

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | Time 5/31/2017 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: May Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Christy Perry, Vice Chair, Representative | Eric Fredericksen, SAPD | Linda Copple Trout, Representative of the Courts | William Wellman, Defense Attorney | Chuck Winder, Senator
Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Andrew Masser, Research Analyst | Nichole Devaney, Admin. Asst. | Brianne McCoy, Regional Coordinator | Jared Ricks, Regional Coordinator | Aaron Freudenthal, Regional Coordinator

Commission Members Absent

Shellee Daniels, IAC Representative

Others Present

Teresa Baker, IAC | Kathy Griesmyer, ACLU | Hannah Drabinski, ACLU | David Delyea, ACLU | Scott Zanzig, Attorney General's Office | Dan Skinner, Attorney at Law

Item	Responsible
1:00pm Welcome and Call to Order: Chair Bolz called the meeting to order at 1:08pm	Bolz
<u>CONSENT AGENDA</u>	
<i>Items on the Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion on these items unless a Commissioner or citizen so requests, in which case the item will be removed from the Consent Agenda and placed on the Regular Agenda.</i>	
Approval of Prior Meeting Minutes (5/02/17): Wellman moved to amend the agenda to change the meeting minutes to reflect the minutes of 4/25/15 rather than 5/02/17.	Bolz
Budget / Financial Update	Simmons
Winder moved to approve the consent agenda, Wellman seconded all members unanimously agreed to the motion.	
<u>REGULAR AGENDA</u>	
1:10pm Items to be placed on future Consent Agendas: Bolz asked if there were additional items the members would like on the consent agenda. Winder suggested that it be left to the discretion of the director.	Bolz
1:15pm Executive Director Report	Simmons
a. Regional Coordinators – WELCOME: ED Simmons welcomed the coordinators. She provided a brief update on office space. They will begin training tomorrow and will be at the IAC meeting next week.	
b. County Visits Update: ED Simmons & DD Jennings had meetings in North Idaho at the end of April. The only attendees in CDA were public defenders. Meetings in Moscow and Clearwater had varied attendance and went well. The goal was to provide information on what is happening within the PDC. Meetings will be held in June in each of the three regions to discuss the rules to be created. The dates of	

those meetings will be sent out to the members if they would like to attend. Bolz asked how soon the rules would be drafted after the meeting. ED Simmons responded that they would be prepared for submission in the August bulletin. She has submitted a notice for the workload study and the capital roster standards. Methodology review is moving forward and the study is going well, data is coming in and is useable. Bolz asked about the cross section of participation. ED Simmons responded it is good.

- c. **A DUI Conference** was held last week, it went very well. It was recorded and the topics were very interesting. Perry asked if they would be available for the members.

1:30pm **Executive Session:** Pursuant to Idaho Code 74-206, convene in executive session to communicate with legal counsel (Idaho Code 74-206(1)(f)). Commission

Purpose/Topic summary: Communicate with legal counsel regarding ACLU Lawsuit with Attorneys Zanzig and Skinner: Wellman moved to go into Executive Session, Fredericksen seconded the motion and the members voted as follows:

AND THE VOTE TO DO SO BY ROLL CALL.

Darrell Bolz, Chair	Yes
Christy Perry, Member	Yes
Eric Fredericksen, Member	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	Yes
William Wellman, Member	Yes

Wellman moved to adjourn the executive session, Winder seconded the members all agreed.
CONVENE AT: 1:25pm ADJOURN AT: 2:07pm

2:00pm **Technical Assistance from Sixth Amendment Center:** ED Simmons reviewed the agreement with the members. Mr. Carroll will assist the Commission with regard to creation of standards and rules among other things as the Commission moves forward. Fredericksen asked ED Simmons opinion on how it would work. ED Simmons responded that he would review and provide feedback on the standards and rules created. Wellman asked if she was aware of any other assistance he has provided. ED Simmons responded that he has worked with many different states. Trout asked if this was in addition to the other agreement for his work with BSU. ED Simmons responded that it was in addition. Wellman moved that the agreement be capped at \$50,000, Perry seconded. Trout asked how that would be seen by the legislature. Perry and ED Simmons specified that it is only an encumbrance at this point and did not reflect the actual expense. Trout stated that the agreement might give him a license to incur fees. ED Simmons responded that she anticipated that all work would be at the Commissions direction. The members unanimously agreed to the motion to move forward with the agreement. Simmons

2:15pm **ELF Policy & Procedures:** ED Simmons shared that revisions had been made to the policy to help clarify some points. She asked that the members reconsider paying attorney's fees on a case by case basis especially in regards to conflict cases that continue to come back to the court. Under section 5, procedures have been added to indicate how the process is handled internally. Trout asked about Section 5b, offering that it is unclear what is PDC driven and what is staff driven and should be corrected. Wellman suggested that anything staff driven should reflect PDC Staff. Bolz suggested that it be Simmons

added to the definitions. Trout asked if there were ever a situation where the members would review an application. ED Simmons responded that was up to the members. Attorney's fees may be an area for which the members may like to participate. Trout suggested adding language that would allow the members to review policy requests. Perry offered that she agreed as there is no way we could anticipate all the instance in which member review is needed.

a. County Budgets: Due to the close proximity of year end the commission will need to encumber funds to cover applications that have already been approved. The ELF Agreement Form allows the Commission to do that with the service providers named in the application. Wellman asked if DFM has approved the form. ED Simmons responded that they helped to create it. Bolz asked if there would be instances where someone will need to request additional funds. ED Simmons responded that yes there could be however they would need to complete a new application to request the additional funds.

b. Proposed Statutory Change: ED Simmons proposed addition to Idaho Code §18-850(2)(e). She suggests changing the term indigent defense provider to defending attorneys to allow a defender and/or counties to apply for funding. Perry asked if taking that verbiage out would enable PD's to go around their supervisors for funding without them being aware. Perry and Bolz reviewed the definition of indigent defense provider in the statute. Fredericksen offered that currently the SAPD is not eligible to apply as the statute reads, the change would allow them to do so. Perry commented that if that was the case it could change things significantly, as providing assistance to the SAPD was not the interim committee's intent. Perry suggested leaving the language as it is. ED Simmons agreed the term should not be changed. Perry ask if County Commissioners are able to apply how would the commission prevent both the county and the attorney from applying. She insisted that there has to be a guarantee that no double dipping would occur. The members agreed that this could be addressed within the policy. Perry moved that the statutory changes be made with the exception of leaving in indigent defense provider as it was written. Fredericksen seconded and the members unanimously passed the motion.

c. Update : ED Simmons explained that 11 applications have been received. She also has been reaching out to attorneys when she comes across cases that could benefit from the funding. Bolz asked if counties should be reminded to utilize their capital defense fund. ED Simmons responded that funds have not been requested for any capital cases.

2:30pm Replacement for Commissioner Wellman: ED Simmons provided a list of candidates to replace Mr. Wellman. She shared some background information on the candidates and suggested the members decide on three to four candidates the members could recommend to the governor's office. Wellman and Fredericksen provided a few individuals that stood out as being good candidates. Perry offered that she would like to see candidates from outside the area. Winder asked if the regional coordinators would provide their opinions on the candidates. Freudenthal offered one candidate that stood out to him and they would fall into the category of being outside the area. McCoy was in agreement with Freudenthal's recommendation. Ricks offered that he has practiced in district 7, stating that Jim Archibald was the candidate that stands out to him. Trout asked about his history, Ricks responded that he was once a magistrate judge. Bolz suggested that the members provide a list to the governor from each of the regions and allow the Governor to choose. The members decided on a list of five candidates to provide to the governor's office.

Simmons

BREAK

- 3:00pm Public Service Loan Forgiveness – Press Release and/or Letter to Legislators: ED Simmons Simmons
received an email from a defender stating that the removal of the loan forgiveness program could impact defenders. Perry stated that since it is a federal issue, the commission should not take a position as it would have no impact. Wellman expressed that he is in favor of the press release and moved to do so. Fredericksen suggested that it be run through the governor's office. Wellman amended the motion pending approval from the Governor's office. There was not a second and the motion died.
- 3:05pm Indigent Defense Grants – FY2018 Review: It is anticipated that 4.1 Million will be distributed Simmons
to the 43 counties that applied. All counties are technically eligible for the grant as no standards were in place at the time applications were due. Next year grant distribution is approaching 4.2 million, as anticipated expenditures on defense services for FY2017 are at 31 million.
- a. Reviewed Applications:
1. Twin Falls: Application was reviewed; Trout asked about salaries and did the Commission have a conversation regarding them. ED Simmons responded it had. Winder asked if any of the things they are doing would affect their workload. The members agreed it would not. Trout asked ED Simmons if her recommendation was to approve. Wellman asked that the members be sent a copy of the Excel file. Kelly agree to send. Wellman motioned to approve the Twin Falls grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.
 2. Bannock County: The application was reviewed; funds are in large part allocated for training. The members were troubled that the grant funds had not been used to lower their caseload numbers but rather allocated for training. ED Simmons suggested that should the Commission approve the application they could provide detailed recommendations. Winder moved to deny Bannock's application pending additional information. Trout seconded and the members unanimously agreed. Reason for denial: Underutilization of grant funds. They should be encouraged to appeal when better uses are determined.
 3. Nez Perce: The application was reviewed; all money was utilized toward increasing contract salaries. ED Simmons recommended approval. Fredericksen motioned to approve the Nez Perce grant application for the full eligible amount, Winder seconded and all members unanimously approved the application. Trout expressed a concern that the county used grant funds to do something they should have done on their own.
 4. Gem County: The application was reviewed. Wellman motioned to approve the Gem County grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.
 5. Bingham County: Reviewed application, no grant funds had been used to date, it is anticipated they will be used towards the cost of increased caseloads. Trout asked what that meant. ED Simmons responded that at the time of the grant application submission a separate line item had not been created to account for the FY2017 grant funds and thus the county is unsure if the full amount had been spent. Winder asked if the application should be denied, ED Simmons responded that there is a little time before a response is required on the application and the commission could table the application and revisit

- it. Trout motioned to table and revisit, Winder seconded and the members unanimously agreed.
6. Clearwater County: The application was reviewed. Wellman motioned to approve the Clearwater grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.
 7. Fremont County: The application was reviewed. More grant funds were spent than the county had received, it appears it was county money however. Wellman motioned to approve the Fremont grant application for the full eligible amount, Trout seconded and all members unanimously approved the application.
 8. Lewis County: Application was reviewed. The county provides an office and other support services. Wellman motioned to approve the Lewis grant application for the full eligible amount, Trout seconded and all members unanimously approved the application.
 9. Bonneville County: Application was reviewed. Funds were used to create an axillary conflict PD office. Wellman motioned to approve the Bonneville grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.
 10. Boundary County: Application was reviewed. The county will utilize all grant funds. Fredericksen motioned to approve the Boundary grant application for the full eligible amount, Trout seconded and all members unanimously approved.
 11. Cassia County: Application was reviewed. Fredericksen motioned to approve the Cassia grant application for the full eligible amount plus the \$25,000 in joint funds, Trout seconded and all members unanimously approved the application.
 12. Jefferson County: Application was reviewed. Wellman motioned to approve the Jefferson grant application for the full eligible amount, Trout seconded and all members unanimously approved the application.
 13. Elmore County: Application was reviewed. The county utilized all grant funds; however, expenses from FY2016 were incorrectly stated. They did not include any of the expenses outside of contract amounts. They would have been eligible for \$94K last year rather than the \$74K. As a result, their local share is much higher this fiscal year. Wellman motioned to approve the Elmore grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.
 14. Kootenai County: Reviewed the application. County Commissioners have put a hiring freeze on the office until a Chief PD is hired. The county has not utilized all monies but they do have a good plan for the remaining funds. The county commissioners could benefit from an education on the needs of a PD's office. Fredericksen motioned to approve the Kootenai grant application for the full eligible amount, Wellman seconded and all members unanimously approved the application.
 15. Minidoka County: Reviewed the application. Not all numbers have been submitted from Cassia County for the joint office, therefore they were unable to determine to what extent the FY2017 grant funding had been used. Trout motioned to approve the Minidoka grant application for the full eligible

Item	Responsible
amount plus the \$25,000 joint grant, Wellman seconded and all members unanimously approved the application.	
16. Bonner County: Reviewed the application. Wellman motioned to approve the Bonner grant application for the full eligible amount, Fredericksen seconded and all members unanimously approved the application.	
b. Elmore County – FY2017 Grant: See notes above.	
c. Kootenai County – FY2017 Grant: See notes above.	
d. Gem County – FY2015 expenses/FY2016: Discrepancy in funds reported, they reported actual expenditure were FY2015 were expenses to date. IAC offered that expenses should be the reported method as they is what is available in September.	
e. Bonner County – FY2017 Grant	
4:15pm Kootenai County – Concerns: County Commissioners have decided to move their HR Department in to the Prosecutors office. IAC offered that this is common; many of the counties have shared space within their prosecutor’s office. She will contact them on the issue. Independence is important.	Simmons
Future Meetings -	Commission
a. Next Meeting: June 22, 2017 at 1:00pm	
b. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702	
5:00pm Adjournment: Wellman moved to adjourn, Trout seconded and members unanimously agreed. The meeting was adjourned at 4:52.	Bolz

Attachments: Notice of Deposition – Ian Thomson (emailed)
 Notice of Request for Documents (emailed);
 Regional Coordinator Training Agenda
 Amended ELF Policy
 ELF Grant Agreement Forms – Sub-recipients
 Proposed Statute Amendment re: ELF
 Sixth Amendment Center Technical Assistance Agreement DRAFT
 List of Recommendations for Defending Attorney Member
 Public Service Loan Forgiveness DRAFT
 Indigent Defense Grant Applications (Electronic only)
 IDG County Review Reports (Electronic only)