

# MEETING MINUTES

## STATE PUBLIC DEFENSE COMMISSION

*Date | time* 5/8/2018 12:00 AM | *Location* 805 W. Idaho Street, Suite 400 – Harris CPA’s Center of Influence

*Meeting:* May 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 | Nichole Devaney, Admin. Asst.

### Commission Members Absent

Christy Perry, Representative | Linda Copple Trout, Representative of the Courts

### Others Present

Tony Geddes, Ada County Public Defender | Kathy Griesmyer, ACLU

| Item  | Responsible |
|---|-------------|
| 1:00pm <b>Welcome and Call to Order:</b> Chair Bolz called the meeting to order at 1:08pm   | Bolz        |
| ROLL WAS CALLED:  |             |
| Christy Perry, Member          Absent   |             |
| Eric Fredericksen, Vice Chair   Arrived at 1:12pm   |             |
| Linda Trout, Member          Absent   |             |
| Chuck Winder, Member          Present   |             |
| Paige Nolta, Member          Present  |             |
| Shellee Daniels, Member          Present  |             |
| Darrell Bolz, Chair          Present  |             |
| Review of Attachments, if needed, by the Commission   |             |
| 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 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 (3/14/2018)   | Bolz        |
| Budget / Financial Update   |             |
| Public Records Request Form   |             |
| Nolta moved to remove the Public Records Request Form from the agenda, Winder seconded and all members unanimously approved. Winder moved to approve the consent agenda minus the Public Records Request form, Nolta seconded and all members unanimously approved the motion.                        |             |
| <b><u>REGULAR AGENDA</u></b>  |             |

| Item  | Responsible |
|---|-------------|
| <p>1:20pm Executive Director Report</p> <ul style="list-style-type: none"> <li>a. <b>Town Hall Meeting Wrap-up:</b> ED Simmons discussed the town hall meetings providing attendance numbers and who attended. The new standards were discussed that went into effect on May 1. The meetings went well and were attended by the RC in each of their districts. Bolz suggested that the staff check to see who new commissioners will be for the next term as there may be some work to be done to bring the new commissioners up to speed. ED Simmons continued sharing that the next wave of meetings will be conducted in mid-June. These meetings will focus on the development of the next set of rules. Comments on these rules will be taken all summer through any means. The first draft of the proposed rule will need to be voted on by the Commission in August with a final draft submitted to the legislature in November.</li> <li>b. <b>CEC Memo Update:</b> Due to the additional positions added DHR requested a change to the ratio matrix and an estimate of pay ratings which required performance evaluations to be completed.</li> <li>c. <b>Tucker Trial Update:</b> The judge and the ACLU have agreed to push the trial to mid to late March. The case is still in the discovery phase, please continue to provide emails and other documents to include notes from PDC meetings.</li> </ul> | Simmons     |
| <p>1:30pm <b>Old Business:</b></p> <p><b>Letter/Meeting with PD (excessive workload) – no further movement:</b> Working on a trial and did not want to interfere.</p> <p><b>Letter to Teton re: best practices – in the works:</b> Additional information was provided. The two attorneys no longer provide services to the county. Biggest concern is that Mr. Eddins the current PD has accepted a judge position. Sean Moulton will provide services in his stead.</p> <p><b>Letter to counties re: <i>Tucker v. State of Idaho</i> - Done</b></p>   |             |
| <p>1:45pm <b>Commission Meeting Schedule:</b> It is necessary for the Commission to meet in June for Grant Applications. Also in July to approve the proposed rules and grant applications are likely to be returned. A meeting may be needed in August to discuss the budget. September could be a free month. In October public hearings will be scheduled and the final rules are due. Additionally a discussion on any amendments to the budget may be needed. November and December are fairly light, the Commission could skip December, and possibly November. Discussion was had on changes to the public meeting law and how that affects conference calls. Winder and Fredericksen are not available to attend the June 13 meeting. ED Simmons suggested June 20<sup>th</sup> and all members present could make that work. July 18 was selected as the July meeting date.</p>  |             |
| <p>2:00pm <b>Capital Counsel Application Review Committee &amp; Application Process from May 1, 2018 thru March 31, 2019:</b> First order of business would be to establish a review committee. ED Simmons recommended that the members of the committee be on the current capital roster. She was thinking 5 to 6 members to make up the committee. Daniels moved that the Commission approve all applicants proposed with the exception of Mr. Bartholick, Fredericksen seconded, all members unanimously approved the motion. ED Simmons will meet with the committee. Daniels suggested sending Mr. Bartholick a letter explaining his exclusion. Staff will begin accepting capital roster applications immediately.</p> <p><b>Concurrent Roster With ISC: Separation of Powers?:</b> There was question as to how the two entity's will maintain a concurrent roster. The Supreme Court has concerns that there is a separation of powers issue. ED Simmons provided some notes in regard to this issue, she does not see that any decisions need to be made today. The issue is not apparent but more</p>  |             |

research will be done so that it can be discussed by the court at their next meeting. Mr. Geddes asked for clarification on where applications should be submitted. ED Simmons suggested that the individual submit an application to both the Supreme Court and the PDC. Mr. Geddes said that was what occurred in an abundance of caution. Bolz asked if having a representative of the court come speak to the commission would be helpful. She agreed it would.

2:30pm **Appointment of a Chief Public Defender – Institutional Office:** The bannock county public defender is retiring. The assistant chief was under the impression that the BOCC could just appoint him however ED Simmons does not believe that this is the process as laid out in statute. Bolz asked if Comm. Daniels knew of any other rules on the issue. Fredericksen was in agreement with ED Simmons analysis. The Commission's recommendation would be to follow the statute.

2:45pm **Legislation Proposal:**

**Local Share, Grant Application deadline and cap on grants; Changing the term "Grant":** ED Simmons would like to propose some statute changes beginning with the word grant, she feels it should be changed to assistance. There is issue with the word grant and how those funds should be used. Changes to the local share could be suggested. She also suggests changing application to proposal as it relates to grants, to mirror the intent of the awards. ED Simmons offered that these are simply ideas of how the statute could be changed. Bolz suggested providing a calculation of the formula if the percentage was changed. Daniels asked that the local share calculations be done. She sees the big counties getting a lot more money than the smaller counties. This lead to some discussion on how cost is different for the counties based on their size. ED Simmons shared that she is learning a lot about how the different county dynamics effect costs.

Counties are requesting a change be made to the grant application deadline given the effective date of rules, when compliance is required and annual reviews occurring at the same time. ED Simmons asked if having decisions on grant funding in June would work for the counties. Daniels responded that they could make it work but she did not know how that would affect the bigger counties. The county's deadline for submitting their budgets is of concern to the chair as well. Daniels suggested moving it forward two weeks may allow enough time.

3:00pm **Selection of 3-6 Defending Attorney names to send to Governor's office for appointment of our new PD representative on the Commission:** ED Simmons will reach out to Seth of IAC, she believes he may already have some suggested representatives in mind. Additionally, she would like to draft a list of names to submit to the Governor for the institutional office position. She then provided some suggestions. Nolta suggested that the Commission recommend someone who is interested in fixing the system. Daniels asked for clarification as to if the commission should suggested individuals outside of the capital defense roster. Mr. Geddes requested that a member from the Ada County office be considered as their office asked to be on the commission long before the commission had been developed. He suggested Jon Loschi and Nicole Owens as good candidates. Fredericksen stated that he liked Jon Loschi, Nicole Owens, Anne Taylor and Chris Schwartz. DD Jennings suggested pulling from the eastern region as that is where the largest number of PD offices are located. Fredericksen asked what the caseloads in Jordan Crane's office were. ED Simmons responded that they are high. He expressed concern with adding a member from an office that has a high caseload. Daniels suggested waiting until IAC provides their recommendations. ED Simmons asked if the Commission would like to wait until IAC is consulted. There are currently seven names for consideration, would the members like to

include any others. Winder stated he would like to see ED Simmons speak with IAC, the remaining members seemed to agree. Daniels stated that it is important for the Commission to take into account the concerns raised.

3:15pm **FY2019 Indigent Defense Grant Applications:**

Simmons

**Madison:** Eligible for \$25,000 – ED Simmons’s recommendation would be to request additional information on the cost analysis. Fredericksen moved that the Commission hold the application for additional cost analysis information. Daniels seconded, the members agreed unanimously to the motion.

**Ada:** Recommendation is to approve for the maximum eligible amount. There is a deficiency but it is not willful or negligible. Application was discussed. Daniels moved to approve Ada County’s application, recognizing a non-willful vertical representation deficiency. Nolta seconded all members agreed to the motion. Fredericksen moved to approve the maximum eligible amount of the grant. Nolta seconded and all members approved.

**Adams:** Application discussed, recommendation is to approve maximum eligible amount but note they do not have an attorney at first appearances. There is however a plan to correct. Fredericksen asked why the carryover is so high. RC McCoy responded that previously there was fear of spending money on public defense but they have since had a change in prosecutors and that is no longer the case. Additional discussion was had regarding willfulness of deficiency. Daniels moved that the Commission recognized the first appearance deficiency as non-willful, Nolta seconded, all members agreed with the exception of Fredericksen. Daniels moved to approve the application for the maximum amount eligible, Nolta seconded, and the motion passed unanimously.

**Benewah:** Application was discussed, recommendation is to request more information to include a cost analysis, workloads and investigation. Daniels asked if the county is being cooperative. ED Simmons responded they were. Fredericksen moved to hold the application pending more information, Winder seconded and the members unanimously approved.

**Blaine:** Recommendation is to approve for the maximum amount of eligibility. Application was discussed. No deficiency was found. Daniels moved to approve the maximum eligible amount for Blaine County, Fredericksen second and all members agreed.

**Boise:** Application was discussed. Recommendation is to approve for the maximum amount of eligibility, however to recognize a deficiency for not using contracts for conflict attorneys. The members agreed it is not a willful deficiency. Fredericksen moved that the Commission find there is a deficiency for not having conflict contracts, Nolta seconded and all members approved. Winder moved to approve the maximum amount of eligibility, Fredericksen seconded and the motion passed unanimously.

**Bonner:** Recommendation is to hold for additional information. Fredericksen moved that the application be held until more information is received on the cost analysis. Nolta second and all members agreed.

**Boundary:** Recommendation is to get clarification on cost analysis but approve application. Application was reviewed. Winder asked for clarification on the recommendation. ED Simmons responded that she would just like clarity on what the \$25,000 would be used for but approve the grant. Nolta moved to approve for the maximum eligible amount and request clarification on the cost analysis, Winder seconded and the motion passed unanimously.

**Camas:** Reviewed application. Recommendation is to approve for \$10,000, a non-willful deficiency for lack of contracts with conflict attorneys should be recognized. Daniels moved to approve the application for \$10,000, recognizing the non-willful deficiency for lack of

contracts with conflict attorneys. Fredericksen seconded and all members approved the motion.

**Canyon:** Application was reviewed. Recommendation is to recognize non willful vertical representation deficiency and approve for maximum eligibility. Fredericksen moved that Canyon County's application be approved for the full amount eligible noting the non-willful vertical representation deficiency. Winder seconded and all members unanimously approved the motion.

**Clark:** Application was reviewed. Recommendation is to approve for the maximum eligible amount. However changed to hold the application for additional information regarding FY2018 cost analysis. Fredericksen moved to hold Clark County's application pending additional information. Daniels seconded all members agreed.

**Clearwater:** Application was reviewed. Lack of contracts for conflict attorneys is a non-willful deficiency. Recommendation is to approve for the maximum amount eligible. Fredericksen moved that the commission approve the application for the maximum amount eligible noting the lack of contracts for conflict attorneys as a non-willful deficiency. Daniels seconded and all members approved.

**Elmore:** Application was reviewed, recommendation is to request more information as to how funds were spent as well as a cost analysts for future funds. Fredericksen moved that the application be held pending more information on how funds will be used. Daniels seconded and the members unanimously approved.

**Gem:** Application was reviewed. Recommendations is to approve for the maximum eligible amount. Winder so moved, Fredericksen seconded and all members unanimously approved.

**Gooding:** Application was reviewed. Recommendation is to approve maximum eligible amount. Suggest they consider using funding to offset workload. Nolta moved to hold the application pending additional information on FY 2018 fund use. Fredericksen seconded and all members approved unanimously.

**Idaho:** Application was reviewed. Recommendation is to approve the maximum amount noting deficiency for lack of contracts with conflict attorneys. Fredericksen moved to approve the full eligible amount noting a non-willful deficiency for lack of contracts with conflict attorneys. Winder seconded and all members unanimously passed the motion.

**Jerome:** Application was reviewed. Recommendation is to approve for the maximum amount eligible. Daniels moved to approve the maximum eligible amount for Jerome County. Fredericksen seconded and all members approved.

**Kootenai:** Recommendation is to hold for cost analysis and funding analysis. Winder so moved, Fredericksen seconded and the members unanimously passed the motion.

**Latah:** Application was reviewed. Recommendation is to hold application pending cost analysis. Fredericksen so moved, Nolta seconded and all members agreed.

**Lewis:** Application was reviewed. Recommendation is approve for the maximum amount eligible, noting a non-willful deficiency for lack of conflict contracts. Daniels moved to approve the maximum eligible amount, noting the no-willful deficiency for conflict contracts. Fredericksen seconded and all members approved the motion, with the exception of Nolta who abstained from the vote.

**Minidoka:** Recommendation is to approve the maximum amount eligible. First appearances deficiency she will leave to the commission as to willfulness. RC McCoy shared that previously there was not a willingness to comply but that has since changed and the courts are working to help adjust scheduling to assist with compliance. Daniels moved to approve the maximum amount eligible with a note of willful first appearance deficiency. Fredericksen seconded and all members unanimously agreed. Including the \$25,000 joint grant award.

**Nez Perce:** Recommendation is to hold the application pending additional information. Winder moved that they approve the director's recommendation. Fredericksen seconded and all members with the exception of Nolta who abstained approved the motion.

**Oneida:** Application was reviewed. Recommendation is to approve for maximum eligible amount. With the suggestion that they hire support staff or another attorney to offset work load. Non-willful deficiency on first appearances exists. Daniels shared that they are working out the deficiency with the courts help and utilizing Life-size. Fredericksen moved to approved for the full amount eligible including the joint incentive grant. Noting deficiency for first appearances. Winder seconded and all members with the exception of Daniels whom abstained approved the motion.

**Owyhee:** Recommendation is to approve the application for the maximum eligible amount noting a deficiency for lack of contracts with conflict attorneys. Winder moved to approve the ED's recommendation, Fredericksen seconded and all members agreed.

**Payette:** Application was discussed. Recommendation is to approve the maximum eligible amount. Noting a deficiency in regards to conflict contracts and political influence. These are non-willful deficiencies. Fredericksen asked what is the plan for correcting the workload. Beyond hiring a new attorney it was not clear. Daniels moved to approve the maximum amount eligible, noting a deficiency for conflict contracts and political influence. Fredericksen seconded and all members unanimously agreed.

**Power:** Recommendation is to approve for the maximum amount eligible. Request cost analysis as noted in exhibit B that was not received. Nolta moved to approve the maximum eligible amount to include the joint incentive grant. Winder seconded and all members approved the motion with the exception of Daniels who abstained.

**Shoshone:** Recommendation is to hold the application pending additional information on the cost analysis and workload. A deficiency exists for lack of contracts for conflict attorneys. Winder moved to hold the application pending additional information, the motion was second by Fredericksen and unanimously approved by all members.

**Twin Falls:** Application was reviewed. Recommendation is to approve for the maximum amount eligible, noting a deficiency for not having a private meeting space in the jail. Daniels so moved, Winder seconded and all members unanimously approved the motion.

**Valley:** Application was reviewed. Recommendation is to approve the maximum amount eligible. Fredericksen so moved, Winder seconded and members unanimously agreed.

**Washington:** Application was reviewed. Recommendation is to hold for additional information. Winder moved to hold the application pending additional information, Fredericksen seconded and motion passed unanimously.

**Executive Session:** Pursuant to Idaho Code 74-206, convene in executive session to consider the records that are exempt from disclosure (Idaho Code 74-206(1)(d)).

Commission

Purpose/Topic summary: -ELF Application FY2018-021

-ELF Application FY2018-024

-ELF Application FY2019-001

Fredericksen moved to go in to executive session pursuant to Idaho Code 74-206(1)(d), Nolta seconded

AND THE VOTE TO DO SO BY ROLL CALL.

|                               |        |
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| Christy Perry, Member         | Absent |
| Eric Fredericksen, Vice Chair | Yes    |
| Linda Trout, Member           | Absent |
| Chuck Winder, Member          | Yes    |

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**Item****Responsible**

|                         |     |
|-------------------------|-----|
| Paige Nolta, Member     | Yes |
| Shellee Daniels, Member | Yes |
| Darrell Bolz, Chair     | Yes |

CONVENE AT: 4:13pm ADJOURN AT: 4:40pm

ELF Application FY2018-021

ELF Application FY2018-024 - Fredericksen Moved to approve the request for \$100,000 with the stipulations that three of the attorneys meet standards, M. Morrissey should be excluded and the remaining attorneys apply to be added to the PD Roster. Daniels seconded and all members unanimously agreed.

ELF Application FY2019-001 – Fredericksen moved to deny the attorney’s fee portion of the application and allow the ED to make the decision on the remaining request. Nolta seconded and the members unanimously approved with the exception of Comm. Daniels who abstained from the vote.

Future Meetings – June 13, 2018 - Due to conflicts the June meeting was rescheduled for June Commission 20<sup>th</sup> at 1:00pm.

4:30pm Adjournment – Meeting was adjourned at 4:43pm.

Bolz

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Attachments: FY2019 County Grant Application Summaries  
FY2019 Grant Application Worksheet