

IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION

61.01.07 - RULES GOVERNING STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM

DOCKET NO. 61-0107-1601 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-850(1)(a)(vii), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

| ALL MEETINGS START AT 6:00 PM LOCAL TIME   |  |
|--|--|
| <b>Monday, October 3, 2016</b>   | <b>Monday, October 17, 2016</b>  |
| The Grove Hotel<br>The Evergreen Room, 2 <sup>nd</sup> Floor<br>245 South Capitol Blvd.<br>Boise, ID 83702 | Canyon County Administration Building<br>1st Floor Public Meeting Room<br>111 N. 11 <sup>th</sup> Avenue<br>Caldwell, ID 83605 |
| <b>Tuesday, October 18, 2016</b>   | <b>Wednesday, October 19, 2016</b>   |
| Hilton Garden Inn<br>Snake River Room<br>700 Lindsay Blvd.<br>Idaho Falls, ID 83402                        | Hampton Inn & Suites Pocatello<br>Pocatello Room<br>1551 Vista Drive<br>Pocatello, ID 83201                                    |
| <b>Thursday, October 20, 2016</b>  | <b>Tuesday, October 25, 2016</b>   |
| Holiday Inn Express<br>1554 Fillmore Street<br>Twin Falls, ID 83301  | Kroc Center - Cedar Room<br>1765 W. Golf Course Road<br>Coeur d'Alene, ID 83815  |
| <b>Wednesday, October 26, 2016</b>   |  |
| Lewis-Clark State College<br>Sacajawea Hall, Room 115<br>500 8 <sup>th</sup> Avenue<br>Lewiston, ID        |  |

The hearing sites will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rule creates standards for attorneys who are appointed to represent indigent persons and other individuals who are entitled to be represented by an attorney at public expense that take into account Idaho's Principles of an Indigent Defense Delivery System, Idaho Code 19-850(1)(a)(vii). The standards included in this rule include requirements that such attorneys conform to performance standards, carry a maximum number of cases per year, and appear at initial appearances.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

There is no fee or charge imposed or increased as a result of this rulemaking.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year as a result of this rulemaking:

There is no fiscal impact on the state general fund as a result of this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 3, 2016 Idaho Administrative Bulletin, [Vol. 16-8 – page 163](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The incorporated documents are the primary reference for defending attorneys and other stakeholders regarding the standards for defending attorneys established by the PDC based upon nationally recognized guidelines. A separate document is necessary for ease of reference, analysis and accessibility. Further, this document will be amended to include additional standards as created and established, increasing the length substantially. The republication of the text would be unduly cumbersome and expensive.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Kimberly Simmons, Executive Director, at (208) 332-1735 or [Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before November 18, 2016. Written comments will also be accepted during the scheduled public hearings.

DATED this 1st day of September, 2016.

Kimberly J. Simmons, Executive Director  
State Public Defense Commission  
816 West Bannock St., Suite 201  
Boise, ID 83702  
Phone: (208) 332-1735  
Fax: (208) 364-6147  
[Kimberly.Simmons@pdc.idaho.gov](mailto:Kimberly.Simmons@pdc.idaho.gov)

**THE FOLLOWING IS THE PROPOSED FEE RULE TEXT OF DOCKET NO. 61-0107-1601  
(Only Those Sections With Amendments Are Shown.)**

IDAPA 61  
TITLE 01  
CHAPTER 07

**IDAPA 61 - STATE PUBLIC DEFENSE COMMISSION**

**61.01.07 - RULES GOVERNING THE STANDARDS FOR DEFENDING ATTORNEYS THAT UTILIZE IDAHO'S PRINCIPLES OF AN INDIGENT DEFENSE DELIVERY SYSTEM**

**000. LEGAL AUTHORITY.**

Section 19-850 (1)(a)(vii), Idaho Code, gives the State Public Defense Commission (PDC) authority to promulgate rules establishing the standards for defending attorneys that utilize, to the extent reasonably practicable taking into consideration factors such as case complexity, support services and travel, Idaho's Principles of an Indigent Defense Delivery System (IPIDDS) as referenced in the same section. ( )

**001. TITLE AND SCOPE.**

**01. Title.** These rules shall be cited as IDAPA 61, Title 01, Chapter 07, "Rules Governing Standards for Defending Attorneys That Utilize Idaho's Principles of an Indigent Defense Delivery System." ( )

**02. Scope.** These rules establish the standards and guidelines for Indigent Defense Providers and defending attorneys practicing in the State of Idaho. ( )

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the PDC's office. ( )

**003. ADMINISTRATIVE APPEALS.**

The PDC's determination to set standards for defending attorneys is an exercise of its duty to responsibly and prudently implement a system to improve the delivery of trial-level indigent defense services. Nevertheless, unless otherwise stated, determinations made by the PDC are subject to administrative appeal under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

**004. INCORPORATION BY REFERENCE.**

The following documents are incorporated by reference into these rules: ( )

**01. Idaho's Principles of an Indigent Defense Delivery System.** "Idaho's Principles of an Indigent Defense Delivery System," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ( )

**02. Standards For Defending Attorneys.** "Standards For Defending Attorneys," edition 2016, is herein incorporated by reference and is available from the PDC's office and on the PDC website: <https://pdc.idaho.gov>. ( )

**005. OFFICE—OFFICE HOURS—MAILING AND STREET ADDRESS—TELEPHONE—INTERNET WEBSITE.**

The location and mailing address of the PDC is 816 West Bannock Street, Suite 201, Boise, Idaho 83702. The offices are open daily from 9 a.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed because staffing levels do not permit. The PDC's telephone number is (208) 332-1735 and the facsimile number is (208) 364-6147. The PDC's official website is: <https://pdc.idaho.gov>. ( )

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. ( )

**007-009. (RESERVED).**

**010. DEFINITIONS**

**01. Case.** A Case shall mean representation of one person on one charging document. The following Idaho Supreme Court definition on case processing and reporting shall apply: ( )

**a.** A new criminal case is defined, processed, and reported as follows: ( )

**i.** A criminal case is initiated and counted at the filing of the charging document (citation, complaint, information, or indictment). ( )

**ii.** The defendant and all misdemeanor and felony charges resulting from a single incident are counted as a single case, even if it involves multiple citations or complaints. Infractions must be filed separately, but may be consolidated. If the charging document contains multiple defendants involved in a single incident, a separate case will be created for each defendant, so that each defendant is counted as a single case. Idaho Criminal Rules and Misdemeanor Criminal Rules provide some exceptions: ( )

1) Two (2) or more defendants can be joined in a single case pursuant to I.C.R. 8(b). ( )

2) Offenses based on two or more acts or transactions connected together or constituting part of a common scheme or plan may be consolidated pursuant to M.C.R. 3(e). ( )

**iii.** In cases involving multiple charges, the case type is classified according to the most serious offense (i.e., if a defendant is charged with a misdemeanor and a felony in a single case, the case is classified as a felony). ( )

**iv.** The disposition of a criminal case is reported in the same case subtype that was used when the case was filed. For example, if a case is filed as a felony and is reduced to a misdemeanor prior to disposition, it is reported as a disposition of a felony. Similarly, if a case is filed as a misdemeanor and is amended to a felony, it is reported as a disposition of a misdemeanor. ( )

**v.** With respect to felony bound over to district court, the following rules apply: ( )

1) When a felony is filed in the magistrate division, it is counted as a new felony filing. ( )

2) Upon the filing of the information or order binding, or both, the case over to the district court, the case is counted as a disposition of a felony in magistrate division and as a new felony filing in district court. ( )

3) When disposed in district court, the case is counted as a disposition of a felony in the district court. ( )

4) If the case is reduced to a misdemeanor and remanded to the magistrate division for the acceptance of a misdemeanor plea, the case is counted as a disposition of a felony in the district court and a remand of a felony in the magistrate division. ( )

**b.** Post-judgment actions in criminal cases are processed and reported as follows: ( )

**i.** In addition to new criminal cases, the following post-judgment actions will be tracked and reported separately: ( )

1) Motion to revoke probation; ( )

2) Motion for early discharge of probation; ( )

- 3) Motion to modify terms of probation; ( )
  - 4) Defendant is transferred to a problem-solving court following a guilty plea/sentencing; ( )
  - 5) Motion for contempt/Motion to show cause; ( )
  - 6) Motion to amend or set aside judgment of conviction or set aside guilty plea; ( )
  - 7) Motion to correct or reduce sentence; ( )
  - 8) Motion for new trial; ( )
  - 9) Motion for stay of execution; ( )
  - 10) Motion to seal case; and ( )
  - 11) Motion for appellate bond. ( )
  - ii. Case remanded to the magistrate division for acceptance of a misdemeanor plea. ( )
  - iii. The above post-judgment actions will be counted at the filing of a motion or, the issuing of an order for cases that are remanded to a lower court or transferred to a problem-solving court. ( )
- The disposition of any of the above listed post-judgment actions is counted as a disposition in the same post-judgment category that triggered the action. ( )

**02. Caseload.** The number of cases, as defined in this chapter, assigned to a defending attorney in a fiscal year. ( )

**03. Defending Attorney.** Defined in Section 19-851, Idaho Code, as “any attorney employed by an indigent defense provider or otherwise assigned to represent adults or juveniles at public expense” in state courts. ( )

**04. Established Standards.** The “Standards For Defending Attorneys” as referenced in Section 004 of these rules and established pursuant to Section 19-850(1)(a), Idaho Code. ( )

**05. Fiscal Year.** As referred to in this chapter, fiscal year refers to a county fiscal year beginning on October 1 and ending on September 30 of the following year. ( )

**06. Indigent Defense Provider.** Any agency, entity, organization or person selected by a board of county commissioners in accordance with section 19-859, Idaho Code, or designee of the commission if the commission’s actions to remedy specific deficiencies pursuant to section 19-861A (11) (b), Idaho Code, involve the direct provision of indigent defense services, as a means to provide for the representation of indigent persons and other individuals who are entitled to be represented by an attorney at public expense. ( )

**07. Workload.** The term workload recognizes that a caseload generally consists of a mix of case types that require differing amounts of time and resources. As used in this section, workload takes that fact into consideration. ( )

**011. ABBREVIATIONS**

**01. PDC.** The State Public Defense Commission. ( )

**02. IPIDDS.** Idaho’s Principles of an Indigent Defense Delivery System. ( )

**012. – 019. (RESERVED)**

**020. PUBLIC DEFENSE ROSTER.**

**01. Roster Membership.** The PDC will create and maintain a roster of all institutional defender attorneys, and defending attorneys included in primary or conflict contracts with the counties in the State. ( )

**a.** Maintenance of Roster. The roster will be updated whenever there is a change, in May and may be updated more frequently in order to accurately reflect anytime there are staff changes at the county level. ( )

**b.** Roster Contents. The roster will include the name of each individual attorney, their Idaho State Bar Number, and professional contact information, including email address, physical address, and telephone number. ( )

**c.** Availability of Public Defense Roster. The roster will be made available from the PDC office upon request. ( )

**02. Application for Roster Inclusion.** Any attorney who is not employed by an indigent defense provider, or who does not work under an existing indigent defense services contract may apply to the PDC for inclusion on the Public Defense Roster. ( )

**03. Approval.** Inclusion on the Public Defense Roster must be approved by the Executive Director. ( )

**021. APPLICATION OF ESTABLISHED STANDARDS.**

The established standards shall apply to all Indigent Defense Providers, defending attorneys, members of the Public Defense Roster, or any attorney who is assigned to represent at least one indigent defendant or is otherwise assigned to represent an adult or juvenile at public expense in state courts in a fiscal year. ( )

**021. – 099. (RESERVED)**