



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE
FEBRUARY 19, 2021, 9:30AM TO 12:00AM VIRTUAL/VIDEOCONFERENCE
MINUTES

CPD voting members Travis Stearns (Chair), Jason Schwarz (Vice-Chair), Abraham Ritter, Deborah Ahrens, Christie Hedman, Eric Hsu, Rachel Cortez, Rebecca Stith, Judge Drew Henke, Matt Heintz, Jaime Hawk, Jason Bragg, Justice Sheryl Gordon McCloud, Nick Allen, Chris Swaby, Brenda Williams, Justin Bingham

CPD Emeritus members (non-voting members): Ann Christian, Eileen Farley, Bob Boruchowitz

WSBA Staff: Bonnie Sterken

Guests: Marla McCowan, Sophia Byrd McSherry, Ali Hohman, Katrin Johnson, Kevin Flannery, Maialisa Vanyo, Shawn Plascencia, Magda Baker

Absent: Natalie Walton-Anderson, Matt Anderson, Judge Patricia Fassett, Louis Frantz, Kathy Kyle

2021 CPD Appointments: Travis reported that there are number of CPD seats that are up for reappointment this year and a few seats where members will be terming off. Individuals in those seats are being contacted, and Travis asked members to let him know if they had ideas for new member recruitment.

Minutes: The January minutes were approved with an edit provided in the meeting.

Covid-19 Updates: Sophia reported that folks who are meeting with clients face to face have been prioritized to receive the vaccine. OPD has created a simple survey to identify folks who qualify and OPD is putting together a form letter to let them know if they are eligible. They have sent out about 850 letters. Sophia also reported that the Court has asked the lower courts to provide similar support to other court employees.

Jason reported that he and Katrin presented to the Court recovery task force about information they had gathered through a survey on Covid response issues. They will plan to share the report at the next CPD meeting to have a longer conversation. The two biggest areas are the caseloads that are piling up and client communication. It's helpful to bring this perspective to judges to make sure proper communication is taking place and the limitations outside of court are known. Criminal Rule 3.4 also came up in the conversations, and Magda shared about that.

Development of Minimum Standards, Tracking and Support in Local Systems: Marla McCowan presented about her work implementing standards in Michigan. She gave a brief history of standards and the early formation of the standards. The first standards included training/education requirements (Michigan does not require CLEs), use of investigation and experts, providing counsel at first appearance and critical stages, and initial client meetings as soon as practicable. She also walked through their system for collecting a reporting plan from how jurisdictions, the support that systems receive to stay in compliance, and how they assess compliance (reporting, evaluations scoring, court watching). She summarized the next standards they are working on, which include independence,

caseloads, qualifications/review, compensation, and indigency screening and contribution by defendants). Marla addressed questions.

Legislative Updates: Sophia Byrd McSherry with the Office of Public Defense, Jaime Hawk with the ACLU, and Christie Hedman with the Washington Defender Association provided the following overviews on current legislation.

Office of Public Defense:

- The OPD budget request is in a holding pattern, waiting for a chair's budget, expect to see action in early March. Watching to make sure that the WDA Incarcerated Parent Program funding is included in the budget
- Multiple child welfare related bills that are supportive of parents and children. HB 1227, major reform of dependency process. HB 1194, visitation related bill. HB 1140, juvenile issues, directs OPD to implement a new program to ensure availability of counsel on a consultation basis whenever police detain or question juveniles, would extend into school resource officers. SB 5163, alternatives for folks transitioning out of commitment on McNeil Island, related to adequate and safe housing.

ACLU-WA:

- HB 1048, voting rights restoration, the day a client is released from prison the right to vote will be automatically restored, working hard to keep limitations out of the bill.
- HB 1282, sentencing reform, focused on earned release time, and would be retroactive.
- SB 5413 is not proceeding, ending solitary confinement, adopting internal human rights standards (limiting solitary to no more than 15 days). Advocacy video is on TVW.
- HB 1413 seems to have legs, would be retroactive, important racial justice, makes it so juvenile calculations are wiped out and we can shorten sentences for folks.
- SB 5226, life and suspension, eliminate driver license suspensions for failure to pay, respond or appear for a moving violation
- HB 1412, LFO 2.0
- HB 1499, drug decriminalization, infrastructure for treatment for clients with substance abuse

Washington Defender Association:

- Finalizing budget proviso to create indigent defense task force, looking for funding, potentially staffed out of OPD
- Sentencing reform bill, stop the stacking on enhancements
- SB 5293, mental health sentencing alternative
- Surveillance and privacy bill
- Number of firearm bills
- Police reform, ACLU taking a lead there, especially relating to accountability and shootings
- A few juvenile bills - Ali shared:
 - 5122 juvenile jurisdiction and raised the floor to age 13 and ceiling to age 20
 - 5120 codification of holding
 - 5123 limiting juvenile sex offender registration for under 15
 - 5188 reentry from JRA
 - 1219 dependency – statewide child representation system under OCLA

All addressed questions

CR 3.4: Magda shared changes in the law, concerns from public defenders, and WDA resources. There are two big changes to the law. There was a Division 1 opinion in *State v Gelinis*. The opinion addressed if a client's personal appearance isn't necessary, and defined necessary as the case can't move forward if the client isn't there. The opinion also held that local court rules must be consistent with state court rules. The other change is that the state Court asked for updates to rules asking that the court find good cause for an accused person to be in court. An attorney can let the court know that the client is waiving their personal presence, and allows for remote attendance. Defenders have raised concerns that some courts are asking defenders "have you ever had contact" with your clients and are violating RPC 1.6 asking for confidential information. Some courts are enacting local rules that conflict with CR 3.4. Some are issuing blanket orders. WDA resources include a CLE in January with a practice advisory, and they are adding to that with an FAQ. WDA is collecting other issues to work with others on responsive resources. Magda addressed questions and the Council had discussion.

Standards: Bob reported that the standards committee is looking at workload issues and considering updates. The committee had invited directors from around the state to meet and discuss the standards and implementation. The takeaways include the following: 1) huge disparities between the counties (resources and ability to challenge the situation and differences in case weighting), 2) significant interest in defining what fully supported means in the standard, 3) how do you count open cases and pending cases and should that be a factor (several directors do count those), and 4) how do you deal with situations where lawyers transfer in the middle of year and someone inherits a caseload. The committee will continue to discuss these items.

Independence Committee: Ann asked the Council members to review the draft proposals that were circulated on Wednesday. Any concerns and suggestions can be sent to Ann or Bonnie. The committee will continue meeting with an aim to have final documents for a vote in April. Ann will circulate the Michigan example to the Independence Committee. Ann summarized the work of the Independence Committee up to this point. They are taking extra time to be able to address any anticipated questions or concerns.

Race Equity Committee Update: Rebecca reported that the committee had its first meeting and discussed how to make CPD more diverse and inclusive. They discussed current recruitment practices on the CPD. She asked if folks have suggestions to make the recruitment and application process more inclusive this. They also discussed the Court's statement and the CPD's statement from the last summer. She summarized the edits in the nomination request letters and the volunteer job description, which were updated to reflect the CPD's commitment to equity and inclusion. The committee might interview chairs/vice chairs about their recruitment and appointment process in past years. The committee also discussed inviting presenters and guests to attend meetings and make presentations. Diana gathered a list of other organizations doing racial equity work. The committee doesn't have the bandwidth to reach out to each of them, but some CPD members are also members of many of those groups. The committee will ask for report backs on what they are doing. Rebecca asked for any ideas for future conversations. We are setting up a listserv and folks can be added.

Civil Commitment Certification: Jason shared that the issue arose out of Spokane with questions about caseload counting among attorneys doing civil commitments. He asked if the council would want to give this issue to a committee to discuss and address. The Council had a discussion.

Other announcements: Jason noted that the conversations regarding guardianship are ongoing. Sophia noted that some funding has been made available and the conversations are evolving.

Ali reported that WDA is doing defender rising coalition with the 3 in state law schools. The link to the program is defensenet.org/defender-rising-initiative

Travis reported that we have some funding to spend, and asked for CPD members to let him know if anyone has ideas to make that useful.

The meeting adjourned at 12:05pm