

# MEETING MINUTES

## STATE PUBLIC DEFENSE COMMISSION

*Date | time* 4/7/2015 8:30 AM | *Location* Canyon County Administration Building, 1<sup>st</sup> Floor Public Conference Room, 111 North 11<sup>th</sup> Avenue, Caldwell, ID

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*Meeting* Commission Meeting—Model Contract Terms

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### Commission members present

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Molly Huskey, Chair, District Judge | Darrell Bolz, Vice Chair, Juvenile Justice Comm. | Kimber Ricks, Madison Co. Comm. | William Wellman, Defense Attorney

Ian Thomson, Exec. Dir. | Nichole Devaney, Admin. Asst.

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### Commission members absent

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Chuck Winder, Senator | Christy Perry, Representative | Sara Thomas, SAPD (arrived late at 12:00pm)

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### Others present

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None

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Item	Responsible
1. Welcome and Call to Order: Called to order at 8:35am	Huskey
2. Approval of Meeting Minutes (3/3/15): Mr. Wellman moved to adopt the minutes as presented, Mr. Bolz seconded, and the motion unanimously passed with one small typographical correction.	
3. Determination of who will attend the PDC Presentation to I.A.C. on June 11 <sup>th</sup> : Judge Huskey stated that it was not necessary for all members to attend. Ms. Thomas, Comm. Ricks and ED Thomson will already be in Coeur d'Alene, and suggested that either she or Mr. Wellman complete the group. Comm. Ricks suggested that anything the Commission wanted to talk about to better explain its purpose would be helpful for the audience. Judge Huskey recommended taking 30 minutes or so to go over the contract terms and then allow 30 minutes or so for questions. Comm. Ricks agreed, stating that the commissioners rely heavily on county staff and supporters to draft new contracts. Judge Huskey recommended the contracts terms discussion be the topic for the full hour and a half allotment. ED Thomson offered to forward an email in advance to all the Commissioners asking for suggested questions/concerns. Judge Huskey recommended tailoring the email to specify questions about contracts. Comm. Ricks mentioned that it would be helpful if the PDC touched on the issue of how the determination of who qualifies for a public defender is made. Mr. Bolz noted that it might be helpful for model contract terms to include a definition of a "flat fee contract" or that this issue be addressed with the IAC. Comm. Ricks reminded the PDC that there is clear division between some counties. The PDC needs to remember the differences between those counties with full-	

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time commissioners, and in-house public defender offices. He expressed a desire that the PDC make an attempt and trying to mend some of those fences.

4. Suggestions for use of excess Operating Budget FY 2015:

At this time the anticipated operating funds available total approximately \$25,000. Mr. Wellman referenced the Executive Leadership training discussed in the previous meeting, and inquired whether that was something the Commission wanted to use the money toward. ED Thomson referenced an email he forwarded to all the institutional office heads stating that he had only received interest from one person. Judge Huskey suggested offering leadership training to some of the up and coming PD's who show interest in leadership. Comm. Ricks commented that selection of individuals should be approached with caution so as not to give any appearance of favoritism. Judge Huskey proposed that she and ED Thomson get together over the next month and select a handful of potential individuals and establish a potential cost.

ED Thomson suggested that some of the funds could be used toward educating the Commission, such as bringing out David Carroll from the Sixth Amendment Center to make a presentation to the group. He recommended asking him to come for the June meeting. Judge Huskey and Mr. Wellman agreed that would be a good idea. ED Thomson will contact him to see what his availability is in June. Comm. Ricks asked if this type of training should be open to the attendance of some of the interim committee members. Judge Huskey liked that idea and recommended getting Mr. Carroll's availability and then the Commission could determine which other individuals would benefit from a presentation that day.

Mr. Bolz stated that if some money is reverted back to the general fund this year, it would not likely affect the Commissions budget next year. The legislature understands the Commission is new and will need a year to establish itself and its expenses.

5. Model Contract Terms:

Huskey/Wellman/  
Ricks

The Commission then undertook a close examination of the contract terms.

Case Types: Mr. Wellman suggested that the PDC use an inclusive approach that would strive to identify any case where a person's liberty is restricted. Mr. Wellman suggested that this list be incorporated with some verbiage within these terms to help Commissioners. ED Thomson suggested including direct appeals for all cases, whether that be by contract or through the SAPD's services. There was also additional discussion of including appeals of juvenile delinquency matters.

Reports and Inspections: The Commission will recommend that annual reporting occur at the end of the county's fiscal year, and that it be submitted by the last day of October. The specifics of what that annual report should include were discussed and refined. That information must include all of those attorneys that provide services under the contract, regardless of whether they are the named attorney under the contract.

Caseload Reports: There were suggestions that the proposed wording be modified to reflect the annual reporting requirement and to include the case types already included.

Expenditure Reports: Suggestions were made to reflect the annual reporting and to include the case types. ED Thomson suggested adding language to distinguish between extraordinary expenses being spent out of original budget appropriations vs.

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supplemental funding coming from the court. Commissioners generally agreed that the PDC should develop a standard form or report to be used by reporting attorneys, and that there would be a significant benefit in having all counties use the same form.

Other: There was some discussion around the bar complaint process. It was determined that the requirements would be triggered by bar discipline instead of a complaints.

Performance Expectations to be Considered: Mr. Wellman opened it up to the Commission for direction as to whether the ABA's Ten Principles of a Public Defense Delivery System, their guidelines for the defense function, or the NLADA Performance Guidelines should be incorporated or used in the terms of the contract. He asked, how the Commission might refer to them in a model contract. What burden would they place upon the counties? There was general agreement amongst the Commissioners that the ABA Ten Principles, along with part of the preamble, should be a mandatory provision of the contract. The Ten Principles could be attached as an addendum. There was a discussion about state and county exposure to liability once standards and aims are adopted. Ms. Thomas reminded the members that any proffered terms will be presented to the Legislature for adoption; if the counties then choose not to adopt them then the state and or county may open themselves up to liability (the state for not making them mandatory, and the county for acting contrary to state recommendation).

There was also a discussion of the NLADA Guidelines compared to the ABA Guidelines for the Defense Function Standards. The Commissioners generally agreed that the NLADA Guidelines were (1) more recent, (2) incorporated most of the ABA guidelines, and (3) were more relevant to indigent defense practice. At the suggestion of Ms. Thomas and Chair Huskey, Thomson will order a bound volume of the NLADA guidelines for each county and member of the interim committee. There was general agreement to remove all caseload/workload issues from the initial model terms. Instead, attorneys should be guided by the ABA Ethics Opinion 06-441, which would be attached as an addendum.

In discussing caseload, the issue of capital cases came up. Chair Huskey wondered whether it would be instructive for the members of the Commission if she were to arrange a meeting with J. Burdick, and obtain the court's interpretation of 18-4004A, and whether a First Degree murder case is considered a death penalty case in the absence of a filing of the Notice of Intent to Seek Death, before the statutory 60-day period after arraignment has been satisfied, or where that period has been extended by an agreement of all parties. Should the capital standards apply in the interim? Otherwise, the defense team is at a significant disadvantage and very behind if that decision is made months later.

Other Proposed Meetings: Ms. Thomas pointed out that the PDC will be going through the Executive Legislative System. Any proposed model contract terms need to go through the Governor's office, and reviewed by David Hensley or Mark Warbus. Chair Huskey would like to sit down with Governor's Office in advance of submitting any rules. Ms. Thomas offered to arrange that meeting. Comm. Ricks also offered to help arrange the meeting with Mr. Warbus. The PDC's goal would be to use the June IAC meeting as the start of a comment period, with feedback incorporated into the terms by September. (The IAC fall meeting is to be held from September 28-30 at the Grove Hotel.)

It was also suggested that Chair Huskey and Dan Chadwick have a meeting with Comm. Yzaguirre (Ada County), to find out what are their concerns. A meeting could be

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set-up for early May. There was an inquiry whether the IAC, and Dan Blocksom, could be used to assist counties in constructing model contract terms until the PDC is able to do so.

Ms. Thomas made a motion for the PDC to ask for another FTE-attorney position next year, who could work with the counties to create RFP bids, and to manage, write and construct contracts. Mr. Bolz seconded the motion. Comm. Ricks inquired as to whether it was premature, and whether anything similar already existed. Ms. Thomas explained that such an attorney would be an expert on the issue, and would constitute an actual service where the state (through the PDC) could off-set a cost to the counties. Comm. Ricks asked whether the PDC was appointing itself to act in that capacity. Ms. Thomas indicated that participation would not be mandatory. Chair Huskey added that the attorney could also help arrange and develop PD trainings, and data reporting. Such a position would require additional legislation. The vote in favor of the motion was unanimous (five present).

Grounds to renegotiate contract: Ms. Thomas believes there needs to be a clearer standard, other than “significant changes”, when a defending attorney is justified in renegotiating a contract. The Commission should look for a definition of what constitutes a “significant change,” and should probably include a definition of materiality. Ms. Thomas also believes there needs to be an “out” provision, like in Blaine County, in the event any case exceeds 60 hours of attorney-time. In that event, the attorney would have to notify the county, and then estimate the time required. In that event, the attorney would then be paid by the hour. The administrative district judge would then make a determination of the appropriate number of hours and the reimbursement rate, under seal.

Qualifications and Case Requirements: Many of the remaining terms had already been taken up in the previous contract terms meeting on January 28<sup>th</sup>. There were some adjustments suggested when addressing capital cases. There was also lengthy discussion surrounding the experience qualifications required for juvenile representation, and whether the same case severity distinctions should be made when distinguishing between certain felonies and delinquency cases. The Commission generally agreed that serious adult felonies would be divided if the possible exposure was 15 years or greater, or where certain mandatory minimums applied. Juvenile cases need to be distinguished between whether the cases are waivable and non-waivable crimes (whether the cases are transferrable into adult court). There was considerable discussion as to what qualifications should be necessary in those types of cases. There was general agreement that any resulting model contract term should parallel the statute that discusses transferring jurisdiction from juvenile to adult court.

6. Next Meeting: May 5, 2015, 1 – 5pm

Agenda Items for Next Meeting:

Review and finalize model contract terms; should discuss IAC presentation in June; follow-up on David Carroll meeting in June; postpone discussion on strategic plan and caseload/workload studies.

Proposed to meet again at Canyon County Administration Building.

7. Adjournment

Huskey

Attachments:

Proposed Model Contract Terms (Rough Draft)