



Washington State Bar Association

COUNCIL ON PUBLIC DEFENSE
JANUARY 28, 2022, 1:00PM TO 3:30PM VIRTUAL/VIDEOCONFERENCE
MINUTES

CPD voting members: Travis Stearns (Chair), Jason Schwarz (Vice-Chair), Larry Jefferson, Louis Frantz, Justice Sheryl Gordon McCloud, Kathy Kyle, Paul Holland, Abe Ritter, Anita Khandelwal, Christie Hedman, Judge Drew Henke, Rachel Cortez, Jonathan Nomamiukor, Rebecca Stith, Leandra Craft, Chris Swaby

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

WSBA Staff: Bonnie Sterken

Guests: Sapida Barmaki, Lindsey Townsend, Sophia Byrd McSherry, Katrin Johnson, Shoshana Kehoe, Liz Mustin, George Yeannakis, Andrea Jarmon, Jaime Hawk, Magda Baker

Absent: Brenda Williams, Judge Patricia Fassett, Jason Bragg, Matt Heintz, Matt Anderson, Arian Noma, Mohammad Hamoudi, Bob Boruchowitz

Minutes: The December minutes were approved without edits.

Office of Public Defense Report: Larry Jefferson reported that they are focused on the legislative session at OPD. They have been working with colleagues at OCLA and have been coordinating conversations regarding Blake. They have been able to address conflicts that have come out of the Blake related SB 5663. There are still some issues that need to be addressed. They are also tracking SB 5772 regarding post-conviction. There was no opposition during the testimony and the bill has passed out of committee. Larry addressed questions.

Larry also reported that are backlogs in courts and they are having discussions about other restorative justice processes to learn from. Larry asked folks to share with him if they are aware of restorative justice programs. They might have funds to contribute through grants. Larry noted continuing concerns over caseloads and the stress of Covid.

Washington Defender Association Report: Christie Hedman reported that WDA will not be holding their defender conference this year in person and are holding a virtual event in April. They are considering an in person event later in the year if possible. The post-conviction project is getting a later start and they are beginning the hiring process and finalizing the contract. They have also been tracking on the Blake related SB 5663 and participating in those discussions. They are trying to build a bill that addresses the concerns that folks have. Christie shared that the SB 5772 regarding post-conviction is exciting and is moving forward. WDA is again supporting OPD funding. Christie shared about the sentencing reform HB 1169 dealing with enhancements and is moving forward. HB 1413 deals with juvenile points and is still moving but there are politics with it. Police accountability bills are moving,

and WDA is collaborating with other group like the ACLU. HB 1507 regarding an independent prosecutors office is not moving forward. Christie addressed questions and the Council had a discussion about ongoing bills.

Youth Consultation Program: Liz Mustin reported that this new program started on January 1, 2022. The program is the implementation of HB 1140, which created requirements that police ensure that youth contact an attorney any time they are questioned. Liz provided an overview of the history and implementation of the new law. The right to counsel is critical to young people to be protected from coercion, etc. California is the only other state with a law like this and is not as strong as Washington's. Some other states are considering a version of this legislation. OPD is the body charged with creating a statewide program to make sure these consultations can occur. They had an extension process to determine how to establish the program and the metrics they are tracking. Liz addressed questions.

Draft Comments to Proposed Amendments to CrRLJ 3.3 and 3.4: Jason Schwarz shared the proposed changes that were submitted by the DMCJA. There was a change to this rule last year as well that was helpful. This new proposal would change the rule again. A draft comment was circulated to the Council. Some concerns that were included the possibility of increased bench warrants and creating ethical problems for attorneys. The Council had a conversation about the drafted comment in the materials. Jason moved that the Council support a simplified version of the draft letter while maintaining all the points that are already in the original draft. Kathy Kyle seconded the motion. The Council had a conversation. The Council collected a supermajority vote confirming that the comment is permissible within GR 12. The vote on the substance of the comment did not pass with two judicial abstentions, two no, the remaining yes. The Council continued to discuss the scope of the comment. Jason moved to submit a narrower comment that only focuses on the ethical violation of not becoming a witness against one's own client. This second motion passed with a supermajority, including two judicial abstentions and 15 in favor.

Standards Committee Report: Travis Stearns shared that the workloads statement was approved by the Board of Governors. The Council discussed the need to spread the word on the statement in the community.

Race Equity Committee: Abe Ritter reported that we have received 15 out of 23 responses on the Committee's survey that was sent on the listserv. Abe and Rebecca are not privy to results of the specific results of the survey. They can report that 15 out of 15 did say they want trainings and are willing to stay engaged. They have met with Barbara Harris to discuss next steps, who will be developing a training in the spring or summer. Barbara is working with Barbara Nahouraii at WSBA to discuss training opportunities. The training will be focused on action-oriented goals. He also noted that recruitment for the CPD will be beginning soon.

Travis noted that there are number of reappointments and new seats to be filled this year. The Council had a conversation about recruitment for this year, including increasing diversity and bringing in community voices. They discussed that the Council might need to change its cadence of how it works to be inclusive and pay people for their time.

Meeting Schedule: Travis noted that there are still scheduling conflicts with the March, May and July meetings. It is likely that we will move the March date to the afternoon and will confirm soon.

The meeting adjourned at 3:10pm

