



*From the office of the State Public Defender*  
**Focused on Fairness**

*By Adam Gregg, State Public Defender*

It's time for fairness from the Office of the State Public Defender.

Gov. Terry Branstad and Lt. Gov. Kim Reynolds campaigned in 2010 on eliminating the “gotcha” enforcement of administrative rules, and this promise was kept throughout state government. However, as I have reviewed the administrative rules of the state public defender since I took office in December of 2014, I've found that many of our rules continue to reflect the “gotcha” mentality. Though our rules were no doubt written with good intentions by good people with good reasons and rationale, in some cases the pendulum has simply swung too far. I believe our agency can do better.

Unfair rules have contributed to a relationship between the bar and the Office of the State Public Defender that is far too hostile and adversarial. The implications go beyond our contractual relationship with approximately 1,000 attorneys across the state. If allowed to fester, a negative relationship threatens our very system of indigent defense, of which our contract attorneys are an integral part. We don't pay exorbitant hourly rates to those who contract with us. The least we can do is have fair rules under which to operate.

That is not to say that we are abdicating our auditing role. Good stewardship of taxpayer dollars, the protection of indigent clients and the Iowa Code all require an audit by our office. But let's work together to build some fairness and discretion into the rules under which your claims are audited.

My office will put forward an administrative rules package which, among other things, will address issues such as:

**Untimely claims.** Under our current rules, a claim must be denied in full if it is not received within 45 days of the date of service. Should you really be completely zeroed out if we received your claim on the 46th day? The amendments will give our office the discretion to decide whether to deny the claim, in whole or in part.

**Exceptions to the 45-day rule.** Currently, very narrow explicit exceptions exist to the 45-day claim submission rule. Let's say, for example, that an attorney is going through cancer treatments and understandably misses the 45-day deadline. Right now, we can only pay that attorney if she missed more than three consecutive days of work, and those missed days occurred in the last five days before the expiration of the 45-day deadline. If your head is spinning, you are not alone. Now imagine navigating these rules during perhaps the worst time of your life — when a spouse or child has passed away, or when you are facing serious illness or injury. Our amendments will give you more of an opportunity to explain your situation and will give my office more discretion in evaluating your claim.

**Invalid appointments.** The Iowa Code requires the state public defender to designate our field offices to accept certain types of cases. Cases involving indigent clients are generally offered to our field offices, and if the field offices are unable to take them, the cases can then go to you, our contract attorneys. What happens if our designations are not followed? Some of you have found out the hard way that our current rules require us to zero you out. That's true even though the mistake was really the court's, not yours — but you're the one who pays the consequences. Our amendments will give us discretion in these situations. Our designations need to be followed, but the current rule is simply too harsh.

**Substitute counsel.** Our current rules generally prohibit the use of substitute counsel. If you are the one who is appointed, you are the one who has to do all the work if you want to be paid. The problem is that most law firms don't work that way — an associate might draft a research memo or a motion or brief, or your partner might cover a hearing when you are double-booked. The Office of the State Public Defender shouldn't impose an entirely new means of operation on your firm. Our new rules will make it much easier to use substitute counsel in appropriate circumstances.

**Due process.** Our new amendments will add additional due process provisions when an attorney's contract is terminated by our office. There have been headline-grabbing abuses by contract attorneys in the recent past, and we need to be able to address those situations appropriately. However, the reality is that the vast majority of our contract attorneys do things the right way. Creating additional due process will ensure that, if and when our office needs to take action, the attorney involved will have a fair opportunity to be heard.

**Minimum qualifications and a new second chair program.** Many of you advocated for the creation of our minimum qualifications rules. Many of you have expressed serious concerns with those rules since their adoption. Our amendments will help soften some of the hard edges which were unintended consequences of the rules as originally adopted in two major ways: First, more discretion will be provided to our office in contracting when faced with situations where most of the requirements are met, but perhaps an attorney falls short on one element. Second, they will create a mechanism under which an approved second chair experience can count as trial experience under the minimum qualifications rules. This program will get newer attorneys the experience they need, foster strong mentoring relationships and put more attorneys on the path toward a higher-level contract with our office.

Do you have other suggestions? If so, send me an email at [agregg@spd.state.ia.us](mailto:agregg@spd.state.ia.us) and we'll consider your proposal. Many of the amendments described in this letter are being considered as a result of such outreach from attorneys. Your input really can make a difference with our office.

I look forward to continuing to find ways to improve the relationship between the bar and the Office of the State Public Defender. These rule changes are an important first step.

*Adam Gregg is the Iowa State Public Defender. He was the Republican nominee for Attorney General in 2014. He previously served as an advisor to Gov. Terry Branstad and Lt. Gov. Kim Reynolds and as an attorney at the BrownWinick law firm in Des Moines, Iowa.*

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Public Safety

## FBI admits flaws in hair analysis over decades

By Spencer S. Hsu April 18

The Justice Department and FBI have formally acknowledged that nearly every examiner in an elite FBI forensic unit gave flawed testimony in almost all trials in which they offered evidence against criminal defendants over more than a two-decade period before 2000.

Of 28 examiners with the FBI Laboratory's microscopic hair comparison unit, 26 overstated forensic matches in ways that favored prosecutors in more than 95 percent of the 268 trials reviewed so far, according to the National Association of Criminal Defense Lawyers (NACDL) and the Innocence Project, which are assisting the government with the country's largest post-conviction review of questioned forensic evidence.

The cases include those of 32 defendants sentenced to death. Of those, 14 have been executed or died in prison, the groups said under an agreement with the government to release results after the review of the first 200 convictions.

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The review confirmed that FBI experts systematically testified to the near-certainty of "matches" of crime-scene hairs to defendants, backing their claims by citing incomplete or misleading statistics drawn from their case work.

In reality, there is no accepted research on how often hair from different people may appear the same. Since 2000, the lab has used visual hair comparison to rule out someone as a possible source of hair or in combination with more accurate DNA testing.

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Also, the same FBI examiners whose work is under review taught 500 to 1,000 state and local crime lab analysts to testify in the same ways.

Texas, New York and North Carolina authorities are reviewing their hair examiner cases, with ad hoc efforts underway in about 15 other states.

