



KOOTENAI COUNTY PUBLIC DEFENDER

May 31, 2021

Idaho Public Defense Commission
816 W. Bannock Street, Suite 201
Boise, ID 83702

RE: Proposed Rules 2021 - Public Defense Commission

To Whom It May Concern:

I write in response to rulemaking 2021. I want to share my concern with that raised by Kootenai County Commissioner Leslie Duncan during the negotiated rulemaking process. The concern is about the definition of Vertical Representation.

Below, I have copied the temporary definition that was approved earlier this year, as well as the proposed new definition. The new definition places more burden on each attorney to appear at hearings with clients and places additional burden upon counties. Both are appropriate in context and both may be misconstrued in context.

Current temporary definition:

***61.01.01.010.22 Vertical Representation.** A Defending Attorney is responsible for the continuous and personal representation and oversight of an Indigent Person's case, to the extent reasonably practicable, through trial proceedings and preservation of right to appeal. For purposes of this definition reasonably practicable means a Defending Attorney will make efforts to personally represent the client during all substantive proceedings where the facts of the case are discussed by counsel or the Court, provide unavailable dates at the time of setting and seek continuances in the case of unforeseen absences. The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation.*

Proposed new definition:

22. Vertical Representation.** A Defending Attorney **appointed to represent is responsible for the continuous and personal representation and oversight of an Indigent Person's case 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 **at the time of setting** and **seek continuances** in the case of unforeseen absences, **filing a motion or stipulation to continue**. **The Indigent Person may consent to have another Defending Attorney appear at a hearing. Each county is responsible to support and provide resources as necessary to ensure Vertical Representation.

I write to discuss the context given the daily, real challenges facing Public Defenders in busy counties.

Covering all hearings for a client is impeded by scheduling outside of a Public Defenders' control. An assigned attorney should cover every hearing to the extent possible but with respect to conflicting courtroom schedules and/or illness or pre-approved vacation.

Advising unavailable dates is appropriate when possible. Many cases are set through a process without input by Public Defenders, or Prosecutors. It is appropriate, when setting motions initiated by the defense, to have a requested date when an attorney is not on planned days off. It is appropriate to look ahead at one's schedule when planning days off. It is appropriate to inform clients if assigned counsel is not available, and discuss whether a substitute attorney, or a continuance, is desired by the individual.

County responsibility for adequately funding their Public Defender is appropriate. Ensuring Vertical Representation, beyond properly funding their Public Defender, is outside the County Commissioners control. County Commissioners cannot control courtroom scheduling, nor can they control an individual public defender's case assignment and daily schedule. The County should fund their Public Defender to supply enough individuals to carry out the work, including investigative and support staff. The funding issue, addressed by separate rule, makes this addition unnecessary.

I request that the proposed rule contain language to limit the rule to things within the control of the Attorney and that the last portion relating to the County Commissioners remain addressed in a separate rule.

Respectfully,

A handwritten signature in black ink, appearing to read 'Anne C. Taylor', with a stylized, flowing script.

Anne C. Taylor,
Chief Public Defender for Kootenai County