

MEETING MINUTES

STATE PUBLIC DEFENSE COMMISSION

Date | time 7/14/2016 9:00 AM | *Location* PDC Office, 816 W. Bannock Street, Suite 201, Boise, ID 83702

Meeting: July Commission Meeting

Commission members present

Darrell Bolz, Chair, Juvenile Justice Comm. | Eric Fredericksen, SAPD | Christy Perry, Representative | Chuck Winder, Senator(arrived at 9:18am left at 11:29am) | William Wellman, Defense Attorney | Linda Copple Trout, Administrative Director of the Courts

Kimberly Simmons, Executive Director
Nichole Devaney, Admin. Asst.

Commission members absent

Kimber Ricks, Madison Co. Comm. |

Others present

Kathy Griesmeyer, ACLU | Bryant Jones, Boise State University | Prof. Stephanie Witt, Boise State University | Dan Chadwick, IAC

Item	Responsible
1. Welcome and Call to Order: Chair Bolz called the meeting to order at 9:07am.	Bolz
2. Approval of prior Meeting Minutes (6/21/16 and 7/1/16): Wellman moved to approve the commissions minutes from the previous meeting held on June 21 st Frederickson seconded, and the motion passed unanimously. Trout moved to approve the July 1 st meeting minutes, Wellman seconded and the motion was unanimously approved.	Bolz
3. Executive Director Report	Simmons
a. Deputy Director Position Update – Summary of Selected Candidates/All Candidates: There were a total of 27 applicants, 13 of which were lawyers the remaining applicants held public administration degrees. 8 of the candidates have been selected for interviews, half of those are lawyers. ED Simmons summarized each of the interview candidates. Interviews will be conducted on July 18 th & 26 th . The hope is to bring them on by mid-August to join ED Simmons in meetings with the remaining districts. The members commented that they were pleased with the outcome of applicants.	
b. District Meetings: ED Simmons met with public defenders from Boundary, Shoshone, Latah and Nez Perce she will go back in August to meet with the Nez Perce Commissioners. She shared that she is learning a lot about the smaller counties and how the contracts are working. She also met with District 7 commissioners in Bonneville, Teton, Bingham, Butte, Lemhi and Clark counties. Contracts have been the basis of most discussions. Bolz asked if Mr. Chadwick	

had received any feedback from the counties and he responded that ED Simmons probably would have more information. ED Simmons shared that many of the counties are asking about the standards in terms of contracts and implantation concerns. Her response to those concerns has been that the commission is working on those standards now but they should refer to the 10 principles and the model contact terms as a guide to what those standards might look like. Which has seemed to ease some of their fears. She encouraged them to keep communication open as the Commission develops the standards indicating their input is vital. Many of the counties have already begun filling out their Grant Application. District 6 – ED Simmons will be meeting with Power and Oneida who are discussing joining. There are rumors Madison and Jefferson may do the same. Wellman asked if the counties are understanding that they will need a PD office to house the joint PD's rather than contracting with a firm. ED Simmons responded that they seem to be clear on the issue. The northern counties are not really having decision about joining simply because the distance between courthouses doesn't make it feasible. Bolz shared that he thought some of the counties may wait to see how well it goes for other counties before deciding to join. ED Simmons continued, stating that some had expressed concerns the legislatures intent was to bring all PD's in house, but she assured them that was not the legislatures intent. Trout asked if any of the counties had indicated they are struggling with immigration translation issues. ED Simmons replied that yes there are a few counties having issues with translation. Trout shared that the court system was provided a grant and a portion of it is designated for language which could be useful to PD's. Bolz asked how interpretation issues are handled in District 4. Wellman replied that Canyon has a great program and his county does well if the client is Spanish speaking beyond that it can be difficult. ED Simmons continued explaining she would be meeting with counties from the 5th District the following week. Bolz commented that the one local county he may be concerned with regarding the grant application program is Washington County. ED Simmons shared that two grant applications had been received so far. She will make her notes available to the commissioners if they are interested. She alerted the members that there is one county that is unhappy with their PD. Mr. Chadwick asked ED Simmons to have the county call him and he will work with them on a resolution. Fredericksen asked if ED Simmons is getting a good idea of what kind of data the Commission could collect. ED Simmons responded that numbers are being submitted however it is not necessarily in the form that was requested in the application but they are providing the information. Bolz asked if ED Simmons could find out how Odyssey is working for Twin Falls. Wellman shared that Justware will only lease their software at a cost of \$25,000. The members are interested in the possibility of the Commission having a large lease with Justware that the smaller counties could then utilize. Perry asked that the members keep the topic of time tracking on their radar as that data would need to be collected to gain a true picture of what is occurring in the counties.

4. Training Funds – Rules

Simmons

- a. Application for Scholarship Funding: Shannon Romero of the SAPD inquired as to when funding would be available to send investigators to training. In response to that request ED Simmons constructed a scholarship funding application based

on the training rules. Wellman moved to accept the application for use, Winder seconded. Trout asked about Section B – Practice, wondering how an investigator would complete that section. Wellman suggested that it be worded differently to accommodate investigator participation. Trout suggested it read “as it relates to indigent criminal defense”. The members unanimously agreed to accept the application with the revision. ED Simmons commented that the rules state that the commission or the ED could approve, asking how would the members like to handle approval? They agreed that ED Simmons could make the decision however they would like to be aware when it has occurred. They are also interested in how the material will be shared.

5. Extraordinary Litigation Definition: Trout asked if there were any supreme court cases that will help to define extraordinary. Perry asked that Mr. Chadwick ask the counties what that would mean to them. Bolz questioned whom should make the decision – will it be a court or Commission decision. The members agreed that it should be the Commission since the moneys would be disbursed by them. Mr. Chadwick shared that this is a big issue because there is little supervision. The claims are being processed without oversight. He continued stating that this will cause relationship problems if not resolved. Expressing that a court rule or something needs to be enacted as to how these types of requests are handled. There is total disregard for Idaho regulations in some counties when it comes to the disbursement of funds. County Commissioners are feeling as if they are not trusted. Fredericksen asked Mr. Chadwick if the counties will have an issue with the definition or the process, Mr. Chadwick responded that the process will be the point of contention. Fredericksen stated that this is an item that should be addressed sooner than later. Wellman asked if this should follow the rule making process. ED Simmons responded that if that was the route in which the Commission wanted to take the deadline to do so had passed. Perry commented that this issue could be handled using a temporary/proposed rule as long as everyone had signed off on it. ED Simmons agreed to look at the deadlines for a temporary rule and discuss it with the counties. Mr. Chadwick shared that the IAC has been discussing this issue and putting together a fund but the standards have been difficult to develop.
6. Guardian –Ad-Litem: Twin Falls asked if this would be an item to include in the local share calculation. In statute it states others represented at the public’s expense. Wellman asked what type of cases the attorneys are being appointed. Trout responded typically they are Child Protection. ED Simmons commented that some counties are including this expense in the PD’s budget and therefore should it be included in the local share? Bolz responded that however the members decided to handle it they will need to be specific to ensure consistency across the state. Perry shared that this is an issue that came up in the Foster Care Legislation and she is interested in any information provided to the Commission.
7. Promulgation of Standards and Guidelines – Prioritizing and Selecting Standards to create for submission to Legislature in January 2017: A notice of intent was submitted on Friday. The notice focuses on the ten principles indicated in statute (sub section 7).
- a. ACLU priorities – Kathy Griesmeyer Presentation: There are two overarching themes. The first being that the standards are created. They encourage the 10 principles of the ABA. Addressing coverage at initial appearances, investigation monies and the flat fee contract issue. Flat fee salaries are specifically an issue. The second point is that the funding is not sufficient and their hope is that the

Commission will be an advocate for additional funding. The ACLU will stand behind the Commission in any instance in which they go before the legislature to request additional funding. Winder asked if the numbers have been run comparing increased cost of flat fee salaries versus non flat fee. Ms. Griesmeyer continued sharing that the ACLU wants to make sure the counties have the support that they need and that everyone is receiving their 6th Amendment Rights. Perry responded to Winder's question stating that in a presentation Mr. Chadwick had given to the Interim Committee the counties were seeing a 15% increase just with the flat fee contracts and anticipating 30% with the introduction of the standards. Winder expressed that this information should be available if the Commission intends to request additional funds. Budgets are due in September and the Commission will need to have an idea of what that looks like. Winder asked if Perry could introduce ED Simmons to JFAC and some of the other stakeholders to obtain some of that information. It was stated that having an attorney at initial appearance is not an issue anyone disputes but it is a tough issue to resolve and will require a lot of funding. ED Simmons shared that the counties are trying to comply with the flat fee issues as contracts expire.

- b. David Carroll/Bob Boruchowitz Recommendations: ED Simmons shared that their recommendation included initial appearances, caseload and performance standards for defending attorneys. She commented that the counties expressed some concern with performance standards as that may impact their ability to hire attorneys in the rural counties.
- c. ACCD Statement on Caseloads (Handout):
- d. Deadlines: Sept. 2 for Proposed Rule; Nov. 25 for Pending Rule:
- e. Michigan Standards: Trout shared that there is a fair amount out there so the Commission will be able to borrow a number of standards and will not need to reinvent the wheel.

ED Simmons asked for some direction from the members as to how they would like to proceed. Wellman suggested honing in on the principles that will fit all 44 counties and set the standards aside that will need to be manipulated to fit the individual counties. Perry commented that Judge Huskey had some caseload information at one time and asked if that could be forwarded to the members. The admin will send an email with the available information.

The members agreed the focus should be Initial appearance, caseload/workload, performance standards and the flat fee issue. ED Simmons asked what the intent was of the flat fee removal. Perry shared that prior to the statute change there appeared to be some dis-incentivizing occurring with the flat fee because attorneys were given a flat amount for everything involved in the case. ED Simmons commented that she is discovering that investigative services is something that is not occurring in all counties and should be addressed.

ED Simmons asked if there is anything outside the statute that the Commission wants to focus on. The members agreed that all other items could wait at this point.

8. Data Collection

- a. BSU School of Public Service: Presentation by Bryant Jones and Prof. Stephanie Witt: ED Simmons spoke with Mr. Jones a few weeks ago, she asked him to speak

to the commission on how they could assist with data collection. Mr. Jones shared the purpose of the school and how information collection affects public policy. Prof. Witt shared that while other groups that have completed data collection in other states could be used in Idaho that information may not be uniquely Idaho and would be at a greater cost. Other states have provided good models that the school could modify to fit the Commissions needs using a more cost effective method. Prof. Witt continued expressing that she has a special interest in this project due to the rural county aspect of it. If the Commission could put together a scope of work they would provide a proposal for a timely, cost effective study. Missouri is willing to share their survey software and it may be beneficial to speak to them. Her one fear is that their model may be to complex for the rural counties but it could be adjusted. Perry asked about the BSU policy group that did surveys previously. Prof. Witt responded that the University wanted the group to go in a different direction but Prof. Witt continued to do some of the public policy and training then the Public Policy Research Center, Applied Research Institute was developed to do that type of work. Perry asked what the difference was between the McClure Institute and others in the state. Mr. Jones responded that they work closely with those other schools but they have particular fields of study whereas the Applied Research Institute’s focus will be public policy. Wellman commented that he is looking for something that will be able to tell him how much time he spent on a particular type of case. Prof. Witt responded that it is difficult when some counties may be using paper systems and may not have web interfacing available to utilize a case management system, this would be the information they could collect. Wellman shared that the commission needs to consider time tracking as part of the standards. It will be necessary to teach PD’s to track their time. Prof. Witt expressed that they would be able to determine what is currently being used and then the Commission could then determine what the method should be moving forward. Mr. Jones shared that when the commission is making the decision as to if it would use an outside source or the school program, to keep in mind utilizing their program will help provide students of the school with experience and to complete their degree. The members agreed that data collection is needed but the grant applications should provide direction and would be discussed at a later time.

- 9. Commission Members: Bolz welcomed Eric Fredericksen to the commission. He shared that Justice Trout’s term had been extended. Election of Officers will be conducted at the next commission meeting. Bolz
- 10. Executive Session: Pursuant to Idaho Code 74-206, convene in executive session to consider personnel matters and or litigation (Idaho Code 74-206(1)(a) &/or (f)). There was no need for an executive session. Commission
- 11. Future Meeting Schedule: August 2, 2016 at 1:00pm. Additional meetings may need scheduled.
- 12. Next Meeting Location: PDC Office - 816 W. Bannock Street, Suite 201, Boise, ID 83702, Justice Trout said she would be a little late.
- 13. Agenda Items for Next Meeting: Budget Preparation, Election of Officers, Rules

Item

Responsible

14. Adjournment: Wellman moved to adjourn, Fredericksen seconded and the motion passed Bolz unanimously. The meeting was adjourned at 11:35am.
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Attachments:

- Deputy Director Candidate Summaries
- Scholarship Funding Application
- ACCD Statement on Caseloads
- Michigan Indigent Defense Commission Standards
- Intent to Promulgate Rules Form