The Idaho Supreme Court, acting in its original jurisdiction, has issued an opinion on a petition brought by the Idaho State Appellate Public Defender, Eric Don Fredericksen ("SAPD"), against the Fourth Judicial District and Cheri C. Copsey, Senior District Judge. In his petition, the SAPD sought a writ of mandamus to remedy what the SAPD viewed as an obstruction of his statutory grant of authority to arrange for substitute counsel. Specifically, the SAPD challenged Judge Copsey's denial of the SAPD's arrangement for conflict counsel for Azad Abullah, an indigent defendant, in Abullah's post-conviction proceeding in *Abdullah v. State*, No. CV-01-22-9520 (Idaho Dist. Ct. 4th 2022). Additionally, the SAPD sought removal of Judge Copsey as the presiding judge over Abdullah's post-conviction action.

In the post-conviction proceeding before Judge Copsey, the SAPD concluded that a conflict of interest precluded his office from continuing to represent Abdullah in that case. After informing the district court of the conflict, the SAPD attempted to furnish a new attorney for Abdullah, relying on Idaho Code section 19-5906. The district court disagreed with the SAPD's interpretation of his statutory authority. The district court also maintained that the proposed substitute counsel had a conflict of interest and stated that it would not appoint an out-of-state attorney. The district court then removed the SAPD from the case and appointed a new attorney of its own choosing.

The Supreme Court first addressed the issue of standing. While recognizing that generalized allegations alone were insufficient to establish standing, the Court concluded that the SAPD had properly alleged a distinct, palpable injury sufficient to satisfy standing requirements. The Court also concluded that the alleged injury was causally connected to Judge Copsey's ruling in the post-conviction proceeding because the complained of conduct was the ruling itself. Additionally, the Court also concluded that the SAPD had demonstrated redressability because a favorable decision on the merits would redress the alleged obstruction to the SAPD's statutory authority. Accordingly, the Court concluded that the SAPD had demonstrated standing to bring his petition.

The Supreme Court next addressed the statutory interpretation of Idaho Code section 19-5906 and the procedure of arrangement for new counsel upon a conflict of interest. The Court first recognized the relevant procedural rules, which permit a substitution of attorney without leave of the district court. The Court then concluded that Idaho Code section 19-5906 was "unclear or ambiguous." Relying on canons of statutory construction and other provisions of the Idaho State Appellate Public Defender Act, the Court concluded that the proper interpretation of Idaho Code section 19-5906 is that the SAPD has been vested with "the duty to arrange for substitute counsel who shall be compensated out of the SAPD's budget." In light of this interpretation, the Court concluded that the district court obstructed the SAPD's statutory authority under Idaho Code section 19-5906 by appointing an attorney of its own choosing.

The Supreme Court then turned to the remedy and addressed the requested writ of mandamus. The Court concluded that the district court obstructed the performance of the SAPD's clear legal duty. Additionally, the Court found that the SAPD had met his burden of proving the absence of an "adequate, plain, or speedy remedy in the ordinary course of law." Accordingly, the Court concluded that a writ of mandamus was the proper remedy in this case. Therefore, the Court

issued a writ of mandamus "ordering the district court to vacate its order removing the SAPD and appointing [its own selected counsel] for Abdullah in his post-conviction case." The Court explained that "[t]he SAPD will return to its status as attorney of record, but only for the purpose of arranging for substitute counsel" of its choosing.

The Supreme Court then addressed whether an attorney admitted pro hac vice was qualified to represent an indigent defendant under Idaho Code section 19-855. Relying on the Idaho Bar Commission Rules, which permit pro hac vice *admissions*, the Court concluded that since an attorney admitted pro hac vice can practice as a licensed member of the Idaho Bar in a specific case, an attorney can be deemed "licensed" as it pertains to that specific case and qualified under Idaho Code section 19-855.

The Supreme Court concluded by addressing the SAPD's request to remove Judge Copsey from the case. The Court noted that the "[t]he record discloses that Judge Copsey, by her own statements, ascribed bad motives to the SAPD, openly questioned the ethics of the SAPD in exercising his duties as a state official, and ardently expressed her position on rulings she would have to now revisit in light of this Court's decision." In light of this, and the antagonistic relationship that developed between the SAPD and Judge Copsey, the Court concluded that Judge Copsey had shown "demonstrable bias against Abdullah's current and potential future counsel." Accordingly, the Court removed Judge Copsey and ordered that the Administrative District Judge for the Fourth Judicial District appoint a new district judge to preside over the post-conviction proceeding.

The Supreme Court acknowledged there were unresolved questions involving whether there was a conflict of interest in the parallel representation of a defendant in a state post-conviction and a federal habeas petition. The Court expressed no opinion on these issues. The Court noted that "[s]uch questions are fact intensive and must be reviewed by the trial court on a case-by-case basis with the attorneys involved." Accordingly, the Court noted that should such parallel representation occur, the new presiding judge may take that up directly with the attorney representing the defendant in both the state and federal cases.

This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.