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Notes* from 9/9/2021 Proposed Rulemaking Public Hearing – Hearing 1 of 2**

Start 2 pm MT via Zoom (recorded) and in-person at Idaho Capitol Building

Senate Committee Room WW 53, 700 West Jefferson Street

PDC: Vice Chair Fredericksen (at hearing site), Chair Bolz, Kathleen Elliott, Jennifer Cichocki (at hearing site), Mark LaSalle, Jennifer Roark, Tammy Zokan (took brief notes***)

Public at hearing site: None

Public participating via Zoom: See Zoom list for all virtual participants

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Kathleen Elliott (KE): started the public hearing at 2 pm MT and reported hearing will continue to 4 pm MT, and there is a second hearing next week and written comments will be accepted on or before 9/24/21. Noted proposed rules public hearing opportunity to make presentation about proposed rules published in the Administrative Bulletin on 9/1/21 and available on the PDC website. Referred to three changes in proposed rules: 61.01.02.060.03.n.xii addition of word “seek”; and 2 deletions 61.01.02.090.01 “of” and “but are not required” this change by OARC/DFM because of their policies applied to all agencies. Noted these are only changes since negotiated rulemaking stage. Reported the PDC anticipates the Commission will adopt pending rules once the current Legislature adjourns. She encouraged all to make comments and referred to proposed rules on the shared screen and offered to scroll around if anyone would like to see specific sections (information on shared screen)

Lorna Jorgenson, Ada County: referred to definitions section and Vertical Representation (VR) and asked about county compliance if county does not have budget to do VR

KE: referred to prior negotiated rulemaking and existing VR requirement that counties are responsible to meet; welcomed comments

Commissioner Jack Johnson: referred to 2020 rulemaking, 2021 Legislature review and desire to understand process

KE: provided brief history overview of 2020 rulemaking process, 2021 Legislative session germane Committees’ hearings and approval and Omnibus Temporary Rules

Commissioner Johnson: referred to his county’s 10/13/2020 letter and 5/28/2021 letter

KE: reported all comments sent to the Commission are considered by the Commission. If comments are not sent to the Commission, they were not/could not be considered

Aaron Bazzoli: referred to some rules he said he had not picked up on before: these included “filing of documents” 61.01.01.003, review of rosters decisions 61.01.02.090 forms, process and timeframes, and his desire for more details

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KE: expressed appreciation for comments; noted public hearing is for public comment on proposed rules, which focus on 21 provisions the PDC worked through with stakeholders; noted PDC rules reference Attorney General's hearing rules

Marilyn Paul: referred to the process for appeal of a denial of capital roster membership and desire for more detail about process, who can appeal and involvement of institutional offices, and referred to IDAPA processes in the Attorney's General's rules

Aaron Bazzoli: referred to Deficiencies review and desire for PDC to work with county and attorney to respond before determined a Deficiency

Brian Thie (Prosecutor): referred to forum to ask questions

KE: noted public hearing as the time for public comment/testimony

Thie: questioned independent committee required for lead defender and view that commissioners make own decisions and should not be limited to a recommendation list.

KE: offered to meet with BOCC and answer questions and opportunity to work through transition to new rules

Thie: referred to independent contract negotiation and required qualifications versus cost to the county

KE: offered to meet with BOCC and talk through constitutional requirements and independence

Thie: referred to requirements for facilities for confidentiality because jail phone is not private and wondered if BOCC must provide telephone booths or other confidential phone meeting space

KE: referred to PDC's work with counties to make sure have confidential space and offered to share how other counties have addressed these issues

Thie: referred to required independence from prosecutor and desire to understand scope so he gets it right

KE: offered to meet with BOCC and talk about this

Sharee from Power County: referred to others' comments and said they have addressed all her questions and concerns and asked if she needs to do anything further

KE: welcomed verbal or written comment

Sharee: expressed desire that her comments be counted with the others if she does not separately comment

KE: reported Commission considers all comments; welcomed her to comment that she agrees with other's comments and referred to the second public hearing on 9/17/21

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Sharee: concurred with all comments made so far today and is busy with L2 tasks

Commissioner Johnson: said he is looking for information from Legislative session and changes after it

KE: referred to shared screen which shows changes from Legislature

[discussion about history and previous comments; various folks weighed in attempt to direct Commissioner Johnson to information we thought he may be asking about]

KE: offered to meet anytime and answer questions

3:02 pm KE: asked if other comments

3:13 pm KE: encouraged anyone who wants to make a comment to do so

3:30 pm KE: encouraged anyone who wants to make a comment do so; we will be available until 4 pm today

3:48 KE: said she wanted to make sure anyone who has comments makes them

KE: thanked all for attending and ended hearing at 4 pm MT

Notes* from 9/17/2021 Proposed Rulemaking Public Hearing – Hearing 2 of 2**

Start 11:30 am MT via Zoom (recorded) and in-person at Idaho Capitol Building

Senate Committee Room WW 53, 700 West Jefferson Street

PDC: Kathleen Elliott (at hearing site), Jennifer Cichocki, Mark LaSalle, Jennifer Roark (at hearing site),

Tammy Zokan (took brief notes***)

Public at hearing site: None

Public participating via Zoom: See Zoom list for all virtual participants

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Kathleen Elliott (KE): Started the public hearing at 11:30 am MT.

Noted this is the second hearing and will continue until 1230 pm PT/130 pm MT and written comments welcome on or before 9/24/21; Noted public hearing happens after publication and is opportunity to present comments germane to propose rules. Referred to three changes since the negotiated rulemaking stage: in IDAPA 61.01.02.060.03.n.xii and 61.01.02.090.01 and will point them out as go through proposed rules today. Reported PDC anticipates the Commission will adopt pending rules once Legislature adjourns and we don't know when that will be. Referred to proposed rules and the screen and encouraged comments as we go through each (shared screen)

61.01.01.010.22

KE: Asked if any comments
(none)

61.01.02.020.01.a

KE: Asked if any comments
(none)

61.01.02.030.02.a

KE: Asked if any comments
(none)

61.01.02.030.02.b

KE: Asked if any comments
(none)

61.01.02.030.05

KE: Asked if any comments
(none)

61.01.02.040.02

KE: Asked if any comments
(none)

61.01.02.050.02.a.ii

KE: Asked if any comments inquiry provision

Kay Maffey: asked if this refers to all attorneys

[brief audio issues]

KE: reported this refers to when court appoints a defending attorney for a capital case and the court's inquiry about that defending attorney's workload

61.01.02.050.04

KE: Asked if any comments on eligibility provision
(none)

61.01.02.060.03

KE: Asked if any comments
(none)

61.01.02.060.03.c

KE: Asked if any comments
(none)

61.01.02.060.03.n.xii

KE: noted the Commission added “seek” and asked if any comments
(none)

61.01.02.060.03.i.iv [out of order because accidently missed]

KE: Asked if any comments
(none)

61.01.02.060.04.a

KE: Asked if any comments
(none)

61.01.02.070.01.a

KE: Asked if any comments
(none)

61.01.02.070.01.a.iv

KE: Asked if any comments
(none)

61.01.02.070.01.a.v (deleted)

KE: Asked if any comments
(none)

61.01.02.070.01.b (deleted)

KE: Asked if any comments
(none)

61.01.02.070.01.b

KE: Asked if any comments

Anne Taylor: asked about Deficiencies provision distinguishing between contract and institutional attorneys and involvement of chief public defenders

KE: reported PDC would involve when appropriate and asked Ms. Taylor for her thoughts

Anne Taylor: expressed her thought that it is appropriate to go through the head of an institutional office and that doing so comports with statutes regarding institutional chiefs and their attorneys answering to them and her desire to know if there is an issue and view that it is important to have all involved be part of those discussions. Noted her second point about this rule as relevant to the rule about removing an attorney from the roster and requested a more formal process for attorneys to be informed about their recourse and referenced IDAPA and final agency action. Expressed concerns about her challenges retaining attorneys and anything putting more pressure on them and helping attorneys understand their recourse

KE: reminded everyone that the public hearing is to address the proposed rules, which is what is shown on the screen. Expressed PDC’s openness to hearing from everyone about other rules and requested

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anyone who desires to talk about other rules to contact the PDC and schedule a meeting. Expressed appreciation for Ms. Taylor's comments

KE: asked if any other comments about 61.01.02.070

Kay Maffey: asked if workloads would be discussed today

KE: reported workloads are not part of proposed rules but the PDC does have a deadline for current case maximums and is continually gathering information about these and welcomes her input

Kay Maffey: asked if she should contact the PDC office

KE: reported she could contact office, regional coordinator in her region or any of us and noted the PDC is monitoring what happening now with COVID and what's anticipated in the future

KE: asked if any other comments about 61.01.02.070
(none)

61.01.02.080.03.a.iv (deleted)

KE: Asked if any comments
(none)

61.01.02.080.03.c

KE: Asked if any comments
(none)

61.01.02.090.01

KE: noted two changes: Commission deleted "of" (typo) and DFM/OARC deleted , "but are not required," per their policies

KE: Asked if any comments
(none)

KE: asked if there are any proposed rules that anyone like me to go back to comment on or you would like to read again

[~12:04 returned to beginning of proposed rules and scrolled through a few times]

12:06 pm Anne Taylor chatted she was leaving the meeting

12:15 pm KE: asked participants to feel free to comment on any of the proposed rules at any time; we will stay here until 12:30 PT/1:30 MT

12:26 pm KE: reminded that still taking comments and we will stay here until 12:30 PT/1:30 MT

12:28 pm (it appears all but ACLU Idaho and PDC staff remain in the hearing)

12:45 pm KE: encouraged anyone with comments to make them

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1:01 pm KE: encouraged anyone with comments to make them and reminded we will stay here until
12:30 PT/1:30 MT

1:26 pm KE: reporting getting to end of public hearing and encouraged anyone with comments to speak
up

1:28 pm KE: expressed appreciation for everyone attending and their comments and reminded
proposed rulemaking comments are welcome until 9/24/2021.