

# MEETING MINUTES

## STATE PUBLIC DEFENSE COMMISSION

*Date | time* 8/23/2018 1:00 PM | *Location* 805 W. Idaho Street, Suite 400 – Center of Influence

*Meeting:* August Commission Meeting

### Commission Members

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

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

### Commission Members Absent

Shellee Daniels, IAC Representative

### Others Present

Molly Kafka, ACLU of Idaho | Kelli Brassfield, Idaho Association of Counties | Rena Rallis, Attorney General's Office

	Approx. Time	Item	Responsible
	1:00pm	Welcome and Call to Order: Chair Bolz called the meeting to order at 1:01pm ROLL WAS CALLED: Jon Loschi, Member Present Dan Dinning, Member Present Christy Perry, Member Present Eric Fredericksen, Vice Chair Present Linda Trout, Member Present arrived at 2:12pm Chuck Winder, Member Present Paige Nolta, Member Present Shellee Daniels, Member Absent Darrell Bolz, Chair Present	Bolz
		Review of Attachments, if needed, by the Commission	
ACTION ITEM	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 (7/18/2018)	Bolz
		Budget / Financial Update	
		Perry asked that on page 2-Old Business should read \$40 less per hour. Perry moved to approve the consent agenda as amended. Fredericksen seconded and all members approved the motion.	
		<b><u>REGULAR AGENDA</u></b>	

Approx. Time	Item	Responsible
1:15pm	<p><b>Review of Open Meeting Law (and the new provisions that went into effect on 7/1/18):</b> Chair Bolz reviewed the open meeting law. He discussed what a deliberation consists of. That notices are required for both emergency and regular meetings. Anything that is voted on has to have the designation of an Action Item or otherwise cannot be voted upon. He reviewed what is required if an agenda is amended. Dinning offered that they have been cautioned that once posted amendments should be dealt with at the meeting. Fredericksen shared that if there is a cereal conversation and that involves a quorum that is against the rules.</p>	Bolz/Simmons
1:30pm	<p>Executive Director Report</p> <ul style="list-style-type: none"> <li>a. <b>Regional Coordinator Updates:</b> ED Simmons provided the updates for the members review. She commented that the coordinators meet with commissioners four times a year they are also observing court, first appearances and meeting with PD's. Dinning voiced a concern about Clearwater County. He explained that they have an instance in which an indigent defendant who was appointed an attorney, but then family of the defendant paid for a private attorney. Any investigation or evaluation cost would not be eligible for reimbursement. ED Simmons explained that the court is allowed to file a motion to have evaluations and other experts paid by the county and if the defendant was determined indigent then those cost would be eligible. The members discussed the ELF Policy. ED Simmons stated that it is something the commission should think about but Chair Bolz clarified that it is not an item that they could vote on today but they could put it on the agenda in the future. Nolta shared that in some cases the family under estimates the cost and it ends up as a PD case in the end.</li> <li>b. <b>IACRC Presentation Update:</b> ED Simmons and DD Jennings traveled to the Clerks meeting. They met with Seth Grigg prior to the meeting. ED Simmons stated that it was the toughest meeting she has participated in during her term at the PDC. The presentation was intended to go over the grant application and revisions that have been made to the application for FY2020. She wanted to get comment and feedback prior to presenting to the Commission for approval. She was only able to get five minutes into her presentation then many questions and concerns were raised. The PDC has been asked to present at the Annual Conference, ED Simmons would rather not however it is a part of the mission. They would like a question and answer session and she is on board with that. She would like to set some parameters on the presentation. She does not want to discuss unfunded mandates, issuing of funds without expectation. She asked for the Commission's permission to limit the conversation. She invited the members to attend the meeting, it will be held September 26, from 1:30 to 2:30 for one hour. Dinning shared that he thinks what ED Simmons may have been sensing at the Clerks meeting was a holdover from the Odyssey discussion in the prior session. There was frustration with how it was shoved down the clerk's throats. Odyssey has been a significant unfunded mandate, that was not presented in that manner but has unfolded that way. Perry offered that the program started with minimal participation to get funding and now that is changing. Perry sees ED Simmons role not as a representative of the counties, they have a representative in IAC and they should speak to them.</li> </ul>	Simmons

The commission's role is to stand up for the indigent defendant. Bolz offered that he understands their frustration with all that has occurred in the last few years. There is a perception that the county wants to be at the table at this level so that they can participate in the process so as to alert them of what is coming. He thinks attending the meeting is important. Bolz asked if he thinks for some of the more rural areas with contract attorneys have handled things in the past now they are having to participate. Dinning responded that it makes them nervous with the amount of funds going out. ED Simmons will notify the Commission Members as to when and where the presentation will be held. Dinning commented that he asked who was representing the counties as a previous meeting. ED Simmons responded he had and she would like to see a collaboration from the county as things move forward. Perry commented that we can only be representative of what our arena is. ED Simmons shared that the counties are certainly welcome to go to the legislature and ask for what they need.

- c. **Rules Update:** The drafts have been submitted and will be available in the September Bulletin. They have been sent out to stakeholders and are available on our website. The public hearings will occur in October and will be published in the bulletin. Bolz asked that she talk about what is required in terms of public participation. ED Simmons summarized the process and how the PDC has handled things in the past two years. The rules office called and were astonished by the number of meetings the PDC holds. Fredericksen commented that he enjoys participating because he wants to hear the comments however it is difficult when no one attends. Bolz shared that the commission has gone out of its way to get comments from stakeholders and that was the intent. DD Jennings shared that she has received comments that contradict the method with which the rules are drafted. Dinning shared that in the federal NEPA process they have what is called scoping which allows for the formation of a draft. He suggested maybe changing the name draft to scoping would get a better response.

2:00pm **FY2020 Proposed Budget Request:** ED Simmons reviewed the proposed increases to the PDC operating budget. She then reviewed the justification for the request. A supplemental is being requested for an additional Regional Coordinator/Training Director. The RC would assist RC McCoy with her region as it is expansive. Developing training has been difficult and this person would take this burden off the ED. The supplemental is being requested as a result of timing. July is a difficult time for a new Regional Coordinator to come on board with all of the activities that are required through statute. An additional supplemental is being requested for training that was requested in the budget for FY2019 that was rejected. A research person is needed to analyze all of the data that has been collected to date. A part time admin is being requested to assist the RCs with their scheduling and data input. The last three line items are related to the IDG's. The first item is requesting additional grant funds to increase the percentage amount from 15 or 20% in terms of the local share calculation. Counties will need additional funding to comply with the workload standard proposed. In total it will be a \$10,000,000 request in additional funding. Nolta asked about Kootenai County and Mr. Schwartz letter. ED Simmons responded this would not address that but she will have a discussion with the chief from that

**ACTION  
ITEM**

Approx. Time	Item	Responsible
ACTION ITEM	<p>office to verify numbers and obtain additional data to see if there is a need to increase the number. ELF Funding is the second item on the supplemental, the request is due to an increase in need for funding but also because of the limits placed on encumbering these funds. \$189,000 in awards from FY2018 have been carried over into FY2019. Perry asked if there is good data on what is being requested that have led to the increase. ED Simmons responded that the increase is mostly the result of the word getting out and the addition of BOCC's being able to apply for reimbursement of funds. Perry then asked what types of expenses are being requested asking if they are related to capital cases. ED Simmons provided a list of expense types. Perry asked a follow up question as to how mental health evaluations are being deemed as extraordinary. ED Simmons explained that the extraordinary cost comes into play when the evaluations relate to the defense of the case not the normal court ordered evaluations. Bolz asked how much discussion ED Simmons has had with Jared Hoskins and Adam Jarvis regarding the requests. ED Simmons responded with a list of meetings held. Perry commented that the legislature was aware of the potential for additional future funding and she is in favor. Perry moved to approve the proposed budget, Fredericksen seconded. Nolta ask for clarification on the supplemental and additional funding for 2020. ED Simmons confirmed that was indeed the case. The members unanimously approved the motion.</p>	
	<p>2:15pm <b>Election of Officers:</b> Bolz explained that August is when the Commission elects officers. Nominations were opened for Chair: Fredericksen nominated Chair Bolz, Dinning seconded and the members closed the nomination. The motion passed. The members unanimously voted Bolz as chair. Vice Chair: Trout nominated Fredericksen, Winder moved to close the nomination, Trout seconded and all members approved. The members unanimously voted Fredericksen as the vice chair.</p>	Bolz
	<p>2:30pm <b>Review of Designated Deficiencies:</b> Per rule the commission is to keep a list of the designated deficiencies. When a period review is conducted that requires a corrective action plan it will be included in the deficiencies list. The members reviewed the list. ED Simmons asked the members to refer to a copy of the order for Cassia County and the appointment of a new public defender. A prosecutor has been appointed to the board. Nolta asked if there are other attorneys who could sit on the board within the county. Fredericksen stated that in Canyon County they selected two PD's from the Canyon County Public Defender's Office and a private attorney to be on board. Perry asked if there is a rule that prevents this type of thing. Fredericksen and ED Simmons stated it is an ethical issue with the attorney. Bolz asked Trout if this was an issue that should be handled by the court. Trout responded that yes having Ms. Thomas speak to the judge may be how the Commission should handle it. If the issue is not resolved that way she or ED Simmons could call and speak to the judge.</p> <p><b>-Franklin County – First Appearances issue:</b> Inmates are housed in Utah, the inmate is arrested and taken to court to decide if a bond is necessary. Their plan is to bring the defendant to court and if the judge determines a bond is necessary the defendant has to return to court then next day. This process seems to punishes the defendant. ED Simmons is not sure how they will correct this. The staff will continue to keep a finger on it. Dinning asked if using Lifesize could be a way of correcting the issue. ED Simmons responded yes it could. Dinning asked if the BOCC is aware of the issue with first appearances. RC Ricks responded that they are, the issue seems to be other</p>	Simmons

Approx. Time	Item	Responsible
2:45pm	<p>individuals. Dinning asked if services are provided by a contract attorney. ED Simmons responded that there is potential to find a different source for services. Fredericksen asked if they have discussed a catch and release policy. RC Ricks explained that the sheriff was not present at the last meeting so that had not been discussed however the prosecutor seems to be opposed to the first appearance issue. Loschi stated that Ada will go vertical the first part of September.</p>	
ACTION ITEM	<p><b>Proposed Legislation – A437-01: Indigent Defense Financial Assistance language:</b> The Commission approved two statute changes, one of the changes was not approved by the governor’s office. The removal of the cap was not accepted as that is essentially what will occur with the ending of the sunset clause. ED Simmons reviewed the changes in language. Perry commented that changing “may” to “shall” was an issue for the legislature in the beginning as they could not make a county apply. She would like to see it remain as written. Winder moved to approve the changes to the language as drafted with the exception of the language in 19-862A where “may”. Perry seconded and all member approved the motion.</p>	
3:00pm	<p><b>CCAR Recommendations and Vote</b></p> <p>Czuba, Deborah: Recommendation is to approve for inclusion on the roster as Co-Counsel for Appeal and Post-Conviction.</p> <p>Horwitz, Jonah: Recommendation is to approve for inclusion on the roster as Lead Counsel for Appeal and Post-Conviction.</p> <p>George Essma: Recommendation is to approve for inclusion on the roster as Co-Counsel.</p> <p>Fredericksen moved to approve as recommended, Trout seconded and all member unanimously approved the motion.</p>	Jennings
ACTION ITEM	<p><b>Capital Counsel –PDC Approved Trainings:</b> The members reviewed the list of trainings. Trout asked if the Commission is approving an ongoing approval of the course as held annually. Nolta asked if someone is going to follow up each year and confirm the programs contain the necessary courses. Trout moved to approve the list, Fredericksen seconded and all members approved the motion.</p>	Simmons
ACTION ITEM	<p><b>Review of Comments on Proposed Rules and Meetings:</b> Letters were provided to the Simmons members for consideration.</p> <p>1. <b>Letter from Ada County:</b> Dinning asked about Ada County’s request. RC McCoy responded that she had spoken to them and offered to schedule a meeting if additional information is needed. ED Simmons also shared that the BOCC like to have Chief Geddes handle PD matters.</p> <p>2. <b>Email from Chris Schwartz, Kootenai County PD:</b></p> <p>3. <b>Letter from IAC re: meetings:</b> The IAC would like additional workgroup meetings held. ED Simmons suggested that the RCs could hold workgroup meetings to discuss the rules and any edits that may be proposed. Dinning asked for clarification on the public hearings in October and how they differ from the previous meetings. ED Simmons explained that the October hearings would be more formal, the meetings in September would be less formal and more of a discussion. Dinning then asked how the information would come back from the RCs. ED Simmons responded that comments would be compiled and that she would meet with Mr. Grigg to discuss. Loschi commented that previously it was discussed that the commission would move forward with the workload standard and then go back and address the numbers as comment was provided and how that would affect funding needed. ED Simmons</p>	

responded that was accurate and the additional funding is being requested in anticipation of how the standard will affect county budgets. There was discussion on the data to substantiate the workload number. Dinning commented that he would like some thought as to how training and experience of an attorney can impact that standard. Fredericksen commented that with the small counties there is a lot of windshield time that impacts them. Dinning commented that by imposing these standards it can impact a contract attorneys income. Bolz offered that the Commission does not know what impact the law suit will have. Trout asked about Mr. Grigg's request for the members of the commission to come to the IAC Annual meeting in September. ED Simmons responded that she thought it was an invitation to all the members.

3:50pm **By-Laws – Notice of Amendments:** The by-laws need amended to reflect the makeup Bolz of the commission and open meeting law notification requirements. ED Simmons added that the members may wish to consider revisions to address the CCA Committee. The proposed amendments will be forwarded to members prior to the next meeting.

4:00pm **Executive Session:** Pursuant to Idaho Code 74-206, convene in executive session to consider personnel matters, consider records that are exempt from public disclosure or communicate with legal counsel (**Idaho Code 74-206(1)(a), (b) and/or (d)**).

-Update on Lawsuit and other advice from Scott Zanzig: Dinning moved to go into executive session, Trout seconded and

The vote to do so was as follows:

Jon Loschi, Member	Yes
Dan Dinning, Member	Yes
Christy Perry, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Linda Trout, Member	Yes
Chuck Winder, Member	Yes
Paige Nolta, Member	Yes
Darrell Bolz, Chair	Yes

The regular meeting adjourned at: 3:49      The meeting re-convened at: 4:12pm

4:30pm **Future Meetings –** September 26 at 2:00pm - move this to the morning?: the members Commission decided on 12:00 – 2:00pm.

October 25 at 1:00pm: Will likely be a call in meeting if it is needed at all.

November?: To be determined at the next meeting

4:45pm **Personnel Announcement:** ED Simmons is resigning her position as of November 16, Simmons 2018. She has taken a position in Denver, CO. Loschi asked how her position will be filled. ED Simmons explained that the Commission will select her replacement.

5:00pm **Adjournment:** Chair Bolz adjourned the meeting at 4:12pm.

Bolz

Attachments: List of Designated Deficiencies  
Ada County Letter  
Email from Chris Schwartz  
Letter from IAC

Letter from Kate Evans  
List of Capital Defense Trainings  
Regional Coordinator Updates  
Proposed Legislation: IC 19-850, 19-851, and 19-862A  
Proposed Legislation: SOP