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Washington State Bar Association  
COUNCIL ON PUBLIC DEFENSE

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OCTOBER 26, 2012

1:00 – 4:00

Perkins Coie LLP  
1201 Third Avenue, 49<sup>th</sup> Floor, 49-22\*  
Seattle, WA 98101-3099

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MINUTES

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MEMBERS IN ATTENDANCE: Jackie McMurtrie - Chair, Brooks Holland – Vice Chair, Greg Banks, Marc Boman, Bob Boruchowitz, Dan Fessler, Judge Richard Fitterer, Don Franks, Ray Gonzales, Christie Hedman, David Hocraffer, Mark Larrañaga, Joanne Moore, Jon Ostlund, Justice Susan Owens, Denis Tracy

INTERESTED PARTIES: Doug Ende, Sophia Byrd McSherry, Cailin Daly, Eileen Farley, Mary Jane Ferguson, Sean Flynn, Ann Christian, Anita Paulsen, Travis Stearns

MEMBERS NOT IN ATTENDANCE: Judge Beth Andrus, Callie Dietz, Jonathan Meyer, George Yeannakis

1. Welcome and Introductions
2. Orientation:
  - a. Charter – The group reviewed the items we are charged with accomplishing. At the end of today's meeting, we will set forth tasks we would like to accomplish by the end of the year.

The following documents and policies were reviewed with the entire group.

- b. WSBA Mission & Strategic Plan
- c. WSBA Travel Policy
- d. WSBA Meeting Agenda

### 3. OPD Report: Joanne Moore

- RCW 71.09, sexually violent predators: Cases became the responsibility of the OPD on July 1<sup>st</sup>. The OPD has 9 contracts with 23 attorneys.
- State OPD budget request: OPD is putting forward two budget requests that have gone to the legislature:
  - Funds for an additional immigration specialist at WDA for one year at \$100,000
  - Maintenance cost of living increase for contract attorneys, who have not received an increase since 2008. OPD is asking for a 1.5% increase.

### 4. Certification process and the standards: OPD held 6 CLEs for attorneys around the state. Implementation of certification process will be assisted by George Yeannakis, who starts ½ time at OPD in November.

#### Certification Compliance:

- Marc Boman, Joanne Moore and others are meeting with Representative Goodman regarding some cities' concerns about the standards.
- WSBA Chief Disciplinary Counsel Doug Ende reported that he met with WSBA officers and members of the Supreme Court in August, regarding concerns over enforcement of certification rule. Attorney Ende included in today's meeting materials a letter with suggested changes that may fill the gap between enforcement and certification, intended to generate dialogue around this issue. He also noted that discipline is not always the best means to advance the primary purpose of the initiative.
- Jon Ostlund suggested the CPD wait and see if any issues develop before moving to change the rule.
- Bob Boruchowitz suggested that Jackie McMurtrie email Chief Justice Barbara Madsen, emphasizing that considerable time should be spent allowing stakeholder feedback.
- Bob Boruchowitz moved that Jackie McMurtrie send a letter to the Supreme Court, asking them not to act on the rule; Justice Owens offered to relay that message next week.
- Several counties have adopted caseload standards, but are not adhering to them. This could be an issue of jurisdiction, or an administrative public defense function within the jurisdiction. Lawyers can inroad to the

disciplinary system through many ways, and grievances are reported to the WSBA in a variety of ways. We are not talking about litigation aspects here; rather, we are discussing how the WSBA will approach these cases if there are complaints filed. Justice Owens will bring these discussion points to the Rules Committee.

#### CITY CONTRACT ISSUE – FEDERAL WAY:

- Concerns expressed over the the Federal Way contract case weighting language. A sub-committee will draft some FAQs to be posted on the OPD website, along with guidelines for case weighting..
- Bob Boruchowitz moved to have the CPD draft a letter to Federal Way. The motion failed for lack of a second; generally held that because the enforcement of the case weighting guidelines is not going to happen until October 2014, there is nothing yet to act upon; and other members commenting that it is not within the authority of the WSBA or the CPD to oversee municipal public defense contracts.
- Denis Tracy noted that he believes the rule has a number of ambiguities.
- Jackie McMurtrie, Christie Hedman, Eileen Farley, Bob Boruchowitz and Ray Gonzales will explore writing an article on this issue for NW Lawyer (WSBA publication replacing Bar News in December/January). Jennifer Carter will look into publication deadlines and content guidelines.
- Suggestion to write an article from the point of view of a person convicted of a crime who will be represented by an overworked attorney - ineffective assistance of counsel claim.

#### 5. Proposed JuCR 1.6 Use of Restraints:

- There is an inability to be effectively represented by counsel when the juvenile is shackled in court: the relationship between the client and attorney is impacted. Case law is clear that shackles are not to be used unless the government proves the juvenile is dangerous or likely to run away.

#### 6. Other matters:

- Dan Fessler reported that he will be looking into a Yakima County issue where attorney/client conversations are being recorded where the client is incarcerated. The issue arose from an aggravated murder case, where the attorney was out of county and not placed on the 'do not record' list. Technology is great now for inmates, as well as law enforcement agencies, who are able to have alerts set for certain phone numbers. Dan will research how to add attorney's names to the 'do

not record' list, and will also engage in dialogue with the WSBA as to how they might interrelate to this issue.