

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 9/26/2018 12:00 PM | *Location* The Cedar Room at The Grove Hotel, 245 S. Capitol Blvd, Boise, Idaho

Meeting: September Commission Meeting

Commission Members

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, Vice Chair, SAPD | Shellee Daniels, IAC Representative | Dan Dinning, IAC Representative | Jonathan Loschi, Defense Attorney | Paige Nolta, Defense Attorney | Chuck Winder, Senator – Arrived at 1:10pm

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

Commission Members Absent

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

Others Present

Jeff Connolly, Bonner County Commissioner | Dave Sasser, ACLU of Idaho | Rena Rallis, Office of the Attorney General | Scott Zanzig, Office of the Attorney General | Seth Grigg, Idaho Association of Counties

	Approx. Time	Item	Responsible
	12:00pm	Welcome and Call to Order: Chair Bolz called the meeting to order at 12:06pm Review of Attachments, if needed, by the Commission	Bolz
ACTION ITEM	12:10pm	<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 (8/23/2018 & 9/04/2018) Budget / Financial Update Nolta requested to abstain from the vote on the 9/4 minutes. Dinning moved to approve the consent agenda, Daniels seconded and the agenda was approved as written.	Bolz
ACTION ITEM	12:15pm	<u>REGULAR AGENDA</u> By-Laws – Amendments (noticed at August 2018 meeting): Bolz reviewed the changes, the most significant was the addition of the open meeting law notice regulation. Loschi referred to a question on page five. Bolz responded that it could be either but members seemed fitting. Loschi moved to approve the amendments to the bylaws. Dinning second and all members unanimously approved the amended by-laws.	Bolz/Simmons
	12:30pm	Proposed Rules: Workgroup Meetings – a. Update from Central Region: RC McCoy was the first to have held the work group meetings. Three meetings were held for her region. Six were present in Twin Falls, they went over the rules. The largest concern is how to track the workload standard. They also mentioned the need for additional breakdown	Jennings/McCoy Simmons

of case types with respect to number of cases. RC McCoy shared with the group that the proposed standard was a starting point. The attendees would like to see the grant funding distributed as an appropriation rather than a grant. This would allow them to put it in a restricted fund which would make it easier to tract. The meeting in Payette also had six attendees. Case input into the Odyssey system and it being consistent they felt could be an issue. There was a question as to if all the data collected in the grant application was necessary? The Ada County meeting had a very diverse group with good conversation. They would like a model contract that they can all use. Something with the ability to add and subtract terms as appropriate would be ideal. Geddes was very positive toward Odyssey and believes the commission will be able to get the data needed. The Commissioners stated that Odyssey has increased public defense costs. There is frustration that there is not sufficient data to base the workload standard on. They shared that it is difficult to accept the numbers based on bad data. Continued funding is also of great concern, IAC feels it is necessary to ensure funding prior to standards being enforced. Bolz commented on contracts, stating that previously Dan Chadwick suggested having options that the county can select to tailor it to their needs. Daniels shared that the counties discussed wanting a model contract but they do not want to be held to it. They would like more of a guide. ED Simmons responded that she would like to provide a sample contract that the counties could modify indicating which terms are items that should not be optional and which terms could be optional. Bolz asked about the comment on restricted funds. Dinning responded that it is similar to how they handle election funds. If not all moneys are used in the current fiscal year the funds can be carried over to the next year. Daniels recommended that revenue can be placed in a trust fund and then as expenses are debited the fund decreases. RC McCoy shared that she had received comments stating that the applications are burdensome and the counties would like to see the fund as an appropriation to simplify the process. With the Commission auditing the expenditures to verify it was used appropriately. Bolz asked if the Commission needs to change the way with which moneys are distributed. Nolta commented that the counties would like to account for how the moneys are spent rather than to have to detail what it will be used for up front. Dinning shared that it comes down to the application process. He added that it would be difficult for the Commission to justify continued appropriations to a county if not all funds are being used. Mr. Grigg shared that counties receive funding from all different state sources. Dedicated permanent funding that has penalties for non-adherence is what IAC would like to see. ED Simmons commented that with the changes to legislation suggested it is the Commission's attempt to ensure permanent funding. She would encourage the counties to bring their ideas to the legislature if they would like a change in the process as the Commission does not have control over that. Mr. Grigg responded that having the Commission's support would be favorable to IAC.

- b. Email from Commissioner Bingham, Kootenai County: ED Simmons shared some of the details of Comm. Bingham's email which lead to her request to have a public records request form completed. The request has been

responded to, Comm. Bingham was provided with all drafts of the rules since inception including comments that were received during those periods. The second portion of Comm. Bingham's question in his email was addressed by RC Freudenthal, he summarized the list of deficiencies worksheet and sent it to him. ED Simmons explained the process that will be followed with regard to the annual reports and how those issues will be handled. Dinning commented that this is the second letter of this nature and perception becomes reality for these folks. The concern is that a rule will be developed and the public hearings will simply be a process. Comments will not actually be incorporated in the rules. He added that there is confusion on what the standards actually mean. Asking if the workload standard is based on actual cases? There is concern that the standards will limit, especially the smaller counties, availability of attorneys. That is the perception he shared. ED Simmons responded that she understood that concern and all of the commission's meetings are open for anyone one to attend. Not every comment received will necessarily result in a change to a rule. Dinning expressed a concern about how the legislature may choose to make changes to rules isn't an all or nothing kind of situation. ED Simmons responded that if the legislature does not accept the amendments to the rules the workload standard will revert back to what is currently in place.

ED Simmons expressed that with regard to Ada County's letter she is unclear how the number was not based on any actual data, the standard was based on the workload study in conjunction with numbers obtained from the largest office in the state as well as other factors. More data would be needed before a standard could be created using a point system. Dinning asked if ED Simmons could confirm that the standard is based on a calculation using 2080 hours. ED Simmons responded it was. The reality is that most PD's will work more hours than that, however to base a standard on more hours would not stand up in court. Nolta shared that she has a lot of the same concerns and is anxious to hear comments from the public hearings. She is interested to hear how others feel about the calculation. Bolz commented that the ultimate goal of the commission is to ensure indigent defense meets constitutional muster. When you start comparing the geographical issues for counties it is difficult and that is understood. Conducting the number of meetings the commission has will hopefully help the members to make an informed decision. Nolta agreed with Bolz stating that we need to do what is right for the client even if that does not make everyone happy.

1:00pm	Review of Designated Deficiencies: Deficiencies corrected have been indicated in green. Oneida's first appearance issue has been resolved. Follow up is need with regard to Camas County contracts. Ada County is now providing vertical representation and the clients and attorneys are loving it.	Simmons
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ACTION ITEM 1:20pm	Review of applications for PDC Capital Counsel Roster J. Scott Andrew – Recommendation is to approve as lead counsel and appellate, Rob Chastain – Recommendation is to approve as lead counsel. Daniels moved to approve both candidates as recommended, Loschi seconded and all members, with the exception of Fredericksen whom abstained from the vote, approved the motion.	Jennings
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1:30pm Presentation: Seth Grigg, ED, Idaho Association of Counties: Mr. Grigg conducted his presentation, sharing with the members how county budgets are prepared, reviewed and approved. The key revenue source for counties is property tax however, counties are limited to a 3% annual growth rate. Statutory levy limits are also in practice further limiting revenue. A significant gap between the urban counties and the rural counties exists as their ability to increase revenue based on growth is non-existent. If counties do not take the full 3% they are able to reach back and use it in the next fiscal year but that option is not necessarily available to rural counties. Counties are reaching caps in justice funding as well. There is the Indigent Levy created to help cover medical expenses for those without medical insurance. However, medical expenses are increasing and when coupled with the costs of public defense counties will reach those caps soon. Counties are concerned about funding. Mr. Grigg shared that IAC will approach the legislature on revising the process with which funds are distributed and they are willing to work with Commission on what that might look like. The concern is how the workload standard will affect the counties ability to fund the standard without commitment from the state to narrow that gap.

2:00pm **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)**). An Executive Session was not necessary for this meeting.

2:05pm Future Meetings –

Commission

- a. Executive Director Application Review – Doodle Poll to be distributed to members for possible dates during October 4-12.
- b. Executive Director Interviews-Dinning asked when and who would be checking references. He also suggested that interviews could be conducted on October 25 in conjunction with the October meeting.
- c. October 25 at 1:00pm – Water Center Building, Rm 602 B-D-Will most likely be a conference call, bigger meeting will be in November.
- d. Conduct poll for November Meeting.

2:10pm Adjournment: Chair Bolz adjourned the meeting at 1:43pm.

Bolz

Attachments: Email from Commissioner Bingham, Kootenai County
Draft By-Laws
List of Designated Deficiencies, September 2018