

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 8/9/2017 1:00 PM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: August Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Shellee Daniels, IAC Representative | Eric Fredericksen, SAPD | Linda Copple Trout, Representative of the Courts | Paige Nolta, Defense Attorney | Chuck Winder, Senator
Kelly Jennings, Deputy Director
Brianne McCoy, Regional Coordinator | Nichole Devaney, Admin. Asst.

Commission Members Absent

Christy Perry, Vice Chair, Representative |

Others Present

Andrew Masser, Attorney | Hannah Drabinski, ACLU of Idaho | Teresa Baker, Idaho Association of Counties | Krista Howard, Canyon County Public Defender | Steven Botimer, Ada County Deputy Public Defender's Office | Tony Geddes, Ada County Public Defender | Shannon Romero, SAPD | Bruce Livingston, Federal Defender Services of Idaho

Item	Responsible
1:00pm Welcome and Call to Order: Chair Bolz called the meeting to order at 1:08pm.	Bolz
ROLL CALL:	
Christy Perry, Member	No
Eric Fredericksen, Member	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	Yes
Paige Nolta, Member	Yes
Shellee Daniels, Member	Yes
Darrell Bolz, Chair	Yes
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>	
Approval of Prior Meeting Minutes (7/19/17)	Bolz
Budget / Financial Update	
FY2019 Budget	
FY2017 Performance Review	
Proposed Legislation – 2 pieces	
a. Statement of Purpose	
b. Fiscal Impact	

Winder moved to approve the consent agenda, Trout seconded and all members unanimously approved.

REGULAR AGENDA

- 1:20pm Election of Officers – Chair and Vice-Chair: Trout nominated Bolz for Chair position, Fredericksen seconded, nominations were closed and Bolz was unanimously elected Chair. Nomination for Vice Chair opened, Trout moved that Fredericksen be nominated as Vice Chair, Nolta seconded nominations closed and all members unanimously elected to Fredericksen as Vice Chair.

Bolz

DD Jennings requested changes to the agenda. Winder moved to make the adjustment Trout seconded and the vote to change the order of the agenda to allow the workload study discussion to come later was unanimous.

- 1:25pm Deputy Director Report Jennings

- a. Regional Coordinator Update: RC Freudenthal reported hearing comments from Judges that the initial appearance piece of the rules will add time to court calendars. RC McCoy will participate in a meeting to discuss this issue with a group from Elmore county. Bolz questioned Trout on what her opinion was on the topic. She responded that it did not surprise her and she anticipated that would likely be a response from some folks. He then asked if it would increase the judge's workload. She responded that it's possible more so in the rural counties. RC McCoy reported that she is hearing if attorneys are able to meet with clients prior the appearance it may be an acceptable way to avert those concerns. Trout suggested that it will require schedule adjustments but can be done. Daniels stated that Oneida is struggling with the issue, as their PD does not have access to the clients. Bolz asked Fredericksen for comments. Fredericksen responded that he agreed with Trout, and it was important for the clients to have access to the attorney prior to interacting with a prosecutor.

The RCs and DD will be meeting through Google Hangouts to help with communication. The web based meetings will enable the participants to share in a conference call while being able to see one another and share documents and computer screens as needed.

Next week ED Simmons and RC Ricks will be presenting at the IACRC meeting. ED Simmons has an hour and a half to discuss issues. The IAC Annual Meeting is coming up in September, DD Jennings offered to be on the agenda if they would like. If nothing else, the PDC would like a table. Ms. Baker offered that they should be able to get the Commission a table and she will look at the agenda to see if there is room to have a presentation. DD Jennings suggested maybe utilizing a workshop period to focus on certain issues.

- 2:00pm Discussion Regarding Workload Study Jennings

- a. Guest – Vanessa Fry: Ms. Fry introduced herself and her associate, Sally Sargeant-Hu. Fry provided a brief description of how the study is being conducted. The survey portion is not going as well as they would like and requested that the PDC provide some assistance. Only 10% have participated at this time. A live discussion with the Delphi panel is scheduled for Aug. 29th. The final report is being drafted now and the data provided looks good. Bolz asked how well the state was represented in terms of participation. Fry responded it was good, she had not seen the final numbers however. The participation rate looked to be better than that of New York. A large amount of data was collected. DD Jennings asked about the date for the final report. Fry responded that after the Delphi Panel

discussion occurs, the information would be available. She anticipated it might be available Sept. 15, but hoped to have some initial information available prior to that. Jennings asked that Fry talk about feedback from David Carroll and Bob Boruchowitz. Fry shared that she has had minimal communication with them and no significant changes had occurred based on their comments. Fry offered that it might be beneficial for the commission to send something out to say thank you for participation in the time tracking. DD Jennings announced the winner of the grand prize Hawaii trip. Mark Coppin from Jerome County will be attending the seminar.

- b. Submit by August 18? Or Wait? (Kelly and Kimberly will be attending workload conference in November): DD Jennings stated that one of the challenges with the delay in getting the workload study started is that the data will not be available to meet the rulemaking deadline. ED Simmons' position is that if the Commission were to decide to postpone the submission of the workload standard it would provide additional time for the counties to be comfortable with the numbers. She understands that was not what the members or the legislature intended. If the standard is postponed it would still occur prior to legal proceeding anticipated in September of 2018. Should the Commission proceed with the standard this year the counties will only have three weeks to provide comment. Trout shared she has no issue with waiting given the amount of opposition with the previous standard submission. She would prefer to have ample time to collect as much comment as possible. Bolz and Fredericksen agreed. Nolte offered that in addition to lack of time for county participation, rushing into a standard would not be good for those attorneys who participate in the workload study. Baker offered that she agreed that waiting was the best option rather than rushing. Winder shared his concern that the legislature was told the Commission would have a number. He wondered if there was an alternative method to set the standard that could occur in a more timely fashion. He suggested talking to Eric Milstead and have him do some research as to what would be needed to accomplish the goal. DD Jennings shared that ~~her~~ she and the ED will be attending a Workload Study conference that should help to provide additional information. Baker offered that proposed rules could be in place and/or perhaps a temporary rule could be created that would allow the commission to have something in place.

1:30pm Indigent Defense Grants – FY2018 Review

Jennings

- a. Bear Lake: RC Jared shared that Bear Lake had incurred a large number of expenses but had not used grant funding to expense them. They have since requested a reallocation in the county to use the grant funding for those items. The county is considering hiring a person to work with the public defender as a local person to facilitate contact with the PD whom is located a distance away. This would be the PT person's only duty. Trout moved to approve Bear Lake's application for the full eligible amount. Winder seconded, and all members unanimously approved the application.
- b. Camas: The county had a slow start spending grant funds. They intend to use monies toward video equipment, improvements to a meeting space and other items. FY2018 funds will be used toward providing security equipment for the PD office offsite. Winder moved to approve Camas County's application for the full amount eligible. Trout seconded, and all members unanimously approve the application.
- c. Gooding: FY2017 funds were used to improve meeting space and securing files, CLEs and other items. FY2018 fund will be used toward the extension of research

services and tech support for video conferencing equipment as well as other public defense related services. Fredericksen moved to approve Gooding County for the full eligible amount, Trout seconded, and all members unanimously approved the application.

- d. Lemhi: The county has challenges related to their remote location. They have one contracted local attorney and a contract with a second from Boise. FY2017 funds were used to help with transportation cost for that attorney. In addition to other improvements. FY2018 funds would be used to increase contract salaries and provide dedicated lines for video arraignments. The county is focused on meeting the standards and will use funds toward that end. Trout asked if there had been any discussion on joining with another county. RC Ricks responded that it had been discussed but does not sound like something they are considering at this point. Jennings offered that there is difficulty getting an attorney in Custer and that could be part of the problem. Trout moved to approve Lemhi County's application for the full eligible amount, Fredericksen seconded, and all members unanimously approved the application.
- e. Payette – Did not resubmit: RC McCoy shared they were very disappointed and refused to reapply. She offered to complete the application on their behalf but they were not interested in the funding. Bolz asked if they were aware funding could have been used on other items rather than personnel and she responded that they did. Trout asked if the PD was going to help with the application in the future. Nolta offered that she had attended a commissioner meeting in ~~her~~ Lewis county and they discussed that the application was not user friendly. She suggested additional worksheets accompany the application so that it would be simpler to find errors. RC McCoy shared that she would be working with Payette County to help in any way possible.

2:30pm Drafts of Proposed Rules: The goal is to leave here today with the intent to print.

Jennings

- a. Investigation: Section X- members had no comment.
- b. Capital Counsel Qualifications (Moved to first Item): DD Jennings provided a brief discussion as to how the standards have been developed and those who participated. ED Simmons used the I.C.R. 44.3 and the ABA Guidelines in creating the draft. Fredericksen shared that the Commission is discussing qualification to be added to the roster and not capital counsel performance standards. Performance standards for Capital Defense will also need to be developed. DD Jennings shared some suggestions and concerns from the call that included: standards be incorporated by reference using the ABA Standards. There was concern as to if the PDC would provide adequate training for the capital defenders. If language should be changed to "shall" to insure compliance. She reviewed the suggested experience qualification changes and co-counsel qualifications changes and noted that alternate qualifications were also of concern. Fredericksen questioned if the qualifications only applied to post-conviction rather than trial cases. DD Jennings responded that she expressed concern with both. She then reviewed Emily Olson-Gault's comments. Winder offered that any time you incorporate by reference it was questioned by most in the legislature, he asked that the ABA Standards document be run by the attorney general's office to ensure it complies with Idaho Code. Tony Geddes shared that with regard to mitigation specialists these are not all cookie cutter cases and the attorneys should be given flexibility on timing of specialists' involvement on the case. He suggested giving them 120 days to determine if it will be a death penalty case. DD Jennings asked if the current language gave any wiggle room. Mr. Geddes responded that in his opinion the language could be

problematic. Geddes's proposed language changes were presented. Romero shared that having a mitigation specialist at the onset is important to prevent falling behind in the case. Fredericksen asked if the Commission had time to review the rule. DD Jennings responded that the proposed rule would need to be printed on August 18 to meet the deadline. She suggested that the Commission might use the original draft for the rule printing and then keep the comments for further negotiation at the next step of the process. Fredericksen was not comfortable using the first draft of the standards based on the censuses of the group that participated in the call. DD Jennings went over the portions of the standard that most everyone agreed upon. She shared her concern with the increase in experience qualification. Nolta and Fredericksen responded that they would prefer not to water down qualification. Mr. Geddes suggested adding, "having tried a death penalty case to verdict as co-counsel" in that section. Trout asked if the commission could use the ABA Guidelines versus incorporating them by reference. DD Jennings stated that was her intent. Geddes shared a concern about the mental health screening language. Daniels asked who is going to pay for these services. DD Jennings responded that CCDF pays for some of the services. Daniels is asking that there be some consideration with regard to cost when considering the standards. The other members felt that grant funding could also be used toward some of these costs. Trout agreed that the counties' burden is heavy and that is of concern, but that the Legislature is aware and is trying to help. In terms of the standards, the Commission has to look at what is adequate to represent clients in a capital case and unfortunately that burden will likely fall on the counties. Section D1- Romero suggested that the language be limited to defense counsel. DD Jennings will also insert the ABA Guidelines in this section. Mental Health language- The members agreed the language needed to be changed to require a mental health professional. Livingston commented that there is a need for a screening and mitigation specialist can perform that function. He was concerned that changes may exclude the requirements of a mitigation specialist. Section D4: Should be changed to "shall" to ensure the necessity of a mitigation specialist from the beginning. Fredericksen felt if the ABA Guidelines suggest it then it should be included. Trout offered that this could be a section the Commission leaves as is for now and gathers additional comment on. "Constitutionally sound" was changed to "zealous and effective." Alternate Procedures: There are concerns and additional comment needed. The other changes were accepted. Qualitative guidelines will be added. Livingston asked if language had been suggested for the removal of attorneys from the roster. The members agreed that the Commission should be able to remove an attorney in certain circumstances. Section V.H: Changes were accepted. I: The members agreed with the change. VI.D- Changes should be added "with the exclusion of capital cases." Main Document, Remove Section 7 reference.

c. Oversight/Enforcement: 003- Clean up language with regard to "procedures;" 024-.03 change to "PDC Staff;" 024.05- add comma and another comma at the end before "defending attorneys." 025.01-a&b Compliance Response- do you want them responding at the same time? There was discussion as to what would occur should the attorney be responding. 26.06 Trout asked that "even if a county or defending attorney complies" sentence be removed. 021.02f- Geddes's commissioners have concern with the language stating the PDC could review and assist. As that is not under the prevue of the PDC. Suggestion: "At the request of county commissioners or indigent defense provider, review and assist." 021.02c - incorporate change from David Carroll.

Item	Responsible
<p>Trout suggested incorporating all of the changes discussed today and distribute the revised document to the all the members for approval via a conference call. Conference call was scheduled for August 17th @ 2:00pm for 30 minutes.</p> <p>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 #FY2018-07 Fredericksen moved to go into Executive Session, Trout seconded</p> <p>AND THE VOTE TO DO SO BY ROLL CALL WAS</p> <p>Eric Fredericksen, Member Yes</p> <p>Linda Trout, Member Yes</p> <p>Chuck Winder, Member Yes</p> <p>Paige Nolta, Member Yes</p> <p>Darrell Bolz, Chair Yes</p> <p>Executive Session CONVENED AT: 4:57pm</p> <p>Trout moved to adjourn the executive session, Nolta seconded and the members all unanimously agreed to the motion.</p> <p>Executive Session ADJOURNED AT: 5:12pm</p> <p>Fredericksen moved to deny ELF Application #FY018-007, Nolta seconded and all members unanimously agreed to the motion.</p>	Commission
<p>Future Meetings -</p> <p>a. Next Meeting: September 13, 2016 at 1:00pm</p> <p>b. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702</p>	Commission
4:30pm Adjournment – Meeting was adjourned at 5:15pm	Bolz
<p>Attachments: 2018 Amendment 19_849</p> <p>2018 Amendment 19_850</p> <p>Idea #437-01 (Procedures for Extraordinary Litigation Fund) Status</p> <p>Idea #437-02 (State Public Defense Commission) Status</p> <p>RULE Oversight Enforcement Creation Modification DRAFT</p> <p>RULE Standards for Defending Attorneys DRAFT</p> <p>Standards for Defending Attorneys DRAFT</p> <p>Statement of Purpose Additional Commission Members</p> <p>Statement of Purpose ELF Amendment</p>	