

# MEETING MINUTES

## STATE PUBLIC DEFENSE COMMISSION

*Date | time* 11/20/2017 1:00 PM | *Location* PDC Office, 816 W Bannock, Suite 201, Boise

*Meeting:* November Commission Meeting

### Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, Vice Chair, SAPD | Shellee Daniels, IAC Representative | Linda Copple Trout, Representative of the Courts | Paige Nolta, Defense Attorney | Chuck Winder, Senator arrived at 1:14pm

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

### Commission Members Absent

Christy Perry, Representative

### Others Present

Ingrid Andrulis, ACLU | Andrew Masser, Attorney at Law | Seth Grigg, IAC

	Item	Responsible
1:00pm	Welcome and Call to Order: Chair Bolz called the meeting to order at 1:07pm. Review of Attachments, if needed, by the Commission	Bolz
1:10pm	<b><u>CONSENT AGENDA</u></b> <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 Commission member or citizen so requests, in which case the item will be removed from the Consent Agenda and placed on the Regular Agenda.</i> <ul style="list-style-type: none"><li>Approval of Prior Meeting Minutes (9/13/17)</li><li>Budget / Financial Update</li></ul> Trout moved to approve the consent agenda as amended. Fredericksen seconded and all members voted unanimously to approve the motion.	Bolz
	<b><u>REGULAR AGENDA</u></b>	
1:20pm	Executive Director Report <ul style="list-style-type: none"><li><b>Prosecutor Role – Update:</b> David Carroll was consulted in regards to the prosecutor’s role in public defense. He offered an amendment to the statute that could be made to exclude them. The change would require an additional change allowing the Commission to assist the counties. Bolz suggested that the Commission speak with IAC concerning any changes. Daniels responded that there would be opposition. Trout asked whom the counties would then consult when discussing contracts. ED Simmons suggested some individuals that could provide that service.</li><li><b>ACLU Case Update:</b> There is a hearing in December. The deposition occurred last Thursday. It will be transcribe soon and available for the members review. The questions were broad and did not require any in depth conversation.</li><li><b>Defending Attorney Annual Reports Update:</b> A large number of attorneys have been added to the PD Roster as a result of report submissions. 150 reports have been</li></ul>	Simmons

received, the only institutional office outstanding is Canyon, however it is pending. Communication has gone out to the county commissioners to indicate that annual reports are due.

- d. **Next Meeting: Conference Call to Approve 61.01.08 and incorporated docs:**  
Additional comments can be accepted through Monday and will be distributed should any be received.
- e. **Recap: NAPD 2017 Workload Conference:** ED Simmons provided some information about the conference she, DD Jennings and Mr. Fredericksen attended the previous weekend. As the Commission moves forward with a workload standard she will share specific information she learned at the conference. DD Simmons believes a standard for the number of open and pending cases rather than simply a workload standard should be the route the Commission should look at. Fredericksen shared additional information about that process explaining it is the preferred process. DD Jennings shared that bringing Steve Hanlon to Idaho would be of value as the standard is negotiated. Fredericksen stated that much of the presentation focused on obstacles Idaho has already worked through, which was reassuring in regards to the work that has been completed thus far. The NAC standard is consistently being found to be three times greater than what attorneys can actually handle, which is similar to what the Delphi panel for the PDC's study indicated.
- f. **Workload Study Update:** Results will be available just after the holidays. The hope was to get them sooner but they are working very hard to make sure the data is interpreted accurately.

2:00pm Administrative Rules Discussion and Approval  
Review of Comments and PDC Authority

Simmons

- a. **Final Approval: 61.01.06:** ED Simmons asked if all the members had an opportunity to read through the comments documents. If they had not she offered to give them time to do so. She then walked through the document referencing comments about section b) Participants, as well as a couple of other minor changes in that section. Minimum Standards – The Commission has no authority to enforce outside of the promulgated standards. 02.b – This section was added to provide clarification as to whom those meetings would involve.

Daniels commented on the rule over all. She said that the smaller counties are just not able to financially support the standards. Her concern is how these counties are going to pay for it. The initial appearance piece is one example she could provide. Oneida's prisoners are housed 90 miles away making initial appearance very difficult and has created a budget issue. Winder responded that yes those are issues the Commission has grappled with throughout the process. The Commission struggles with how to provide a standard that gives constitutional representation while being cognizant of budgets. ED Simmons shared that it would be key for the Commission to focus on the statute as it does not have the authority to withhold funding if a county is attempting to provide the services. Fredericksen said that it is not just the smaller counties, there are competing issues and that is the difficult responsibility of the Commission. Not all stakeholders will be happy with the results. There was further discussion regarding funding was offered. Nolta asked if the Commission is able to make recommendations to the legislature regarding the issue of ticket revenue between the county and city. The members agreed that it could as it pertains to public defense.

23.09 – Nolta asked how determination can be made if the reports are not passed on. The language was revised to indicate if a compliance issue was possible. ED Simmons continued her review providing comment on changes that were indicated.

Trout moved to adopt 61.01.06 as amended, Nolta seconded. With the exception of Daniels, the members voted unanimously in favor of the motion.

One of the items ED Simmons took away from the Workload Conference is that the Commission needs a person who can collect and read data. The members offered that OPE may be able to provide services in that regard.

- b. **Final Approval: 61.01.07:** 01. Two new sections were added to provide for additional lists to contain attorneys no longer providing services. Nolta asked if the roster would be available on the website. ED Simmons responded it is not currently but she would like to develop a system similar to the Idaho State Bar's for easy look up.

Trout moved to approve 61.01.07, Nolta seconded and members unanimously approved the motion with the exception of Daniels who opposed.

- c. **(Tentative) Approval: 61.01.08:** ED Simmons reviewed the changes. The definition of Vertical Representation was added as the result of a few comments received. It helps to provide clarification with regard to initial appearance. Winder suggested replacing minimal level to constitutionally required. Daniels suggested that the highlighted area be taken out so that it does not provide another out. The other members agreed. This rule will be subject to final approval on Monday.

- i. **Standards for Defending Attorneys:** ED Simmons reviewed the only change, grandfathering the supreme court roster into the PDC capital counsel roster – Fredericksen shared that he goes back and forth on this issue as he is not sure how current the supreme court roster is. DD Jennings explained that if the concern is for those no longer providing service, maybe the solution is that they would need to apply to the PDC Capital Roster within the first six months, which they likely would not do, and then they would be removed through the process. Nolta asked how long it would take the Commission to get the roster up and running. ED Simmons responded that compliance with the rule would not be necessary until March 31, 2019, so there will be a lag.

- ii. **Capital Defense Roster Application:** ED Simmons reviewed the changes made as a result of comments provided from the capital defense working group. Daniels asked who would be reviewing the applications. ED Simmons responded that a group of capital defense attorneys would review applications.

3:00pm **Periodic Review Reports – Review, Discussion and Vote:** The reports model the process as outlined within the rules and ED Simmons wanted to get an idea of what that would look like. Trout suggested that sharing the information with the counties would cause more issues than the vagueness of comments by the ACLU warranted. Daniels warned that this type of adversarial approach was what the counties are concerned about; Bolz agreed. Trout offered that if someone witnessed a definite issue within the court system she would like to see a report on that, however, at the same time it should be as it relates to meeting the standards

Simmons

with regard to the IDG process. Trout continued saying Benewah, Bingham and Shoshone could have some potential issues based on this information but it appears the coordinators are working with them and the members look forward to hearing more at a later date. Fredericksen shared that this is exactly how the system should be working.

Trout moved that having reviewed the Periodic Review reports no further action be taken with the exception of Benewah, Bingham and Shoshone. The members would like to follow up on those counties once the Regional Coordinators have had an opportunity to work with the counties on a resolution. Winder seconded and the members unanimously approved the motion.

ED Simmons asked for direction on how these reports should be reviewed in the future. She suggested the possibility of adding a section to indicate if the Commission had decided to take action or not, and then the counties could be made aware if further action was needed. Daniels commented that if the rules were in effect that it would be different, but with the rules not being in effect that is where the issue lies. Fredericksen offered that complaints are going to come in and the Regional Coordinators can investigate. Daniels suggested that Oneida County's Regional Coordinator, Jared Ricks could schedule a meeting with them once a quarter and that would be an ideal time to go over any reports.

3:45pm **Initial Appearance Discussion – Out of Custody Arraignments:** This is a difficult thing to monitor and would be difficult to review. The members discussed how out of custody arraignments can go and how that process can affect defendants as well as the repercussions of those processes. ED Simmons asked at what point the Commission's authority comes in and if the Commission would like additional information. The members agreed they would. The issue will be something needing further discussion when grant application funding is decided.

4:00pm **Vertical Representation and Odyssey**

**Ada County's dilemma:** The way Odyssey is assigning attorneys is not providing the county with vertical representation. There is concern from the county that they will be found in non-compliance due to the process. Trout shared that while she was told this would not be an issue, with Odyssey in place it does not work due to the teams they are using. ED Simmons asked for the member's opinion on the issue. She expressed that she would like to work with the PD's office and Judge Moody to verify that there is not a work around. Fredericksen commented that he knows how important vertical representation is and he does not want to get to the point that the Commission provides a pass for a county because it is too difficult to comply. DD Jennings suggested that the smaller counties would not receive that well, given that they are working so hard to comply. ED Simmons shared that concern and that is why she would like to work with them to see if a solution could be found.

**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).

*An Executive Session was not convened during the meeting.*

Commission

4:15pm **Future Meetings**

Commission

- a. **Next 6 months of meetings:** ED Simmons shared that she did not see a purpose for a meeting in December except for the holiday potluck. The members decided on January 4, February 7, March 14, April 11<sup>th</sup>, May 8, and June 13 all beginning at 1pm.
- b. **December Potluck** – Scheduled for December 18<sup>th</sup>, 4pm – 6pm

---

**Item****Responsible**

Adjournment: Fredericksen moved to adjourn, Winder seconded and the members unanimously approved. The meeting adjourned at 4:21pm.

---

Bolz

Attachments: Rulemaking Record – Comments and letters  
Proposed Rule 61.01.06 with updates  
Proposed Rule 61.01.07 with updates  
Proposed Rule 61.01.08 with updates  
Standards for Defending Attorneys – Updated Draft  
Capital Counsel Roster Application  
Regional Coordinator Updates  
Periodic Review Reports