
From: Jay Logsdon <jlogsdon@kcgov.us>

Sent: Friday, February 4, 2022 7:44 PM

To: Senator Todd Lakey <TLakey@senate.idaho.gov>; Senator Doug Ricks <dricks@senate.idaho.gov>; Senator Patti Anne Lodge <palodge@senate.idaho.gov>; Senator Abby Lee <ALee@senate.idaho.gov>; Senator Kelly Anthon <KAnthon@senate.idaho.gov>; Senator Steven Thayn <sthayn@senate.idaho.gov>; Senator Christy Zito <CZito@senate.idaho.gov>; Senator Grant Burgoyne <gburgoyne@senate.idaho.gov>; Senator Melissa Wintrow <mwintrow@senate.idaho.gov>

Subject: Public Defense Commission Proposed Rules

Please find my letter attached concerning this round of proposed rules.

Jay Logsdon
Chief Deputy Litigation
The Law Office of the Public Defender of Kootenai County
1450 NW Blvd, Suite 301 (83814)
P.O. Box 9000
Coeur d'Alene, ID 83816
Phone: 208-446-1700
Fax: 208-446-1701

Committee Chair and Members of the Committee,

My name is Jay Logsdon and I have been a public defender in Kootenai County for ten years. I am currently a chief deputy.

Last year, the Executive Director of the PDC Kathleen Elliot claimed the proposed rewrite of the rules for the Public Defense Commission changed nothing and was simply for clarification. That was untrue. I do not know what she is telling you this year, but upon reviewing this round of changes, my concerns are not mollified. I am sending you a slightly modified version of the statement I sent the House last year. I see, frankly, that the leadership of the PDC continues to throw away its mission to provide us with trainings and resources and continues to claw for power.

The current rules essentially made every practicing attorney *working* as a public defender a public defender- there was no roster to which we had to *apply*. The new rules create hurdles to becoming a public defender- despite the fact that the requirements to be a public defender are already set by law: See I.C. § 19-855:

No person may be given the primary responsibility of representing an indigent person unless he is licensed to practice law in this state and is otherwise competent to counsel and defend a person charged with a crime.

The law that created the Public Defense Commission, I.C. § 19-850(1)(a)(vii), did not change that- rather it set out “standards for defending attorneys to utilize”, that is, standards for our work environment, i.e., the counties, jails, and courts, to ensure we are able to adequately represent our clients. It had no intention of questioning our ability to practice law.

The current leaders of the Public Defense Commission’s proposed rules fly in the face of I.C. § 19-850. Subsection (a) of the law ends with the admonition that no standard the Public Defense Commission creates would be grounds for ineffective assistance of counsel or post-conviction relief. What then is the purpose of the standards set out in the proposed rules? What do we need an additional watchdog for if we continue to be bound by the requirements of the Bar and the Sixth Amendment? Is it any wonder that so many public defenders believe that the real intention of the PDC is to give it the power to remove attorneys they do not like from practicing?

I do not understand how the Public Defense Commission came to have power over the judicial branch. Where is the power to order the court not to appoint certain lawyers to act as public defenders? Where is the power to tell counties who can and cannot be their public defender under I.C. §§ 19-859, 860, 861, 862, and interfere with their ability to control their own employee? We are not talking about standards for contracts anymore- we are talking about this organization acting as a public defense czar that all of the attorneys that used to answer to clients, counties and the bar now having yet another boss.

What happened to the independence guarantee of Subsection (1)(a)(vii)(1)? I see it listed in here, but most of the Public Defense Commission and **executive director** are appointed by and do the bidding of the Governor. His point of view, and that of his predecessors, has always been clear- a Public Defender is to provide a cheap speed bump for prosecutions to ensure they will not be questioned in costly appeals and post-conviction relief petitions. In the view of Governor's Office and its cronies- be it Ms. Elliott, or the head of the State Appellate Public Defender (also appointed by the Governor) Mr. Frederickson, any litigation on behalf of the poor is a waste of public resources unless it is successful. They would have us freeze the law where it is- failures are too costly. Creativity must be stamped out. As the principle attorney behind many cases that changed the law of this state (often not to my clients' benefit, but that is how the law works) I find their continued "leadership" a gross injustice. I do not believe for one moment that under their oppression that I would have convinced the Idaho Court of Appeals to stop shackling minors during some hearings despite the issue being moot, or the Idaho Supreme Court that the police letting their dogs touch our cars to get a good whiff of the interior is a flagrant violation of our rights (particularly where some District Judges treated the argument with intense disdain). The fact that the SAPD has occasionally taken my ideas to the finish line does not convince me that that office is run with the same commitment to zealous representation of the most denigrated people in our society that my office has. I could go on, but let us be clear:

I do not work for the Governor of Idaho and I will not. Period. This is not negotiable.

I object to using sleight of hand to turn a commission intended by this legislature to provide much needed resources and support to the public defense function into a policing agency. I understand the concerns that led some to want a single, unified, state-run public defender agency in this state. That is not, however, what this legislation was intended to do; in fact, it clearly rejected that idea. If the legislature wishes to create such an agency, I am certain it would realize that the *Governor* should not be in the position of naming its head or those in decision-making positions within it. (Even if it did fail to pick up on that issue when it blessed the creation of the SAPD.) **This blatant conflict of interest cannot be ignored by this committee.** This is a fox in charge of the henhouse situation. It is a violation of the independence of counsel required by the Sixth Amendment, and it will give our clients ample ammunition for lawsuits once **we are run by the same branch of government that prosecutes them.**

Finally, I wish to address something that seems to be lost in these attempts to overhaul our public defense system. I want to object to the idea that Idaho has a public defense problem. I object to the idea that the courageous men and women that fight the police, prosecutors and judges every day protecting our constitutional rights are the ones putting innocent people in jail. I object to the idea that somehow the group with the most scrutiny of any category of attorney- from the judges, law enforcement, the Bar, post-conviction relief claims, and malpractice lawsuits- is in need of yet another layer of control. I object to the idea that we are why hundreds of people are in our jails right now for petty offenses. I object to the idea that we are why thousands of cases now wait for trials that do not seem to come while our Supreme Court via judicial fiat has done away with our right to a speedy trial. I object to claims that we make criminal justice expensive- we do not control

how many people are prosecuted or for what, or whether a case with clear evidentiary issues must be litigated, or whether pseudo-science is brought to court to put people in prison.

I object to the fact that every time we talk about criminal justice reform in this state we pick on the underdogs trying to hold this system together.

If this committee adopts these rules, it will only lead to lawsuits and good lawyers quitting the fight entirely, tired of being the whipping children of the failures of this system. I implore this committee not to adopt them. Thank you.

A handwritten signature in cursive script that reads "Jay Logsdon".

Jay Logsdon
Chief Deputy Litigation
The Law Office of the Public Defender of Kootenai County
1450 N.W. Blvd. Suite 300
P.O. Box 9000
Coeur d'Alene, ID 83816
Phone: 208-446-1700
Fax: 208-446-1701