



February 4, 2022

RE: Opposition to PDC Rules

Dear Members of the Senate Judiciary and Rules Committee,

The Idaho Association of Criminal Defense Lawyers (“IACDL”) asks that you reject the Idaho Public Defense Commission (“PDC”) Proposed Rules, which are scheduled to be heard in your committee on Monday, February 7. Attached please find suggested revisions.

We are grateful for the time Vice Chair Ricks and Vice Chair Hartgen allocated for a work session with the PDC, Idaho Association of Counties, IACDL, and other stakeholders on February 2, 2022. We believe that with a workgroup similar to the one that took place on Tuesday of this week, we could reach solutions to the problems with the PDC rules next year. For now, the rules must be rejected. The proposed rules go well beyond the statutory authority of the PDC and provide no due process protections for attorneys or counties.

The key to reading the attached mark-up is as follows:

Red changes are PDC changes from 2021, suggested IACDL **strike outs in yellow**, suggested new language is in **green** and the insert on due process is also suggested language from IACDL.

Please feel free to contact our lobbyist Teresa Molitor at 208-860-9968 or teresa@molitorandassociates.com if you have questions.



PDC Rulemaking Resources:

- 2020 Rulemaking Overview <https://pdc.idaho.gov/negotiated-rulemaking-2/>
- 2020 Rulemaking Record <https://pdc.idaho.gov/2020-rulemaking-record/>
- 2021 Rulemaking Overview <https://pdc.idaho.gov/negotiated-rulemaking-2021/>
- 2021 Rulemaking Record <https://pdc.idaho.gov/2021-negotiated-rulemaking-record/>

Unofficial Tracked Changes 2020 Proposed Rules – 2021 Pending Rules: The PDC created the attached unofficial document with tracked changes to show the changes in the rules from the 2020 Proposed Rules we were all discussing in 2020 to the 2021 Pending Rules that were passed by the Commission this November. Deletions are shown in ~~striketrough~~, additions in underline, and additions that were later deleted in both ~~striketrough and underline~~. Numbering is inaccurate because of underlying formatting. There are also color variations because of formatting that do not signify anything. And all changes were made manually therefore text and text effects may be inaccurate.

Please [contact](#) Tammy Zokan, Policy and Compliance Counsel, with any questions.

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.1.1 – GENERAL PROVISIONS AND DEFINITIONS

1. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. ()

2. TITLE AND SCOPE.

This chapter is titled “General Provisions and Definitions,” and contains general provisions and definitions applicable to IDAPA 61. ()

3. ADMINISTRATIVE APPEALS.

1. Intermediate Administrative Appeal Procedure. Except as set forth herein, IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General,” shall apply to IDAPA 61. ()

2. Confidential Information Exempt From Public Records. Documents containing confidential information and submitted in any administrative proceeding must be redacted or filed under seal. ()

3. FILING OF DOCUMENTS.

Unless otherwise set forth in a Notice of Rulemaking or Order of the Commission or Executive Director, all written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the Executive Director. No copies in addition to the original document need be filed with the agency unless requested by the Executive Director or Commission. ()

4. – 009. (RESERVED)

10. DEFINITIONS.

1. **Active Case.** A Capital Case is active when it is not stayed. All other Cases are active when there is an appointment, appearance, filing or investigation in the reporting period or it is not stayed. ()

2. **Annual Report.** The Defending Attorney report required by Section 19-864, Idaho Code, including CLEs, Caseloads, Workloads and other information requested for the October 1 through September 30 reporting period to complete the Annual Report form provided by PDC Staff. ()

3. **Capital Case.** A case in which the state has given notice it will seek the death penalty or is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code. ()

4. **Capital Defending Attorney.** A Defending Attorney who meets the qualifications for and is on the Capital Defending Attorney Roster. ()

5. **Capital Defending Attorney Roster.** The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a Capital Case. ~~Some attorneys on the Capital Defending Attorney Roster may not currently be employed or under contract with a county.~~ ()

6. **Case.** All related charges against an individual from a single incident, transaction or occurrence filed within a single case number. A probation violation or motion for contempt is counted as a separate Case. ()

7. **Caseload.** A Defending Attorney's total number of Active Cases during the applicable reporting period as counted under IDAPA 61.01.02, "Requirements and Procedures for Representing Indigent Persons," Paragraph 060.05.c. A county's total Caseload to determine compliance with Workload rules is calculated as the mean of the Felony Case Equivalent calculation for each of the preceding three (3) years. ()

8. **Compliance Plan.** A county's plan for meeting Public Defense Rules and curing any Deficiencies including detailed action items and completion dates. ()

9. **Cost Analysis.** A detailed explanation of the expected expenses for the county to complete its Compliance Plan and how the county is proposing to pay for those expenses. ()

10. **Defending Attorney.** Any attorney employed by a county or under contract with a county as an institutional Defending Attorney or a contract Defending Attorney to represent adults or juveniles at public expense. ()

11. **Defending Attorney Roster.** The PDC's list of Defending Attorneys eligible for appointment by a court to represent an Indigent Person at public expense in a non-capital Case. ~~Some attorneys on the Defending Attorney Roster may not currently be employed or under contract with a county.~~ ()

12. **Deficiency.** The **WILLFUL AND MATERIAL** noncompliance with any Public Defense Rule by a county, Defending Attorney, employee, contractor, representative or other agent. ()

13. **Executive Director.** PDC employee appointed by the Commission under Section 19-850(2)(a), Idaho Code. ()

14. **Felony Case Equivalent (FCE).** The calculation after all Case types are converted to their felony equivalent to determine compliance with Caseload rules. ()

15. **Financial Assistance.** The state funding a county may request and may be awarded under Section 19-862A, Idaho Code. ()

16. **Indigent Person.** A person who, at the time his need is determined under Section 19-854, Idaho

Code, is unable to provide for the full payment of a Defending Attorney and all other necessary expenses of representation. ()

17. **Initial Appearance.** The first appearance of the defendant before any judge. In the event a defendant appears before more than one judge, the first appearance before the first judge constitutes the Initial Appearance. ()

18. **Material.** An action or failure to act that ~~could have~~ **HAS HAD** an immediate and significant negative impact on the effective representation of Indigent Persons or result in the misuse of state funds. ()

19. **PDC.** The Idaho State Public Defense Commission including PDC Staff and the Commission. Information reported to the PDC will be reported using available PDF forms. ()

20. **PDC Staff.** Employees of the Commission who report to the Executive Director. References to PDC Staff include the Executive Director unless otherwise specified. ~~Information reported to the PDC will be reported using available PDF forms~~ ()

21. **Public Defense Rules.** Any rule promulgated by the Commission under Section 19- 850(1)(a), Idaho Code. ()

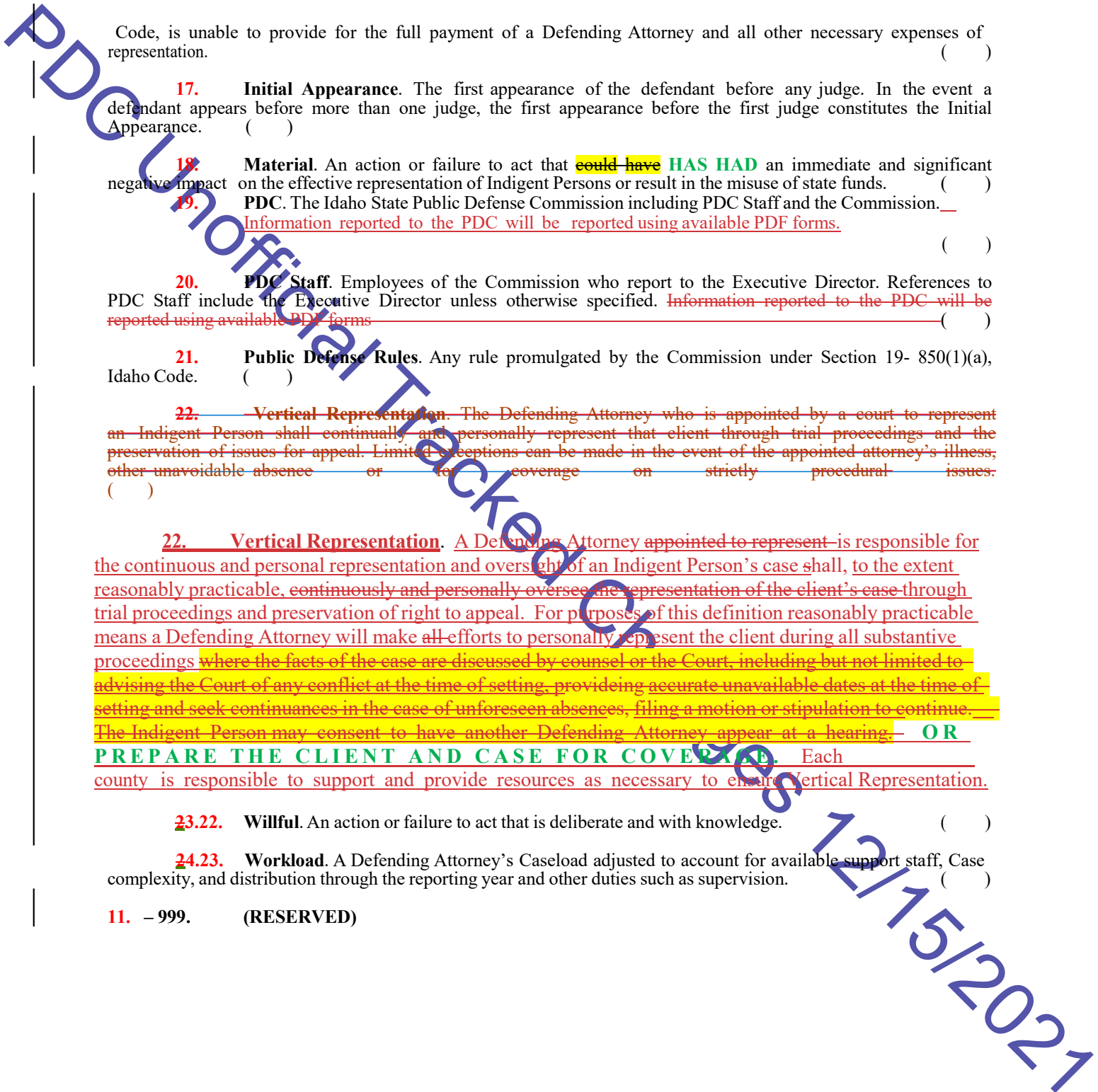
~~22. **Vertical Representation.** The Defending Attorney who is appointed by a court to represent an Indigent Person shall continually and personally represent that client through trial proceedings and the preservation of issues for appeal. Limited exceptions can be made in the event of the appointed attorney's illness, other unavoidable absence or for coverage on strictly procedural issues. ()~~

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. **OR PREPARE THE CLIENT AND CASE FOR COVERAGE.** Each county is responsible to support and provide resources as necessary to ensure Vertical Representation.

23.22. **Willful.** An action or failure to act that is deliberate and with knowledge. ()

24.23. **Workload.** A Defending Attorney's Caseload adjusted to account for available support staff, Case complexity, and distribution through the reporting year and other duties such as supervision. ()

11. - 999. (RESERVED)



IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.1.2 – REQUIREMENTS AND PROCEDURES FOR REPRESENTING INDIGENT PERSONS

1. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. ()

2. TITLE AND SCOPE.

This chapter is titled “Requirements and Procedures for Representing Indigent Persons” and contains the minimum requirements for representation of Indigent Persons. ()

3. – 009. (RESERVED)

10. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. ()

11. – 019. (RESERVED)

20. COUNTIES TO ADEQUATELY RESOURCING PUBLIC DEFENSE BY COUNTIES TO ENSURE EFFECTIVE REPRESENTATION IS PROVIDED TO INDIGENT PERSONS AS PROVIDED IN SECTIONS 19-860(2), 19-861(2)-(3), 19-862(1) AND 19-862A(1), (2) AND (8), IDAHO CODE.

Counties shall ensure effective representation is provided to Indigent Persons by adequately resourcing public defense as follows: ()

1. **Supported Defense Model.** ~~Sufficiently fund~~ Annually appropriate enough money to fund the public defense model selected under Section 19-859, Idaho Code: ()

a. Employ or contract with attorneys to provide public defense services from the Defending Attorney Roster or ~~require, if the attorney is not yet on the Defending Attorney Roster, have the attorney to apply for complete and submit to the PDC the Roster form within thirty (30) days from the date of their employment or contract~~ under Subsection 070.03 of these rules; ()

b. Employ or contract with qualified staff and contractors with professional certificates, licenses and permissions as required by applicable rules and laws; and ()

c. ~~Ensure~~ Provide resources for compliance with Public Defense Rules. ()

2. **Defending Attorney Resources.** ~~Ensure~~ Provide Defending Attorneys ~~have~~ with resources for carrying out the Defending Attorney’s responsibilities, including: ()

a. Confidential office, jail and courthouse meeting rooms to protect client confidentiality; ()

b. Confidential servers and systems to protect client confidentiality; ()

c. ~~Sufficient~~ Equipment, technology, supplies; and ()

d. Other resources needed to provide ~~effective and zealous~~ constitutional representation. ()

3. **Contracting.** Counties and contract Defending Attorneys will enter into a contract for public

- defense services as required by Section 19-859, Idaho Code, which must include the following core terms: ()
- a. All parties will comply with Public Defense Rules; ()
 - b. Description of services and Case types included in the contract; ()
 - c. Prohibition of a single fixed fee for services and expenses; ()
 - d. Fee structure and amount for services; ()
 - e. The county will pay client related expenses and costs; ()
 - f. Defending Attorney will safeguard and retain case files and records as necessary to protect Indigent Persons, and, at termination of their contract, transfer files to the successor contract Defending Attorney; proper safeguards will be put in place to ensure no file is transferred to an attorney who may have a conflict; ()
 - g. All parties keep ~~detailed~~ records of their ~~public defense services~~ CASELOADS and expenditures; ()
 - h. Defending Attorney will notify the county and the lead institutional or primary contracting Defending Attorney, as applicable, if the Idaho State Bar or other licensing organization files formal charges against a Defending Attorney or non-attorney staff; and ()
 - i. ~~Authorization for and~~ disclosure of the contract to the PDC. ()
4. **Communication.** The County will ~~frequently~~ meet with the lead institutional or primary contracting Defending Attorneys who are the main providers of public defense services about the following: ()
- a. Review compliance with Public Defense Rules, including monitoring Workloads and Vertical Representation; and ()

b. Review county budget and expenditures for sufficient allocation of public defense resources and assess need for Financial Assistance. ()

21. - 029. (RESERVED)

30. PUBLIC DEFENSE INDEPENDENT OF POLITICAL AND JUDICIAL INFLUENCE.

Counties will ensure public defense is independent of political and to the extent possible, judicial influence, provided however, the judiciary is encouraged to contribute information and advice concerning the delivery of public defense services.

1. No Judicial, Political or Conflict Influences. The county's selection and retention of Attorneys will not be based on judicial or political influences or other conflicts of interest. ()

2. Independent Committees.

a. Selection Recommendation Committee. 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 ()

b. Independence Working Group. Each judicial district will may establish an independent committee working group of one (1) attorney from 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 working group for their District, and if the ADJ or TCA does not, the Commission will identify committee group members. ()

c. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code. ()

3. Independent Advocate. The county will not take action against a Defending Attorney for exercising their professional or ethical obligations or advocating for policies supporting constitutional representation of Indigent Persons is not cause for discipline or termination. Nothing in this Subsection 030.03 is intended to prohibit the discipline or termination of a Defending Attorney who has violated county employment policy or Idaho Rules of Professional Conduct. ()

4. Independence. The county will limit prosecutor involvement in public defense matters that may jeopardize the independence of any Defending Attorney or undermine the delivery of public defense. ()

5. Independent Contract Review-Negotiation. The county should consider engaging independent legal counsel to review and negotiate Defending Attorney ()

Contracts. 31. - 039. (RESERVED)

40. COUNTIES TO PROVIDE CONSISTENT RESOURCES FOR PUBLIC DEFENSE.

Counties will provide adequate and equitable resources for public defense consistent with a properly funded prosecutor, as provided in Sections 19-860(1), 19-861(3) and 19-850(1)(a)(vii)7, Idaho Code. ()

1. Staff and Facilities. Defending Attorneys and prosecutors will have equal access to quality staff and facilities. ()

2. **Pay.** So far as is possible, Defending Attorneys and their staff will ~~receive similar compensation~~ as not be compensated less than a properly funded prosecutor and staff with similar experience and performing similar duties. ()

3. **Other Resources.** Defending Attorneys and the prosecutor will have equal access to resources necessary for legal representation. This includes but is not limited to the independent investigation and evaluation of evidence. ()

4. **Equity Review.** The county will frequently review and assess equity between, and resource needs of, Defending Attorneys and prosecutors. ()

5. **Budget for Equity.** The county will frequently review resource needs with Defending Attorney

PDC Unofficial Tracked Changes 12/15/2021

and adequately budget to meet those needs. ()

41. – 049. (RESERVED)

50. APPOINTMENT OF COMPETENT DEFENDING ATTORNEYS.

Courts will appoint ~~d~~Defending ~~a~~Attorneys who are competent to represent Indigent Persons as provided in Sections 19-855 and 19-850(1)(a)(vi), Idaho Code, and Subsection 060 of these Rules. ()

1. ~~Appointment from Roster in Non-Capital Cases.~~

a. Courts will appoint a Defending Attorney from the ~~applicable~~ Defending Attorney Roster except in extraordinary circumstances where the Court:

- i. Finds there is good cause to appoint an attorney at public expense who is not on the Roster;
- ii. Finds the attorney is competent to represent the Indigent Person in the particular case; and
- iii. Directs the appointed attorney to notify the PDC of the appointment.

b. Every attorney appointed under this Subsection 050.01 to represent an Indigent Person at public expense must comply with Subsection 060. of these rules. ()

2. ~~Additional Appointments in Capital Cases.~~

a. In Capital Cases, Courts will:

- i. When appointing ~~appoint~~ a Defending Attorney from the Capital Defending Attorney Roster to represent an Indigent Person at public expense a Capital Case the Court must also:; ()

ii. Assess-Inquire about the Defending Attorney’s Workload to ensure compliance with the Public Defense Rules. ()

b. At or before the Initial Appearance in a Capital Case, appoint no less than two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other(s) as co-counsel. ()

~~Appointment of Attorneys Who Are Not Engaged by County. Courts will not appoint a Defending Attorney to a case in a county if the Defending Attorney is not employed or under contract to provide public defense services for the county. ()~~

~~The attorney will notify the Court if they are not employed by a county or do not have a contract with a county as required by Section 19-859(4), Idaho Code, and Public Defense Rules; and ()~~

~~The Court will verify the attorney is employed by a county or has a contract with the county containing the terms in Subsection 020.03 of these rules, and is on the applicable Roster, prior to appointment and commencement of representation. ()~~

43. **Conflicts of Interest.** A Court shall not appoint a Defending Attorney to any case with a conflict of interest in that case. ()

04. **Eligibility.** Except as provided in Subsection 050.01.a. of these rules, attorneys who are not approved for inclusion on the applicable Roster are not eligible to represent Indigent Persons at public expense.

ii. – 059. (RESERVED)

60. **DEFENDING ATTORNEY MINIMUM REQUIREMENTS FOR DEFENDING ATTORNEYS.**

Defending ~~a~~Attorneys shall meet the following minimum requirements for providing effective representation to ~~i~~Indigent ~~p~~Persons, as provided in Sections 19-855, 19-860(2), 19-850(1)(a)(vi) and 19-850(1)(a)(v)(ii)5 and 8, Idaho Code. ()

1. **Idaho State License, Defending Attorney Roster, and County Employment or Contract**

Requirements:

- a. ~~Be~~ licensed to practice law in Idaho and in compliance with Idaho State Bar rules.; ()
- b. Member of the Defending Attorney Roster, except as provided in Subsection 050 of these rules;
- c. Employed or under contract to provide public defense services to a county; and
- d. If a Court attempts to appoint an attorney to represent an Indigent Person at public expense and the attorney does not meet one or more of the requirements in this Subsection 060.01, the attorney will immediately notify the Court. ()

1.2. Public Defense Competency. Be competent to counsel and represent Indigent Persons. ()

2.3. Qualifications. Have ~~demonstrated the~~ ability, training, experience and understanding regarding representing Indigent Persons and necessary for their appointed Cases to 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. Nothing in this rule is intended to prohibit a different Defending Attorney from representing the client at Initial Appearance. 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~~ **FOR INVESTIGATION; RETENTION OF EXPERTS; MITIGATION EXPERTS AND EVALUATIONS;** ()
- 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 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 **CONSIDER AND BE PREPARED TO ADDRESS** 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 private confidential and secure information systems to confidentially access and store 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; ()

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ix. Jury selection methods and procedures; _____ ()

PDC Unofficial Tracked Changes 12/15/2021

- x. Electronic filing, discovery and evidence and systems; ()
- xi. Quality and zealous Constitutional representation; and ()
- xii. ~~Understand their own professional limitations and~~ When a Defending Attorney's abilities do not match the nature and complexity of the Case, they will seek the advice of experienced attorneys, seek training, or decline appointments ~~when necessary.~~

i. ADHERE TO THE IDAHO RULES OF PROFESSIONAL CONDUCT. ()

~~3.4.~~ **Additional Qualifications for Capital Cases.** Capital Defending Attorneys must meet the following additional requirements: ()

a. Have advanced familiarity and ~~demonstrated~~ competence with ~~the above minimum requirements for Defending Attorneys; and~~ ()

b. ~~Have knowledge and experience in the following:~~ ()

- i. Capital laws, rules, procedures and practices; ()
- ii. Capital mitigation; ()
- iii. Use of mental health evaluations and evidence; ()
- iv. Managing and litigating complex cases; ()
- v. Assembling and leading a trial team; ()
- vi. Capital jury selection methods and procedures; and ()

vii. ~~Qualifications meeting or exceeding~~ the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases to extent they do not conflict with Idaho law; ()

c. Lead trial Defending Attorney in Capital Cases will meet ~~or exceed~~ the following experience levels: ()

- i. Active trial practitioner with no less than ten (10) years in criminal defense litigation; ()
- ii. Lead counsel in no less than ten (10) felony jury trial tried to verdict; and ()
- iii. Lead or co-counsel in no less than one (1) Capital Case **(AS DEFINED IN IDAPA 61.01.010.03 – THE CHARGE INCLUDED THE POSSIBILITY OF DEATH)** tried to verdict or capital sentencing; ()

d. Trial co-counsel Defending Attorney in Capital Cases who are not qualified as lead trial counsel will meet or exceed the following experience levels: ()

- i. Active trial practitioner with no less than five (5) years in criminal defense litigation and one of the following; ()
- ii. Lead counsel in no less than five (5) felony jury trial tried to verdict; ~~and/or~~ ()
- iii. Lead or co-counsel in no less than one (1) Capital Case **(AS DEFINED IN IDAPA 61.01.010.03 –**

THE CHARGE INCLUDED THE POSSIBILITY OF DEATH) tried to verdict or capital sentencing;
()

e. Lead appellate/post-conviction Defending Attorney in Capital Cases will meet or exceed the following experience levels. **UNOFFICIAL VERSION: NUMBERING AND TEXT EFFECTS MAY BE INACCURATE** ()

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- i. Active appellate/post-conviction attorney with no less than ten (10) years in criminal defense litigation; and ()
- ii. Lead counsel in no less than one (1) Capital or federal capital habeas corpus Case; ()

PDC Unofficial Tracked Changes 12/15/2021

f. Appellate/post-conviction co-counsel in Capital Cases who are not qualified as lead appellate or lead post-conviction counsel will meet or exceed the following experience levels: ()

i. Active appellate and post-conviction practitioner with no less than five (5) years in criminal defense litigation; and ()

ii. Attorney in no less than one (1) Capital felony appeal with appellate argument, or if tried to evidentiary hearing either a post-conviction or federal capital habeas corpus Case; ()

g. Lead trial or appellate and post-conviction counsel who do not meet the numeric years of practice or numeric number of trials/cases will meet the following alternate requirements: ()

i. Meet all the other minimum requirements to ensure their abilities, training, and experience are appropriate given the nature and complexity of a Capital Case, and ()

ii. Demonstrate they are qualified to provide lead trial representation or appellate and post-conviction representation in a Capital Case, as applicable, despite their years in practice and trials/cases handled; ()

h. Minimum requirements for Capital Case defense teams: ()

i. At least two (2) qualified Capital Defending Attorneys, one (1) designated lead and the other or others as co-counsel, appointed at or before the Initial Appearance; ()

ii. ~~Immediate assembly of a team by~~ Capital Defending Attorneys **SHALL CONSIDER** ~~consisting of no less than~~ the following **PARTICIPANTS IN A CLIENT'S CAPITAL DEFENSE:** ()

(1) Fact investigator; ()

(2) Mitigation specialist; ()

(3) ~~Person trained and professionally qualified to screen for mental and psychological screenings;~~ **PSYCHOLOGIST, PSYCHIATRIST OR OTHER MENTAL HEALTH PROFESSIONAL** and ()

(4) ~~Other persons needed to provide effective and zealous representation; and~~ ()

(5) ~~Require ongoing training and compliance with standards.~~ ()

4.5. Caseloads and Workloads. Defending Attorneys will have Caseloads and Workloads that are appropriately sized to permit effective representation as follows: ()

a. Caseload standard. Maximum Caseloads by Active Case type shall not during the reporting period exceed: ()

i. Two (2) Capital Cases at a time; ()

ii. Two hundred ten (210) non-capital felony Cases; ()

iii. Five hundred twenty (520) misdemeanor Cases; ()

iv. Two hundred thirty-two (232) juvenile Cases; ()

v. One hundred five (105) child protection or parent representation Cases; ()

vi. Six hundred eight (608) civil contempt or mental health Cases; and ()

- vii. Thirty-five (35) non-capital substantive appeal Cases. ()
- viii. To determine maximum Caseloads for mixed Case types, add the percentage of the maximum

PDC Unofficial Tracked Changes 12/15/2021

Caseload for each category and the sum of those percentages is not to exceed one hundred percent (100%); and adjust the Caseload downward when the Case assignments are weighted toward more serious offenses, complex Cases, or those requiring significant expenditure of time and resources. ()

b. Maximum Caseloads will remain in effect until April 30, 2023, unless otherwise addressed by the Commission prior to that date. In the absence of a numerical Caseload rule, Defending Attorneys and counties should use the National Advisory Commission (NAC) Caseload limits recognized by the American Bar Association as a guideline for assessment. ()

c. Case Counting. ()

i. A felony Case is counted as follows: ()

(1) A Case filed as a felony is counted as one (1) felony, whether it is dismissed, remanded, pled, or tried to completion; ()

(2) A Case filed as a misdemeanor that is later amended to a felony is counted as a felony; ()

ii. A probation violation or motion for contempt is counted as a separate Case; ()

iii. A Case that is conflicted or consolidated is counted by the Defending Attorney assigned to the conflicted or consolidated Case and not counted by the initial Defending Attorney; ()

iv. A Case sent to a problem-solving court is counted once as initially filed as a felony, misdemeanor, or juvenile Case; ()

v. A Case is counted as a Capital Case if, in any part of the reporting period, the state is legally entitled to seek the death penalty under Section 18-4004A, Idaho Code; ()

vi. Post-judgment motions are not counted as a Case; ()

d. Defending Attorneys who are unable to comply with the Caseload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. ()

e. Workloads. Caseloads maximums are based on the following considerations: ()

i. Adequate support staff; ()

ii. Cases of average complexity; ()

iii. Reasonable distribution of Cases throughout the year; and ()

iv. No supervisory duties; ()

f. Defending Attorneys ~~who are~~ unable to comply with the Workload rules will notify their supervisor, Board of County Commissioners or the Court and request appropriate resources. ()

61. – 069. (RESERVED)

70. ATTORNEY ROSTERS REQUIREMENTS AND PROCEDURES.

1. Defending Attorney Roster. ()

PDC Unofficial Tracked Changes 12/15/2021

- a. For inclusion on the Attorneys who complete the PDC form verifying they meet the items in this Subsection 070.01 will be automatically included and remain on the Defending Attorney Roster, ~~attorneys must~~ until they request removal or are removed for failing to comply with Public Defense Rules. **SUBJECT TO NOTICE AND THE RIGHT TO BE HEARD AS OUTLINED IN THE SECTIONS **** OF THESE RULES** Attorneys who are unable to verify the items in this Subsection 070.01 may submit a new verification form at any time. **NOTHING IN THE VERIFYING FORM SHALL BE A RELEASE OR WAIVER.** ()

- 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 of being placed on the Roster or within the next sixty ninety (60 90) days of being placed on the Roster; **AT THE TIME OF THE ANNUAL REPORT UNLESS THE REPORT IS DUE WITHIN 90 DAYS OF BEING PLACED ON THE ROSTER; IN THAT CASE THE MINIMUM CLE SHALL BE COMPLETED BY THE FOLLOWING ANNUAL REPORT DATE.** ()

~~v. Have completed the Defending Attorney Roster application and authorization forms. ()~~

vi. ~~v.~~ 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. The Executive Director will decide whether an attorneys who meet the requirements in Subsection 070.01 a will be is 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. ~~b.~~ Continuing Eligibility.

~~i. To remain on the~~ Defending Attorney's **WILL REMAIN ON THE** Roster ~~attorneys must~~ **SUBJECT TO THE FOLLOWING CONDITIONS:**

~~e.~~ (1) ~~e~~ Comply with the Public Defense Rules and; ()

i. (2) Have completed the minimum CLE requirements under Subsection 090.03 of these rules; and ()

ii. (3) Have completed an Annual Report. ()

~~The Executive Director will remove attorneys who do not meet continuing eligibility requirements from the Defending Attorney Roster. ()~~

~~ii. To address Defending Attorney Deficiencies: ()~~

~~(1) PDC Staff will review reported Defending Attorney Deficiencies and work directly with the Defending Attorney, and the county when appropriate, to resolve them. ()~~

~~(2) If the Deficiency cannot be resolved at the review, PDC Staff may ask the Defending Attorney to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. ()~~

~~(3) If a plan is requested and is not submitted or completed, or if the Defending Attorney Deficiency is not cured, it will be referred to the Commission with the Executive Director's order of removal, which the Defending Attorney may appeal as set forth in Subsection 080.04 of these rules. County Deficiencies, which are not Defending Attorney Deficiencies, are the responsibility of the county and not the Defending Attorney. County responsibilities are set forth in these rules including without limitation Subsection 020. of these rules and subject to the county Deficiency process set forth in IDAPA 61.01.03, "Records, Reporting and Review," Sections 050 through 060. ()~~

- 2.** Capital Defending Attorney Roster. ()
- a.** For Inclusion on the Capital Defending Attorney Roster, a Defending Attorney must: ()

- i. Meet minimum qualifications under Subsection 060.04 of these rules; and ()
- ii. ~~Have completed minimum CLE requirements under Paragraph 090.03.b. of these rules within two~~
~~ii. (2) years;~~ ()
- iii. Have completed Capital ~~Defending Attorney Roster reporting application and authorization~~ forms by
November 1 every other year. ()

b. PDC Staff or contractor ~~investigates~~ **REVIEWS** an applicant for initial inclusion on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews applications and PDC Staff reports and makes recommendations to the Commission. **THE APPLICATION PROCESS SHALL NOT INCLUDE A RELEASE OR WAIVER. The Commission makes the final decision. PRIOR TO RECOMMENDATIONS OR PRESENTATION TO THE PDC, THE APPLYING ATTORNEY SHALL BE INFORMED, IN WRITING, OF THE RECOMMENDATIONS OF THE PDC STAFF AND CONTRACTOR REVIEWING THE APPLICATION. THIS WRITTEN NOTIFICATION SHALL CONTAIN THE RECOMMENDATION. IF THE RECOMMENDATION IS TO DENY THE APPLICATION THE WRITTEN NOTIFICATION SHALL CONTAIN THE REASONS FOR THE DENIAL. THE APPLYING ATTORNEY SHALL HAVE A RIGHT TO BE HEARD WHEN THE PDC MAKES THE FINAL DECISION. THE PDC'S FINAL DECISION SHALL BE IN WRITING AND CONTAIN REASONS FOR THE AGENCY ACTION. THE APPLYING ATTORNEY SHALL HAVE RIGHTS OF DUE PROCESS AS OUTLINED IN SECTION ___ OF THESE RULES** ()

- c.** Continuing Eligibility. To remain on the Capital Defending Attorney Roster Defending 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 Capital Case reporting and authorization forms by November 1 every other year. ()

~~**d.** PDC Staff or contractor ~~investigates~~ **REVIEWS** continuing eligibility to remain on the Capital Defending Attorney Roster. The Commission appointed subcommittee reviews continuing eligibility and PDC Staff reports and~~

REPORTING FOR CONTINUING INCLUSION ON THE CAPITAL ROSTER AND makes recommendations to the Commission. ~~The Commission makes the final decision. The Commission will remove attorneys who do not meet continuing eligibility requirements from the Capital Defense Roster.~~ **PRIOR TO RECOMMENDATIONS OR PRESENTATION TO THE PDC, THE APPLYING ATTORNEY SHALL BE INFORMED, IN WRITING, OF THE RECOMMENDATIONS OF THE PDC STAFF AND CONTRACTOR REVIEWING THE APPLICATION. THIS WRITTEN NOTIFICATION SHALL CONTAIN THE RECOMMENDATION. IF THE RECOMMENDATION IS TO DENY THE APPLICATION THE WRITTEN NOTIFICATION SHALL CONTAIN THE REASONS FOR THE DENIAL. THE APPLYING ATTORNEY SHALL HAVE A RIGHT TO BE HEARD WHEN THE PDC MAKES THE FINAL DECISION. THE PDC'S FINAL DECISION SHALL BE IN WRITING AND CONTAIN REASONS FOR THE AGENCY ACTION. THE APPLYING ATTORNEY SHALL HAVE DUE PROCESS RIGHTS AS OUTLINED IN SECTION ____ OF THESE RULES** ()

~~3. **Attorneys Engaged Prior to Defending Attorney Roster Membership.** Attorneys who are not on the Defending Attorney Roster at the time of employment or contract to provide public defense services 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 Defending Attorney Roster are not eligible to represent Indigent Persons at public expense.~~ ()

43. Confidentiality. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from the Public Records Act under Section 74-105(18)(a), Idaho Code. ()

71. -079. (RESERVED)

80. REVIEW RIGHT OF REVIEW OF ROSTER DECISIONS.

1. Denial of Initial Inclusion on the Defending Attorney Roster. ()

~~a. An attorney may appeal a denial of initial inclusion on the Defending Attorney Roster by submitting a notice of appeal within twenty onefourteen (2114) days of the date of the Executive Director's notice of denial.~~ ()

~~b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the Executive Director's decision denial, or take other action deemed appropriate by the Commission.~~ ()

2. Denial of initial inclusion on the Capital Defending Attorney Roster. ()

~~a. A Defending Attorney may appeal a denial of initial inclusion on the Capital Defending Attorney Roster by submitting a notice of appeal within twenty onefourteen (2114) days of the date of the Commission's notice of denial.~~ ()

~~b. A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission.~~ ()

~~c. The Commission will issue a final agency order adopting or rejecting the hearing officer's recommended order, or take other action deemed appropriate by the Commission.~~ ()

3. Emergency Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster. ()

~~a. The Executive Director will take immediate action to remove an attorney from the Roster to prevent or avoid immediate danger, and the Commission may act through an emergency proceeding under Section 67-5247, Idaho Code, when:~~ ()

~~i. The An attorney's Idaho license to practice law is suspended;~~ ()

~~ii. The An attorney is disbarred in Idaho; or~~ ()

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- iii. ~~The~~An attorney's Idaho license status is inactive; ~~or~~ ()
- iv. ~~The~~An attorney is convicted of a serious crime as defined in IRPC 501(p); ()

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b. ~~The attorney will be removed from the Roster by~~ the Executive Director who will notify the attorney and Commission upon issuance of the ~~order~~notice of removal which will include a statement of the immediate danger and is effective immediately.

b.c. An appeal of the removal under Subsection .080.03 ~~may~~ will be reviewed by the Commission in an emergency proceeding under Section 67-5247, Idaho Code. ()

s.d. An attorney may appeal their emergency removal by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Executive Director's WRITTEN ~~order~~notice of removal. ()

PDO Unofficial Tracked Changes 12/15/2021

d.c. The Commission will review a timely appeal and issue a decision within twenty eight (28) days of receipt of timely filed notice and materials. ()

e.f. The Commission may base its decision on a written record or elect to hold a hearing. ()

4. Removal of an Attorney from the Defending Attorney Roster or Capital Defending Attorney Roster for Other Reasons. ()

a. An attorney removed from a Roster for reasons other than set forth in Subsection 080.03 of these rules, may appeal their removal by submitting a notice of appeal and all supporting documentation within ~~twenty one~~fourteen (14) days of the Executive Director's order of removal. ~~A Defending Attorney shall remain on the Roster pending resolution of the appeal. A Defending Attorney who fails to file a notice of appeal within fourteen (14) days, will be immediately removed from the Roster.~~ ()

b. The Commission will review a timely appeal and issue a final agency order affirming or reversing the Executive Director's decision, or take other action deemed appropriate by the Commission.

~~5. Confidentiality. Information about an attorney's fitness to represent Indigent Persons is confidential and exempt from Public Records Act under Section 74-105(18)(a), Idaho Code.~~

~~6.~~

81. RESERVED)

90. CONTINUING LEGAL EDUCATION.

Roster members must complete the minimum continuing public defense legal education requirements as provided in Sections 19-850(1)(a)(i) and 19-850(1)(a)(vii)5 and 8, Idaho Code as follows. ()

~~1. Approval. Approval of the Executive Director is required for CLE credits that meet the requirements in Subsection .090.02 will count toward minimum requirements, and Roster members have the option, but are not required, to request advance of approval of a CLE course to confirm the course meets minimum requirements. Courses completed without that are not pre-approved by PDC Staff may be dis- will not be approved in if they do not meet these requirements.~~ ()

2. Idaho Law. Legal education must directly relate to **AREAS OF PRACTICE.** Idaho substantive or procedural law and the Defending Attorney's public defense practice to count toward minimum requirements, and will not be approved if not substantially related. ()

3. Minimum Number and Type of CLEs Required for Each Roster. ()

a. Defending Attorney Roster – Minimum of seven (7) CLE credits each county fiscal year by (October 1- September 30) each year; ()

b. Capital Defending Attorney Roster – Minimum of twelve (12) CLE credits with at least ten (10) from a nationally recognized and well-established capital trial training program, by September 30 every other county fiscal year. Attorneys on both Rosters may count capital CLE credits toward the seven (7) CLE credits. ()

c. Defending Attorneys with supervisory or management duties – ~~Additional in~~ Minimum of two (2) CLE credits each county fiscal year in leadership skills, attorney management, or mentoring, which count toward the seven (7) CLE credits. ()

91. – 999. (RESERVED)

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.1.3 RECORDS, REPORTING, AND REVIEW

1. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. ()

2. TITLE AND SCOPE.

This chapter is titled “Records, Reporting, and Review,” and contains minimum public defense recordkeeping and reporting requirements and PDC’s review of this information. ()

3. – 009. (RESERVED)

10. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. ()

11. – 019. (RESERVED)

20. ~~ROSTER MEMBER INFORMATION RETENTION AND REPORTING AND RETAINED BY ROSTER MEMBERS.~~

Roster members must keep and report information about representation of Indigent Persons and their eligibility to remain on the roster as provided in Sections 19-850(1)(c) and 19-862A(1), Idaho Code. ()

1. Compliance. ()

PDC Unofficial Tracked Changes 12/15/2021

- a. All information regarding compliance with Public Defense Rules; ()
- b. Annual Report; ()
- c. Public defense contracts; ()
- d. Line item public defense expenditures of county funds and Financial Assistance; and ()
- e. Resource and Financial Assistance needs; ()

2. **Changes to Information.** Notify the PDC of any change in address, employer or county contracts for public defense services within thirty (30) days of the change. ()

3. **Confidential Information.** ()

a. Information reported to the PDC, the county, or administrative district judge must not include any records containing information protected or exempted from disclosure under the rules adopted by the Idaho Supreme Court, attorney work product, attorney-client privileged communication, or other confidential information. ()

b. Requests for and expenditures of Extraordinary Litigation Fund shall only be disclosed to the PDC. ()

21. – 029. (RESERVED)

30. **COUNTY INFORMATION RETENTION AND REPORTING AND RETAINED BY COUNTIES.** Counties must keep and report information about how the county provides public defense as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)-(2) and (6)(c), Idaho Code. ()

1. **Compliance.** ()

a. All information regarding a county’s compliance with Public Defense Rules; ()

b. Public defense contracts; ()

2. **Changes to Public Defense Model or Defending Attorneys.** Notify the PDC of any change to the county’s public defense model or the attorneys employed or contracted by the county within thirty (30) days of the change.

3. **Financial Information.** ()

a. Line item budgets and expenditures of county funds and all Financial Assistance for Public Defense. ()

b. Extraordinary Litigation Fund reimbursements. ()

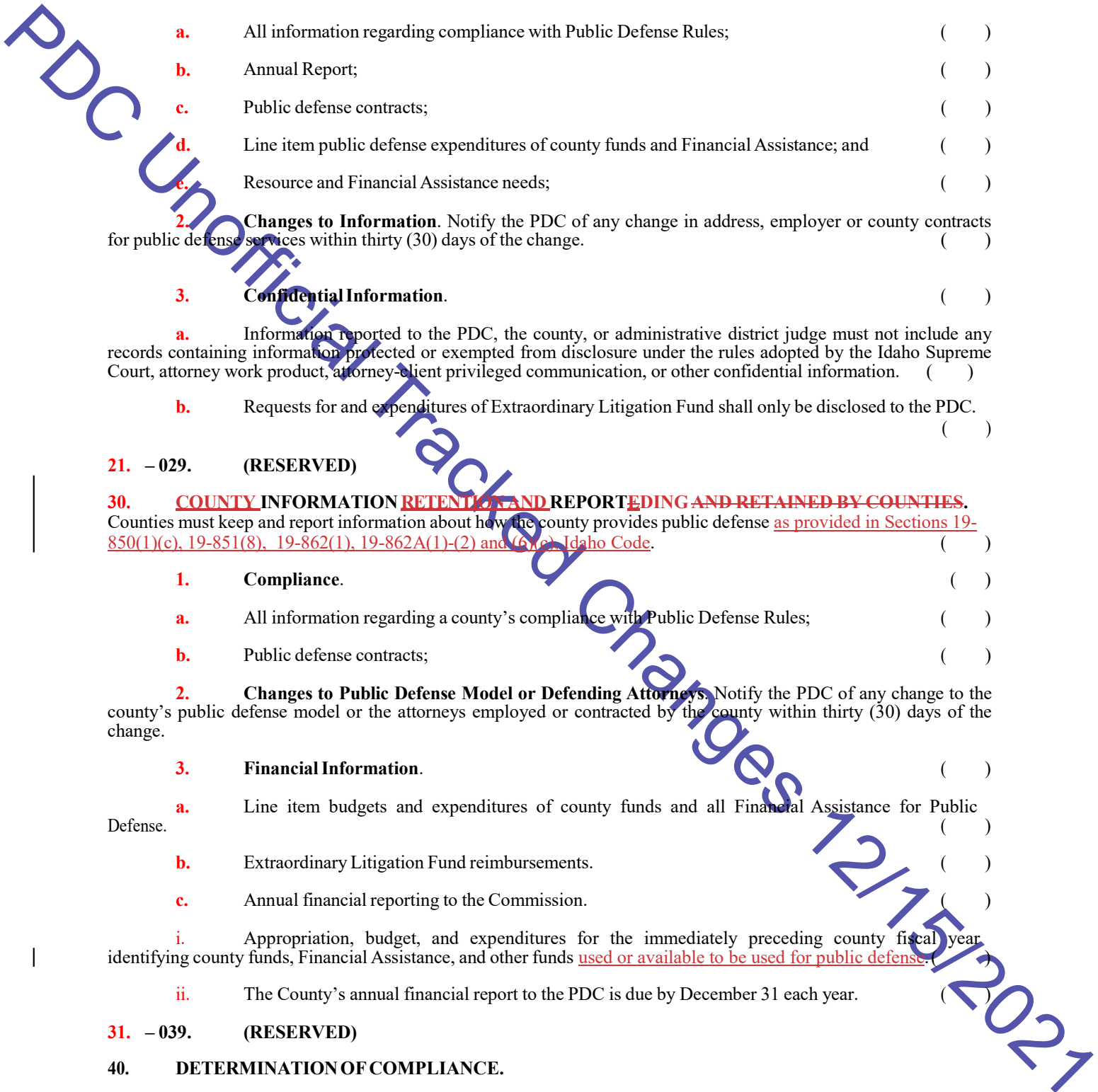
c. Annual financial reporting to the Commission. ()

i. Appropriation, budget, and expenditures for the immediately preceding county fiscal year identifying county funds, Financial Assistance, and other funds used or available to be used for public defense. ()

ii. The County’s annual financial report to the PDC is due by December 31 each year. ()

31. – 039. (RESERVED)

40. DETERMINATION OF COMPLIANCE.



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PDC staff may request, review, and audit the following county records to determine compliance with Public Defense Rules and Financial Assistance, as provided in Sections 19-850(1)(c), 19-851(8), 19-862(1), 19-862A(1)-(2) and (6)(c), Idaho Code. ()

PDC Unofficial Tracked Changes 12/15/2021

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- 1. **Financial.** County budget and expenditures related to Public Defense Rules or Financial Assistance. ()
- 2. **Contracts.** Public defense contracts. ()
- 3. **Records.** Public defense records including Case names and numbers. ()
- 4. **Annual Reports.** Information reported in Annual Reports. ()
- 5. **Other.** Other information requested by PDC Staff or the Commission related to Public Defense Rules or Financial Assistance. ()

41. – 049. (RESERVED)

50. DEFICIENCY REPORTING, REVIEW, AND RESPONSE AS PROVIDED IN SECTIONS 19-850(1)(c), 19-862A(1), (11)-(12) AND 19-850(1)(a)(vi), IDAHO CODE.-

- 1. **Reporting.** ()
 - a. Counties and Defending Attorneys have a duty to report Deficiencies to PDC Staff. **FILE AN ANNUAL REPORT.** ()
 - b. Deficiencies may be reported by Indigent Persons, PDC Staff, or others. ()

2. Review and Response. PDC Staff will review reported Deficiencies **THE ANNUAL REPORT. IF A DEFICIENCY IS DETERMINED THE PDC and may work WILL NOTIFY, IN WRITING, directly with a county and Defending Attorney to resolve, THE PARTY AND THE CHIEF PUBLIC DEFENDER IF THE DEFENDING ATTORNEY IS EMPLOYED IN AN ESTABLISHED OFFICE. THE PDC SHALL PROVIDE THE ATTORNEY, AND CHIEF PUBLIC DEFENDER ALL RELEVANT MATERIALS AND GIVE THE ATTORNEY THE OPPORTUNITY TO BE HEARD. PRIOR TO make MAKING a report to the Commission, or both.**

()

3. Non-Material Deficiencies. If a Deficiency may be readily resolved with the assistance of PDC Staff, the Executive Director may ask the county to submit a plan to cure the Deficiency with proposed detailed action items and completion dates. If the plan is not submitted or not completed, or the Deficiency not cured according to the deadlines set by the Executive Director, the Non-Material Deficiency will be deemed Material. THE PDC STAFF AND THE AFFECTED PARTIES SHALL WORK TOGETHER TO CORRECT A DEFICIENCY. THIS INCLUDES THE PLAN, TASKS AND TIMELINE. ()

4. Material but Non-Willful Deficiencies. If the Commission determines a Deficiency is Material following review by PDC Staff and recommendation of the Executive Director or if a non-material Deficiency is not cured by the set deadline: ()

a. The county must consult with PDC Staff on a Compliance Plan and timely apply for Financial Assistance, if necessary; ()

b. The Compliance Plan must include timeframe to become compliant and progress reports from the county to PDC Staff; ()

c. If compliance is not achieved by the deadline set by the Executive Director, the Commission may designate the Material Deficiency as Willful. ()

5. Material and Willful Non-Compliance. ()

a. If the Commission determines a Deficiency is Material and Willful following review by PDC Staff and recommendation of the Executive Director, **A HEARING THE AFFECTED PARTIES AND PDC WILL ENGAGE IN A PLAN TO BE IN COMPLIANCE. IF THE ISSUES ARE NOT RESOLVED THE ATTORNEY HAS DUE PROCESS RIGHTS AS OUTLINED IN SECTION ___ OF THESE RULES. and** ()

b. IF THE AFFECTED PARTY DOES NOT ENGAGE IN THE PLAN TO BE IN ()

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COMPLIANCE The Commission **SHALL** give notice of its intent to remedy specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county's expense: ()

i. Within fourteen (14) days of the date of said notice, the Commission and the county or their designees shall meet to attempt resolve the issues of the Material and Willful Deficiency or agree on a schedule for

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further meetings; ()

ii. If the Commission and the county are unable to resolve the Deficiency by meeting, and ()

iii. The Commission determines it must take immediate action under Subsection 060.01 of these rules, the Commission may contract with contract Defending Attorneys or other resources as deemed appropriate to

PDC Unofficial Tracked Changes 12/15/2021

remediate at the county’s expense; or ()

iv. If the Commission does not proceed under Subsection 060.01 of these rules, the Commission and the county or their designees must agree on a mediator and a date for mediation within twenty-eight (28) days, with the cost of mediation to be paid equally by the parties; ()

v. If after mediation the Commission and the county are unable to come to a resolution, the Commission shall provide written notice of its decision to remedy specific Deficiencies and may ~~with~~ contract ~~w i t h~~ Defending Attorneys or other resources as deemed appropriate to remediate at the county’s expense; ()

6. **Application to Resume Public Defense.** If the Commission remedies specific Deficiencies to the extent necessary to comply with Public Defense Rules at the county’s expense, the county may make application to resume public defense upon showing the county is able to do so in compliance with Public Defense Rules. ()

51. – 059. (RESERVED)

~~60. REVIEW OF WILLFUL AND MATERIAL DEFICIENCY DECISIONS.~~

~~1. Emergency Action.~~ The Commission will take immediate action and contract with appropriate resources to remedy Willful and Material Deficiencies to avoid immediate danger and may act through an emergency proceeding under Section 67-5247, Idaho Code, when: ()

~~a.~~ A county is using a Defending Attorney who has been removed from the applicable PDC Roster for the reasons set forth in IDAPA 61.01.02, “Requirements and Procedures for Representing Indigent Persons,” Subsection 080.03; or ()

~~b.~~ A county has not complied with or responded to a notice of Deficiency within thirty (30) days of the date of such notice; ()

~~c.~~ If the Commission issues an emergency order to remedy Willful and Material Deficiencies, the Commission will notify the county of its order. The Commission’s order will include a statement of the immediate danger and is effective immediately; ()

~~d.~~ A county may challenge the Commission’s emergency order to remedy Willful and Material Deficiencies hereunder by submitting a notice of appeal and all supporting documentation within fourteen (14) days of the date of the Commission’s order; ()

~~e.~~ The Commission will review any timely challenge and issue an emergency decision within twenty-eight (28) days of receipt of timely filed notice and materials. The Commission may base its decision on a written record or elect to hold a hearing. ()

~~2. Action for Other Reasons.~~ ()

~~a.~~ If the county is subject to a Commission order to remedy Willful and Material Deficiencies for reasons other than set forth in Subsection 060.01 of these rules, the county may appeal the order by submitting a notice of appeal and all supporting documentation within twenty one (21) days of the Commission’s order. ()

~~b.~~ A hearing officer appointed by the Commission will review a timely appeal and issue a recommended order to the Commission. ()

~~c.~~ The Commission will issue a final agency order adopting or rejecting the recommended order, or take other action deemed appropriate by the Commission. ()

61. – 999. (RESERVED)

IDAPA 61 – IDAHO STATE PUBLIC DEFENSE COMMISSION

61.1.4 – FINANCIAL ASSISTANCE AND TRAINING RESOURCES

1. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Section 19-850(1)(a), Idaho Code. ()

2. TITLE AND SCOPE.

This chapter is titled “Financial Assistance and Training Resources,” and contains requirements for public defense financial assistance and trainings offered through the PDC. ()

3. – 009. (RESERVED)

10. DEFINITIONS.

For the purposes of this chapter, the definitions in IDAPA 61.01.01, “General Provisions and Definitions,” apply. ()

11. – 019. (RESERVED)

20. FINANCIAL ASSISTANCE FOR COUNTIES TO PROVIDE PUBLIC DEFENSE IN COMPLIANCE WITH PUBLIC DEFENSE RULES AS PROVIDED IN SECTION 19-862A, IDAHO CODE.

1. **Information for Application.** Counties making application for Financial Assistance to continue complying with Public Defense Rules or cure any Deficiency must provide the following information: ()

PDC Unofficial/Tracked Changes 12/15/2021

PDC Unofficial Tracked Changes 12/15/2021

- a. Compliance Plan and Cost Analysis; ()
- b. Compliance attestation required by Section 19-862A, Idaho Code; ()
- c. Itemization of the County’s public defense: ()
 - i. Expenditures for the prior county fiscal year; ()
 - ii. Budget for the current county fiscal year; and ()
 - iii. Anticipated budget for the upcoming county fiscal year; ()
- d. Information from Defending Attorneys necessary for the Compliance Plan and application; and ()
- e. Other information requested by PDC Staff or the Commission related to Public Defense Rules or Financial Assistance. ()
- 2. Preference.** Financial Assistance is subject to the availability ~~for~~of funds, with preference given: ()
 - a. First, to counties that need assistance to cure Deficiencies; ()
 - b. Second, to counties that need assistance to continue complying with Public Defense Rules; and ()
 - c. Third, to counties for other improvements to public defense. ()
- 3. Financial Assistance for Workload.** The Commission may award Financial Assistance for counties to pay for resources needed to meet the Workload rules in IDAPA 61.01.02, “Requirements and Procedures for Representing Indigent Persons,” Subsection 060.05 (“Workload Financial Assistance”) of these rules, which is subject to the following additional requirements: ()
 - a. Workload Financial Assistance can only be used for attorneys, staff, and other resources to comply with the Workload rules; ()
 - b. A county must specifically state in the Financial Assistance application all proposed designated uses for Workload Financial Assistance; ()
 - c. A county can only use Workload Financial Assistance for the designated uses approved by the Commission; ()
 - d. County responsibility for compliance with the maximum caseload standard is contingent upon the appropriation of state funds as provided in Idaho Code 19-862A at a level necessary to implement the numeric standard. If Caseload or Workload maximums are being exceeded and the county has timely requested and not received Financial Assistance to pay for resources needed to comply with Caseload or Workload rules, the county’s failure to comply with Caseload or Workload rules will not be deemed a Deficiency. ()
- 4. Financial Assistance for Joint Offices.** The Commission may award additional Financial Assistance to counties that have established a joint office of public defender under Section 19-859(2), Idaho Code. ()
- 5. Review.** PDC Staff will review county applications for Financial Assistance. The Executive Director or appointed subcommittee of the Commission will make recommendations to the Commission. The Commission will determine the type, terms, and amount of Financial Assistance. ()
- 6. Extraordinary Litigation Fund (“ELF”).** The Executive Director or the Commission may award

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Financial Assistance for extraordinary litigation costs necessary for representation in a public defense case when such costs are a financial hardship on the county or when requesting from the court or the county may undermine an Indigent Person's case. ()

PDC Unofficial Tracked Changes 12/15/2021

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a. Defending Attorney applicants may apply exclusively for prospective litigation costs and any request seeking reimbursement for services already rendered or expenses already paid will be rejected. ()

b. Counties may request ELF Financial Assistance for reimbursement of extraordinary litigation costs paid and the application may only seek reimbursement for services rendered within the same state fiscal year. ()

c. Information provided in support of an ELF application is confidential and exempt from the Public Records Act under Section 74-105(18)(b), Idaho Code. ()

d. The Executive Director will approve or disapprove and will determine the amount of ELF assistance for costs other than attorney fees. The Commission will approve or disapprove and determine the amount of ELF assistance for attorney fees. ()

7. **Independence.** Counties applying for Financial Assistance must limit prosecutor involvement in the Financial Assistance process ~~that~~ if the involvement may jeopardize the independence of any Defending Attorney or undermine the delivery of public defense. ()

21. – 029. (RESERVED)

30. TRAINING RESOURCES FOR ~~DEFENDING~~ ATTORNEYS ON THE ~~DEFENDING ATTORNEY~~ PDC ROSTERS, AND THEIR STAFF WHO DIRECTLY SUPPORT ~~THE DEFENDING ATTORNEY'S~~ PUBLIC DEFENSE PRACTICE.

1. **PDC Training.** The PDC may partner with outside organizations to present free or reduced cost training. ()

2. **Scholarships.** The PDC may award training scholarships for approved non-PDC training. ()

3. **Non-Roster Attorneys.** Attorneys not on a Roster and their staff are not eligible for PDC training or scholarships but may participate through a partner organization, if applicable. ()

4. **Preference and Conditions.** Training and scholarship funds are limited and subject to the following: ()

a. Preference is given to qualified applicants whose experience levels and compliance needs best fit the particular training program, and who did not attend a free or discounted training within the previous year; ()

b. Approved applicants must immediately notify PDC Staff if they cannot attend or fully participate in any training; and ()

c. Approved applicants who, without timely notifying PDC Staff, were absent from or failed to fully participate in a previous training, will not get preference and may not be eligible for training and scholarship benefits for the next twelve (12) months. ()

31. – 999. (RESERVED)

61.01.02.080 DUE PROCESS

1. Every attorney performing or applying to perform indigent defense shall have the right of due process whenever the Public Defense Commission (PDC), or employee of the PDC makes a decision that could impact his/her employment or employability. The following is a list of PDC decisions of impact, but is not an exclusive list: defending attorney roster; capital defending attorney roster; and a finding of deficiency.
 - a. An adverse decision impacting a defending attorney must be in writing and served on the affected attorney and chief public defender in an established office.
 - b. The written decision shall specifically cite to the PDC standard or rule the PDC relies upon for a decision that impacts the attorney. The written decision must contain specific facts to advise the defending attorney of the issues considered and reasoning for the decision.
 - c. An attorney may appeal an adverse decision by submitting a written notice of appeal to the PDC within 14 days of the date the notice of denial is served.
 - d. Upon notice of appeal a hearing shall be conducted.
 - e. The PDC and defending attorney, County, County Representative or Supervising defending attorney shall agree to the selection of the hearing officer within 45 days from the date of the notice of appeal.
 - f. The Defending Attorney, Supervising Attorney, County or County representative shall have an opportunity to be present at the hearing and be able to present written and oral information in support of their appeal.
 - g. Upon written request, the Defending t Attorney, Supervising Attorney, County or County representative shall receive all written documents or information received by the PDC in support of the PDC decision to exclude or remove the defending attorney on any defending attorney roster. The information shall be provided within 14 days from the date of the written request. The disclosure of the written documentation does not waive any public record protection and the documents are to be used only in the proceedings before the Commission, the hearing officer, or judicial appeal.
 - h. The hearing on the denial or removal shall be within 90 (ninety) days from the date of appeal unless the parties stipulated to a different time.
 - i. Upon a full and fair opportunity to be heard, the hearing officer shall issue a written recommendation to the PDC within 14 days from the date of the hearing. Upon receipt of the recommendation from the hearing officer, the PDC will have 14 days to issue a final agency decision in writing to be mailed to the defending attorney, the supervising attorney, County or County Representative.
 - j. A final decision of the PDC may be appealed to the District Court of Idaho in accordance with the Idaho Rules of Civil Procedure. The appeal must be filed to the District Court within 14 days of the final decision of the PDC. The standard of review in front of the District Court of Idaho shall be de novo.
2. IMPACT OF DUE PROCESS AND APPEAL

- a. Nothing in this section eliminates the right of the defending attorney and chief public defender, when an institutional office exists, from the right to be heard during the decision making process at PDC level as stated in these rules.
- b. During the appeal process the attorney maintains employment at the same status and level as prior to the action by the PDC.