lee said he is just planting a seed of an idea to discuss in advance.

KE thanked for sharing.

61.01.02.070.01.a

KE mentioned the roster form is available online or other format and is very simple.

Mark Coonts asked if PDC already has a copies of contracts.

KE said the PDC do not always have them and the roster form is first thing the PDC will get from a defending attorney so requesting with it so have information right away.

Mark Coonts said he understands reason for roster but he is not a big fan of it.

KE thanked Mr. Coonts for cooperating with it and said the PDC is doing best to streamline. She said the PDC should be getting contracts from counties and with DAARs.

61.01.02.070.01.a.iv

No comments

61.01.02.070.01.a.v (deleted)

No comments

61.01.02.070.01.b (deleted)

No comments

61.01.02.070.01.b

Dori Smith asked how defending attorney deficiencies determined.

Jolene Maloney said she appreciates the mitigation language. She said she appreciates efforts and this memorialized PDC work directly with attorney before removal. She said it shows a level of commitment from PDC to attorneys' success.

KE asked for any other comments, concerns or ideas.

61.01.02.070.02.a.iii

No comment

61.01.02.070.03

No comments

61.01.02.080.03.a.iv

No comments

61.01.02.080.03.c

No comments

61.01.02.090.01

Mark Coonts said obviously all of us are going to try to take CLEs relevant to our practice. He asked what take to approve, if it must be criminal defense related.

KE gave example of Connecticut law versus Idaho law. Idaho statute requires relevant and a class in Connecticut about cross examination is likely relevant. She said some CLEs, like bankruptcy, could be relevant to a criminal case handled by a defending attorney. She said the whole idea the training be relevant to your practice.

KE asked for any comments or ideas about this section. She said she knows some joined after we got started. She asked if anyone would like us to cover information that may have already been covered.

Jolene Maloney said she would like to talk about FCE and CPA and juvenile weighting. She said she understands need to do a study but counties are spending resources to meet current numbers. She said she would like to talk about a study and discussion now. She said she knows negotiated rulemaking is not based on these changes. She mentioned potentially bringing into next year's session.

KE said she understands there are concerns with the initial study and whether covered enough cases or length of time but there is a lot of good in the study. She said the study expires next year and new rules extend expiration to 2023. She said the PDC wants to make sure these #s are not based on anecdotal data. She also mentioned the COVID influence. She said she is hearing discussion about work on this but need to have data to support changing #s. She said if current numbers are causing problems, please write down what issues are because this is where we get the data. She said the PDC wants to do more than bandage. She said defending attorneys can tell the PDC what they're doing and why they can provide constitutional representation even if #s above maximums. She said this helps identify the differences in cases from jurisdiction to jurisdiction. She said she does not know how to proceed with adequate data for 2022 Legislature. She asked for any ideas about how to do this sooner, please share. She said the PDC needs data to drive this and is not shirking this. It's a big issue and open to ideas.

Jolene Maloney asked if plan is to do a study in 2023.

KE said currently behind on case information because the state does not have uniform data or data reporting. She said there will be a study but need information from attorneys in the field. She talked again about attestations from attorneys explaining why.

Jolene Maloney asked if there is a commitment that there will be a study.

KE said if the rules are not done, numbers default to national standards so there is pressure in getting the study done. She said we also have to deal with artificial highs and lows of COVID.

Jolene Maloney asked if makes sense to push to 2024 so there is more time.

KE said that is a consideration. She said the PDC wants to do it quickly to address pressures Ms. Maloney raised but also want to do it right. She said whether have to move to 2024, remains to be seen. She said we do have better data now and better sense now based on work of data analyst but continued lack of case reporting and case tracking makes it hard.

KE asked if there is anything else anyone else wants to go over.

KE encouraged everyone to submit any written comments. She said we are noting your comments today.

KE reminded everyone about PDC First Friday meetings for defending attorneys only and requested they tell the PDC what topics you'd like us to cover.

KE reminded about PDC2 trial college and that it is open to all experience levels.

Mark Coonts thanked the PDC for hosting this. He said likes this better than what the PDC did in the spring. He said there may still be conflict about changes but early and often communication is the best way iron out issues.

KE said the PDC Commission always does negotiated rulemaking to avoid issues. She asked everyone to please share your comments. She said the PDC is subject to timeframes in rulemaking process. She said this is a highly unusual year before the Legislature. She said there are a lot of different stakeholders and pressures to take them all into consideration. She said the earlier everyone can provide their comments and clearer you can be about your ideas, the better.

Jolene Maloney asked about deadlines for commenting.

KE said May 31, 2021 is the comments deadline. She said the PDC Commission will review and prepare proposed rules that will be subject to public hearings.

Jolene Maloney asked if comments are limited to negotiated rulemaking.

KE said yes.

Jolene Maloney asked about the change from 2023 to 2024 for FCE Case study.

KE said that is not part of this negotiated rulemaking because that portion is already approved. She asked Ms. Maloney to continue to bring this to this to PDC's attention and work with us on this.

KE asked Ms. Maloney if she knows anyone interested in PDC2 trial college. She said it is open to any experience level and could be easier for contract attorneys to attend because it's virtual.

KE said if anyone wants to weigh in, you're welcome to do so now or after this meeting.

5:42 pm Coonts, Maloney, Judge Lee, Taylor, Bramwell said they were signing off, only PDC team were on the meeting.

6:00 pm MT PDC team only ones on the line and KE ended the meeting.