



# **KOOTENAI COUNTY PUBLIC DEFENDER**

October 1, 2021

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

To Whom It May Concern:

I write in further comment of the rules being negotiated, proposed and presented for adoption in 2021. I previously provided written comment in May of 2021, and now provide written comment after the public hearings in September 2021.

In January and February 2021 the Public Defense Commission presented a set of rules that was contested by various stakeholders throughout the State. I was one of the opposing stakeholders. One of the areas I strongly opposed was the Defending Attorney Roster. I was concerned about centralization of power and control of who provides public defense with the PDC; the Defending Attorney Roster shifts control to the Public Defense Commission, contrary to statute, in that the Executive Director has authority to remove someone from the Roster. As the controversy progressed changes to the rules were made; except centralization of power and control of the Defending Attorney Roster remained vested in the Executive Director. I recall commitments by the PDC to work through and talk about a Defending Attorney's right to have due process and review of a removal decision by the Executive Director. That has not happened and the rule remains with vast power to remove an attorney from the Roster without the protection of independent review. As we approach the final stretch of presentation of this rule for adoption I am concerned that there is inadequate due process provided for attorneys choosing public defense in Idaho.

I write specifically about IDAPA 61.01.02.70 and IDAPA 61.01.02.80. The process for an attorney to be listed on the Roster was addressed during the Legislative process earlier this year. However, the portion of the rules relating to deficiencies (61.01.02.70. b. ii) and removal from the roster (61.01.02.80) remain contrary to statute and without process to those choosing public defense.

Control of the Defending Attorney Roster and centralization of authority to determine who practices public defense is contrary to statute. Idaho code 19-860 and 19-861 delegate authority to county commissioners to hire and fire the Chief Public defender, and then to the Chief Public Defender to employ Deputies to carry out Constitutional duties. These statues are ignored by the PDC in creating and controlling the roster.

In addition to ignoring those statutorily responsible to provide public defense, attorneys choosing public defense have no protection from a decision by the PDC to remove them from the Roster. Compare this to Idaho Code 19-862A(13) :

(13) A county aggrieved by a decision made by the commission pursuant to subsection (11)(b) of this section shall be afforded reasonable notice and opportunity for a fair hearing in accordance with the Idaho administrative procedure act and rules promulgated by the commission pursuant to section [19-850\(1\)\(a\)\(v\)](#), Idaho Code.

This statute provides remedy for counties found non-compliant with standards and rules promulgated by the PDC (Idaho Code 19-862A(11)(b)). Attorneys choosing public defense, necessarily need the same protection from decisions made by the PDC. Counties aggrieved by PDC decisions relating to compliance with their standards have protection through the Idaho Administrative Procedure Act. Attorneys do not have the same protection; without it the PDC can terminate one's employment without fair and independent process.

If the Defending Attorney Roster remains the gateway to employment as a public defender, some provision protecting attorneys is necessary. Public Defense is difficult work; the pay is often not competitive. This Constitutionally required service is done by people working long hours and dedicating themselves to hard work. The Defending Attorney Roster leaves good, dedicated professionals vulnerable with security of a formal process to redress decisions.

Sincerely,



Anne C. Taylor  
Chief Public Defender