

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 7/19/2017 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: July Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, SAPD | Linda Copple Trout, Representative of the Courts | Paige Nolta, Defense Attorney | Chuck Winder, Senator arrived at 1:20pm

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Brianne McCoy, Regional Coordinator | Nichole Devaney, Admin. Asst.

Commission Members Absent

Shellee Daniels, IAC Representative | Christy Perry, Vice Chair, Representative

Others Present

Item	Responsible
1:00pm Welcome and Call to Order: Chair Bolz called the meeting to order at 1:07pm.	Bolz
ROLL CALL:	
Darrell Bolz, Chair	Yes
Christy Perry, Member	No
Eric Fredericksen, Member	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	No
Paige Nolta, Member	Yes
Shellee Daniels, Member	No
Review of Attachments, if needed, by the Commission	
1:10pm <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> Trout moved to approve the consent agenda, Fredericksen seconded and all members unanimously approved the motion.	
Approval of Prior Meeting Minutes (6/22/17)	Bolz
Budget / Financial Update – Not available for meeting	Simmons
<u>REGULAR AGENDA</u>	
1:20pm Executive Director Report	Simmons
a. IAC – Retirement of ED; County withdrawal: ED Simmons shared that Dan Chadwick has announced his retirement effective February 2018. Additionally, Ada County will be withdrawing from IAC. A withdrawal from IAC affects that county's participation in the Capital Defense Fund and SAPD. It will be important to make counties aware ELF funds are not available for capital cases.	
b. Definition of a Case – Working With ISC: The ED & DD met with Idaho Supreme Court to discuss the difference in definition and how that will affect processes. The	

ISC definition is based on workload for judges and not attorneys, as needed by the PDC. Bolz offered that the critical thing would be to educate legislators regarding the existence of the different definitions and the differences between them. Trout offered that if attorneys are reporting to the district court judges using a different definition it could affect the numbers and cause issues. The preference would be to make the definition work for everyone. Bolz asked how that would affect parity with the prosecutor's office. ED Simmons responded that yes, it could be an issue; however it goes further than that. Without workload, data from the prosecutor's office it makes it difficult to calculate despite the definition. DD Jennings added that inconsistent charging practices among prosecutors in different counties and even among deputy prosecutors within the same county is an additional complicating factor. This issue is also being discussed on the Advancing Justice committee at the Idaho Supreme Court.

- c. Update on Regional Coordinator Outreach: A written report was available for the members' review. Brianne added that she has been focusing on counties in which IDG applications were denied. She has obtained several applications because of her visits. Bolz offered his thanks for her visits and noted that the RCs' work in the field gives the Commission a great advantage. Trout also commented that it is of great benefit.

1:35pm Discussion regarding Prosecutor/PD Overlap: Memo was provided to the members for their review on the issue. ED Simmons asked the members how they would like to handle instances such as this. Trout offered that she agreed with the memo and the Commission should not weigh in on the Idaho State Bar's opinions. With respect to training, she stated it is the Commission's goal to improve the system and asked would the PDC not want them to be the best-trained individual for the case in which they were providing indigent defense services? Scholarships may not be something that should be available to them. ED Simmons commented that in trainings when strategies are being discussed it would be important for individuals to know a prosecutor is present. A reminder to the room about the presence of a prosecutor would likely be sufficient. Bolz agreed training was of concern but he agreed with Trout's opinion. Nolta offered that having the training is of benefit to all parties in the system, including prosecutors, when they understand more about the public defense perspective. ED Simmons shared that she will adjust the training rules to reflect that preference will be given to full time public defenders. Bolz asked about attorneys who are not currently providing defending attorney services but are applying to provide the services. ED Simmons responded that as long as it was known they would be acquiring a position as a defending attorney they would not be turned away. Fredericksen commented that if it is an individual who may provide services it could be made possible to have them pay a small fee to attend.

2:00pm Drafts of Proposed Rules

- a. Capital Counsel Qualifications: AARF will be submitted in August after a more finalized draft is created. The commission can incorporate all documents incorporated by reference under a new chapter. This would allow for changes to be made in only one chapter if a document incorporated by reference was amended. The same concept applies to definitions, which will also be in the new chapter. ED Simmons reviewed the changes. Admin offered that the roster update should occur in November when the reports are due rather than May. ED Simmons continued review. Performance Standards, Capital Counsel Qualifications: ED Simmons offered that the staff had discussions with counties and capital defense attorneys to

develop these standards. Fredericksen commented that this would apply to all stages of the case once it was capital classified. There was concern with the language specifying that an individual should be trained to see if mental health issues are occurring as a part of the defense team. Trout questioned why there was a need to have such an individual on the “defense team” as it would not necessarily apply to every case. ED Simmons stated they would review the ABA Guideline commentary to see if other language is available. Section B4c: Fredericksen asked what the background was for using the term “high quality legal” to modify “representation” in the *ABA Guidelines*. ED Simmons responded she was unsure except to imply that you would want the highest quality legal representation. Section C1d: Fredericksen asked to add “jury selection in capital cases” Winder offered that they should be prepared to get questions on reference to what international referred to when the rules hearings occur. Trout questioned the reference to court rules. ED Simmons responded that it is was something every defending attorney should know. Fredericksen asked if “Capital Cases” should be moved up into the heading to make it clear. Section C2: The number of credit hours may or may not be enough; Winder asked if anyone had offered a number. DD Jennings responded they had not provided a definite number, some wanted more, some wanted less. Trout offered that availability could be an issue in some instances. Section D: a,ii-Winder offered changing the language to verdict rather than completion. A,iv: Trout asked about the wording of “focused on capital cases,” thinking that it should not be included. A,vi: Fredericksen asked why the commission would not adopt the ABA Guidelines? DD Jennings responded that when rules hearings are conducted national standards are not always well received. Trout offered that if other organizations change rules that are adopted, and the PDC does not agree with those changes, the Commission would have to revise the rule. ED Simmons responded that yes there are instances in which that happens. Winder commented that there is some resistance to accepting outside documents. ED Simmons suggested that either within the application or in the rules that a statement could be made that minimum performance of counsel begins with the standards. c: Trout had concern with the language. ED Simmons will look at language to make it clearer. Fredericksen asked who would be reviewing the applications. ED Simmons responded that a subcommittee would be created and the Commission would have final decision. Numbering was changed to make the requirements more clear. Section 2: Changes were made to 2,a,ii to be consistent. 2,b: ED Simmons will look at language to clarify the PDC’s responsibility. Trout asked how Fredericksen felt about these standards; he responded that the SAPD’s internal requirements are greater than those suggested in the draft under review, so he does not have concerns. Regarding 2b, Winder asked, “What are the legal consequences of someone on that committee. Could they be held accountable?” ED Simmons responded she did not believe so as long as committee members and applicants followed the application process. ED Simmons stated that the standards would be sent out to all members for review and comment. Standards will need to be finalized for publication at the next meeting. Public comment meetings will be held in October. Winder asked if there would be a circumstance in which within the two-year period that would disqualify someone from the roster. ED Simmons responded that language could be added to insure that does not occur.

- b. Investigation: Draft rule was reviewed by the members with no comments.

c. Oversight/Enforcement: Title 01 Chapter 06: ED Simmons provided a summary. The RCs will be responsible for reviewing attorneys and providing a report. A plan would then be developed to correct any deficiencies. She then reviewed the draft. 021.04 Numbering has been corrected. 023.03-A definition is needed for Indigent Defense Delivery System. 023.03a2 grammatical errors were noted. 023.04 Trout suggested adding "Branches" to title. 024.05 Trout suggested capitalization was needed. 026.04-Fredericksen asked how taking away training was a punishment; he feels that the clients are the ones who suffer in those instances. Trout questioned the removal of an attorney from providing PD services. There may need to be a mechanism to allow attorneys being removed from the PD Roster to conclude their cases. ED commented that more work would be done on this piece. She will make the changes indicated and send it to the members for comment.

2:30pm Indigent Defense Grants – FY2018 Review

Simmons

- a. Bear Lake: No action at this time.
- b. Blaine: Will be carrying over funds to meet goals. Attorneys will be attending initial appearances. Money will be used toward, investigation, contracted interpreter services, immigration consulting and meeting room improvements. Comm. Greenburg added some details on how they came up with their proposals and provided information. Bolz offered that it was not the intent of the Commission to withhold funds but that it was difficult to issue additional funds when it appeared previous funding had not been used. Greenburg commented that Blaine County is very focused and serious about this issue. Bolz applauded the Commissioner on appointing a designated County Commissioner to liaise with Blaine County's defending attorneys. Frederickson moved to approve the full grant amount for Blaine County, Trout seconded and all members unanimously approve the motion.
- c. Boise: The County has difficulty obtaining space due to restrictions with Idaho City's historical building register. They will be using funds to construct space for meetings with clients, investigation, case management software and video conferencing equipment. Trout asked if they had video equipment but were not using it. McCoy commented that they do but it does not have audio. Trout moved to approve Boise County for the full grant amount eligible. Winder seconded and all members approved unanimously.
- d. Camas: No action at this time.
- e. Gooding: No action at this time.
- f. Jerome: Grant funds were spent on computer equipment; balance will be used on investigation, immigration consultant and one new PD to ease workload, as well as training for attorneys on immigration issues. Winder moved to approve Jerome County for the full grant amount eligible. Trout seconded and all members unanimously approved the application.
- g. Lemhi: No action at this time.
- h. Lincoln: 2017 Funds will be used on investigation, interpreters, immigration consultation and IT support service related to video conference for initial appearance. Funds will also be used to create a PT position of 15 hours a week dedicated to being a Public Defense Coordinator. The position would assist clients when the attorney, who is located in another town, is not available. Helping to prevent public defense clients from having to approach staff in the prosecuting attorney's office with questions. 2018 Funds would be used for office space, computer equipment, and case management software. Frederickson asked if the PT person will be employed by the attorney. McCoy responded no, she would be an

employee of the county. There is concern with regard to the confidentiality aspect. Bolz offered that the attorney should be made aware of the confidentiality issue. McCoy said that she would speak to the attorney to stress the importance of the issue and how it can be coordinated. Frederickson moved to approve Lincoln County for the full amount eligible, Trout seconded and all members approved the application unanimously.

- i. Payette: No action at this time.

Frederickson moved that the order of the agenda be amended to allow Jared Hoskins to present on the Trustee and Benefit Allocation. Trout seconded and all members agreed to the revision with the exception of Nolta.

3:30pm Trustee and Benefits Allocation – Guest Jared Hoskins: Mr. Hoskins shared that a question had been raised as to if the Commission could use funds allocated for IDGs toward additional ELF Funding. He explained that the allocations were based on estimates originally with the expectation that they would need adjusted as expenses increased. Nothing legally prevents the commission from doing so, it really is more of a “should” question. There is some concern with regard to the anticipated revision. He suggested the Commission go before the legislature with a reallocation for FY2019. FY2018 funding can be addressed in the legislative report provided by the ED or during the budget request where the reallocation could be laid out for everyone. Winder offered that it may be helpful to contact the chairs and lead legislators within JFAC and different branches to get direction. Hoskins recommendation was to just get it out in front of everyone. Bolz commented on the sunset clause and having new members in JFAC that could affect that issue. Hoskins shared that it was his impression that when the sunset clause was reached the Interim Committee would reconvene to discuss the issue. Additional money will be needed for Grant Funding in FY2019. ED Simmons shared that ELF application were only received the last two months of the fiscal year and they came very near the \$250,000 allocation. Re-allocation or additional funding will be needed in coming years. Hoskins commented that Encumbrances used for ELF Funding requests may not have been an appropriate use of an encumbrance. He reviewed the statute and has a concern with the last point. There is also concern about not all the funds being used as intended. Bolz shared that in future years it would not be the commission’s intent to encumber ELF Funding. ED Simmons agreed that a cut off would be implemented. Trout commented that it was not the Commission’s intent to carry over moneys but to address specific expenses.

3:00pm Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider records that are exempt from public disclosure (Idaho Code 74-206(1)(d)). ELF Applications Purpose/Topic summary: ELF Application review #FY2018-01 Thru FY2018-05 Trout moved to go into Executive Session, Frederickson seconded AND THE VOTE TO DO SO BY ROLL CALL WAS

Eric Frederickson, Member	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	Yes
Paige Nolta, Member	Yes
Darrell Bolz, Chair	Yes

Executive Session CONVENED AT: 4:25pm
 Frederickson moved to adjourn the executive session, Winder seconded and the members all unanimously agreed to the motion.
 Executive Session ADJOURNED AT: 4:36pm

Item	Responsible
Trout moved to approve ELF Application FY2018-005, Fredericksen seconded and all members unanimously approved.	
Future Meetings -	Commission
a. Next Meeting: Annual Meeting where elections of officers (Chair and Vice-Chair) will take place. August 9 th 1:00pm-5:00pm. September 13 th at 1:00pm-5:00pm; Oct. 11 th 1:00pm – 5:00pm	
b. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702	
5:00pm Adjournment: Chair Bolz adjourned the meeting at 4:42pm	Bolz

Attachments: