

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 10/11/2017 1:00 PM | *Location* Riverfork Room, 3rd Floor of the Grove Hotel, 245 S. Capitol Blvd., Boise

Meeting: October Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, Vice Chair, SAPD | Christy Perry, Representative | Shellee Daniels, IAC Representative | Linda Copple Trout, Representative of the Courts | Paige Nolta, Defense Attorney | Chuck Winder, Senator

Kimberly Simmons, Executive Director | Kelly Jennings, Deputy Director
Brianne McCoy, Regional Coordinator

Commission Members Absent

None

Others Present

Andrew Masser, Attorney at Law | Jeremy Woodson, ACLU | Kathy Griesmyer, ACLU | Aaron Bazzoli, Canyon County Public Defender

	Item	Responsible
2:00pm	Welcome and Call to Order: The meeting was called to order at approximately 2:05 p.m. ROLL CALL: Christy Perry, Member Present Eric Fredericksen, Vice Chair Present Linda Trout, Member Present (by phone) Chuck Winder, Member Present Paige Nolta, Member Present Shellee Daniels, Member Present (by phone) Darrell Bolz, Chair Present	Bolz
	Review of Attachments, if needed, by the Commission	
2:10pm	<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 (9/13/17) Budget / Financial Update Sen. Winder moved to approve the items on the consent agenda; Mr. Fredericksen seconded, and the motion passed by unanimous vote of the Commission.	Bolz
	<u>REGULAR AGENDA</u>	
2:25pm	Executive Director Report a. Regional Coordinator Update ED Simmons referred to reports in the provided packets. All three RCs were in Boise for the Idaho Association of Counties meeting at the Boise Centre on the Grove on September	Simmons

25 and 26, followed by a day-long meeting on-site. ED Simmons noted that RCs are following up on the Declaration of Ingrid Andrulis, filed in *Tucker v. Idaho*, to research allegations in the Declaration.

b. Workload Study Update

DD Jennings updated re: BSU. Data is compiled and David Carroll at the Sixth Amendment Center is reviewing the report. The final product is pending and will be delivered prior to the holidays.

Chair Bolz asked whether or not the IDG Grant checks have gone to the counties. ED Simmons responded that she would follow up with Nichole and DFM and will advise. Comm. Daniels stated Oneida and Power counties received theirs; Canyon Co. PD Bazzoli states they received theirs as well.

2:45pm **Administrative Rules Update**

Simmons

ED Simmons led the discussion. I.C. § 19-850 mandates rule creation.

61.01.01 is done. It is temporary and we're asking for it to be extended.

61.01.06 was published Oct. 4, 61.01.07 as amended was published Oct. 4, removing definitions and attachments and adding capital defense and investigation.

61.01.08 will be published Nov. 1 and comments will be due Nov. 22. ED Simmons will review today with Commission.

Three areas have had no additional rules.

Chair Bolz asked, regarding 61.01.03, with IAC getting a new ED, do we need to talk with current IAC ED Chadwick before he leaves? ED Simmons stated she didn't think so. She referenced that she has done a webinar recently on contracting and the PDC will continue to work with counties. ED Simmons will connect with ED Chadwick to get his thoughts. Rep. Perry notes that he will probably have input.

Regarding 61.01.08, ED Simmons did send the draft for publication before running it by the PDC, which is what will happen today. She proceeded to explain the purpose of the chapter, including that it will contain all definitions and all documents incorporated by reference.

ED Simmons reviewed definitions 1 through 5. Regarding item 4, Nolta asked if the capital defense roster would have first and second chair delineated? ED Simmons responded that it would, and would also include appellate separately. She also stated that staff are still getting questions about how that will work and still working with the Idaho Supreme Court to determine how that will work. Ms. Nolta asked that on item 5, to go with "Case," should we define "vertical representation?" ED Simmons said yes, and the Commission agreed. ED Simmons will come up with something and have it ready for the next meeting.

ED Simmons explained some additional definitions. Compliance Verification would be used for counties who don't apply for IDG so the PDC can still collect information. A Corrective Action Plan ("CAP") is an informal plan. It is similar to a Compliance Plan which is submitted with the IDG application. The CAP is worked on with the RC and county staff and submitted to the PDC. A "Formal Status Meeting" describes a time frame to meet with counties quarterly and attorneys annually. This is for ongoing coordination and provides opportunity to offer assistance with anything related to county indigent defense system.

ED Simmons referenced definitions 19, 20 and 21 — she wasn't sure if she had reviewed prior to today's meeting and asked Commission members to read through them and voice any concerns or questions.

Comm. Daniels asked if these definitions are standard in most locations across the country. ED Simmons replied that these are what we came up with for Idaho. The reason we developed these was in relation to our oversight rule so we can notify our stakeholders what they mean as we work on the oversight rules.

"Expenditures" and "Grant" were already defined.

Mr. Fredericksen wanted to discuss definition 20 and would like to change wording to "cannot include." ED Simmons will check against statute and will change to "cannot" unless it came straight from statute.

Item 26, defined stakeholders broadly. Item 31, oversight review was created for oversight rule. (Quoted definition) "Annual review," as a reminder, is done between the compliance date and the IDG application due date.

"Compliance Review" and "Periodic Review" were explained, with periodic review smaller issue than a compliance review, and a report can be generated for submission to the Commission.

Rep. Perry asked if there was still a county not in CCDF. The group responded that all counties now participate.

ED Simmons explained that the rest of definitions are fairly self-explanatory. She asked Commission to please continue to review them over the next month and provide feedback.

ED Simmons discussed an addition to Standard for Defending Attorneys. She added a document to the ABA Guidelines: *Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases* as she felt this should be added as part of the standard. She added it to each area that referenced the ABA Guidelines. At Ms. Nolte's request, DD Jennings will email a copy of the *Supplementary Guidelines* to Commission members.

The last part of rules review was the Periodic Review Report. DD Jennings and the RCs came up with this. They went through the rule line by line and came up with this draft form. This would be used if an alleged deficiency was reported to the PDC. ED Simmons wanted the Commission to see what this looked like. There's another long form in progress for the Annual Visit, but both forms will be part of policy rather than part of the rule, so those changes can be made as needed. DD Jennings noted that the RCs will be using the Periodic Review Report in draft form to investigate allegations from a declaration filed in *State v. Tucker*.

Chair Bolz asked ED Simmons where staff is in terms of a policy manual. ED Simmons replied that developing the manual is a somewhat tedious process that's on the back burner but stated we'd try to have something for the Commission's review in December, once we finish the rules meetings.

3:30pm **Prosecutor's role in Indigent Defense Grant Applications (Payette/Adams)**

Simmons

ED Simmons notified the Commission that PDC staff have been told that in counties that didn't apply for IDGs, prosecutors were involved in providing feedback to BOCCs about applying. Conversation ensued. Comm. Daniels stated that Comm. Shigeta of Payette County is on ICRMP with her and that's not the reason they didn't apply.

Sen. Winder suggested RCs should go to Simmons and let the BOCC know. Mr. Fredericksen said it's a conflict of interest for the prosecutors to advise on BOCCs applying for IDGs. Chair Bolz stated the challenge is that the prosecutor is the legal advisor to the BOCCs.

Comm. Daniels expressed concern about the subject of prosecutors advising BOCCs regarding public defense. She stated counties were advised by IAC that they should NOT consult with prosecutors re: public defense. Justice Trout agreed with Comm. Daniels and

thinks there should be a discussion with IPAA to see if they'll comply because it's definitely a conflict of interest. Comm. Daniels Wonders if this is a few people or if it's a widespread problem. ED Simmons replied that there have been rumblings about this topic but this is the first time it's been reported. DD Jennings reported that we know per RC Freudenthal's direct contact with the PA in Boundary Co. that she is involved in writing the job description and hiring the contract defending attorney.

Rep. Perry stated this is a clear conflict of interest. In any other case it's a conflict case. Mr. Fredericksen opined that counties should have someone else on retainer to consult regarding county-level public defense issues. Rep. Perry asserted this should be put into statute and handled as such and stated the counties probably have no knowledge that it's a conflict.

ED Simmons explained that counties have always done it this way. She expressed interest in finding out how Michigan has handled the issue and stated she'll investigate with Jonathon Sachs, ED of the Michigan Indigent Defense Commission.

Chair Bolz recommended that ED Simmons visit with counties to see what they think. He believes she'll get push back from the counties, as the counties do have an interest in the topic. Comm. Daniels reiterated that IAC was clear when they spoke to counties that there's a conflict. Comm. Daniels explained that when they run into a potential conflict issue they have their judge look at it first, but they also let their prosecutor look at it.

Rep. Perry suggested that if counties have grant money, and it's clear they can hire a conflict attorney, then it's clear they should use the money to hire a conflict attorney for that issues as well. They can't just say "yeah, we know, but we're not going to hire conflict counsel for it."

ED Simmons stated that perhaps the PDC can speak to this in rule. Rep. Perry replied that counties will fight a rule as much as they'll fight legislation. Mr. Fredericksen informed the group that I.C. § 50-208A is the statute that outlines the duties of the city attorney. Guest Andrew Masser added that I.C. § 31-2604 sets for the duties of the prosecuting attorney in the county.

ED Simmons suggested that it's prime to have the conversation now. Rep. Perry observed that this issue may ramp up. This could be a manipulative tool to encourage PDs not to take out IDGs.

ED Simmons committed to putting something together to talk about soon. Chair Bolz urged that it happen relatively quickly. Rep. Perry believes that this legislative session, deadlines will get pushed up and any legislative proposal will need to happen VERY soon to get something done this year. She noted it's simpler to kill a policy in rule form, but in statute it takes a lot more people to get it done.

Legislation was approved to move ahead by the Governor's office.

Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider records that are exempt from public disclosure and/or to communicate with legal counsel (Idaho Code 74-206(1)(d) & (f)).
[Executive Session was not convened during the meeting.]

Commission

Future Meetings

Commission

- a. Next Meeting: 11/20/17
- b. Next Meeting Location: PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

The next PDC meeting will be fairly lengthy, to finalize rules. There will need to be a conference call subsequent to the meeting to vote on the updated Standards for Defending Attorneys and 61.01.08, we need to do a phone call. Comment for 06 and 07 is 10/31.

After discussion, the next regular meeting will be held 11/20/17 at 1 p.m. at the PDC office. The conference call to finalize Docket 61-0108-1701 will be held 11/27/17 at 8 a.m.

Adjournment

Bolz

The meeting adjourned at 3:01 p.m.

4:00pm Public Hearing

Simmons

Attachments: Administrative Rules Chart
Proposed Rule 61.01.08
Standards for Defending Attorneys – Updated Draft
Regional Coordinator Updates
Periodic Review Report - Draft