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# MINUTES

Idaho State Public Defense Commission Meeting

Attendance via Zoom meeting was encouraged

Masks and social distancing were encouraged at meeting site

Public Defense Commission Conference Room

816 W. Bannock Street, Boise, Idaho 83702

December 15, 2022 at 10:00 am

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*Commission Members Present (via Zoom):*

Darrell Bolz, Chair, Eric Fredericksen, Vice Chair, Angie Barkell, Dan Dinning, Linda Trout

*Commission Members Absent:* David Cannon, Jim Woodward

*PDC Staff Members Present at Meeting Site:* Kathleen Elliott, Jennifer Cichocki

*PDC Staff Members Present (via Zoom):*

Mark LaSalle, Jared Ricks, Jennifer Roark, Tammy Zokan

*Members of the Public Present (via Zoom):* Joe Aldridge, Rena Rallis and Scott Zanzig, Idaho Attorney General's Office

*Welcome and Call to Order – Chair Bolz*

The meeting was called to order at 10:05 am

*Consent Agenda*

*(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 so requests, in which case the item will be removed from the Consent Agenda and placed on the regular agenda.)*

FY2023 Actual and Budget Report September

FY2023 Office Budget September

FY2023 Actual and Budget Report October

FY2023 Office Budget October

FY2023 Actual and Budget Report November

FY2023 Office Budget November

Approval of October 11, 2022 Meeting Minutes

Commissioner Dinning moved to approve the Consent Agenda. Commissioner Trout seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

#### *Executive Director Report:*

Ms. Elliott reported on the Regional Coordinators' and Data Analyst's continued work on processing data from the FY2022 Defending Attorney Annual Reports (DAAR). She said the counties' annual Expenditure Reports are due on January 3, 2023 and some counties have already submitted their report. Ms. Elliott referred to the open houses held by PDC Staff to provide assistance with completing DAARs and Expenditure Reports. She said Annual Reviews will start in January and the Regional Coordinators have already scheduled a number of meetings. Ms. Elliott listed the exciting PDC trainings planned for 2023: Leadership Forum for Idaho Defending Attorneys February 27 – March 1, in partnership with NLDA, PDC<sup>2</sup> Trial College May 21-26, also in partnership NLADA, and Pozner on Cross: Advanced Cross in the Chapter Method Pozner, which will be on dates in July in northern Idaho, the metropolitan area and eastern Idaho. Larry Pozner is a nationally recognized expert on cross examination and has developed a new "one and done" discovery method. Ms. Elliott also referenced the recently launched PDC online library of recorded PDC trainings and said feedback is very positive about ease of use and on-demand availability.

#### *2023 Legislature:*

Chair Bolz referred to the upcoming 2023 Legislature and summarized the significant changes in elected representatives in the House and Senate. He reported the committees most significant to PDC's work, JFAC and Judiciary and Rules, have new Chairs and Co-Chairs, as well as some new members. He said it is going to be interesting how these changes impact legislation and budgeting for PDC. Chair Bolz said he will try to educate the new members of these committees, and noted it is going to take time for the new Legislators to get up to speed. He reported the General Fund Budget Monitor has determined that revenues are 7.2% above last year but below DFM's forecast and mentioned the competing demands on any surplus. He said the session begins on January 9, 2023, and reminded the Commission that the Legislators will spend the first few weeks of the session going through administrative rules, and that the PDC does not have any rules changes this year.

Ms. Elliott reported that the PDC will present to JFAC on February 13, 2023.

#### *Joint Regional Coordinator Report:*

Mr. Ricks and Ms. Roark said they did not have additional information to add to their written report.

Ms. Elliott complimented PDC Staff on all their work in managing forms like the DAAR and Expenditure Report and following up on the reports that are incorrect or incomplete. She said the electronic forms provide for a lot of efficiencies, but it takes quite a bit of work to gather, check, follow up on and process data.

Chair Bolz also expressed appreciation for staff's work and said the work is moving Idaho public defense in the right direction.

*Policy 102 Public Records and Procedures Repeal:*

Ms. Zokan reported this policy should be repealed because it duplicates much of what is the Idaho Public Records Act and information about PDC's public records custodian, records location and records request form is included in PDC Policy 100 General Information Policies adopted by the Commission on October 11, 2022.

Vice Chair Fredericksen moved to repeal PDC Policy 102 Public Records and Procedures. Commissioner Trout seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

*Policy 103 Incoming Communications Review Repeal:*

Ms. Zokan reported this policy should be repealed because it is outdated and an updated policy describing PDC's current process for responding to all types of confidential incoming communications received by the PDC has been prepared and is the next agenda item.

Vice Chair Fredericksen moved to repeal PDC Policy 103 Incoming Communications Review. Commissioner Trout seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes

Darrell Bolz, Chair  
The motion carried.

Yes

*New Policy 103 Incoming Communications Review Adopt:*

Ms. Zokan reported this proposed new policy has been updated to reflect PDC's current process for responding to all types of confidential incoming communications received by the PDC and PDC's current response template, and gives PDC Staff the flexibility to adapt their response to the incoming communication.

Commissioner Trout asked about the bullet specific to the *Tucker* litigation and whether it should refer to any litigation in which the Attorney General's Office is representing the PDC.

Ms. Zokan referred to the previous version of the policy and suggested any changes to the proposed policy be reviewed by the Attorney General's Office.

Commissioner Trout expressed concern about repealing the previous version of the policy without adopting a new one in its place, and the impact it may have on incoming communications.

Vice Chair Fredericksen suggested adopting the policy to address Commissioner Trout's concerns for review by the Attorney General's Office, and then the Commission can act on additional changes at its next meeting, if needed.

Commissioner Trout moved to approve PDC Policy 103 Incoming Communications Review with changes to reflect that all such confidential correspondence will be saved in the S: drive so that it is available to the Deputy Attorney General (and their staff) assigned to represent the PDC in any litigation, rather than just the *Tucker* litigation, provided such change is reviewed by the appropriate Deputy Attorney General. Commissioner Dinning seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

*New Workload/Caseload Counting and Financial Assistance Policy Adopt:*

Ms. Elliott recommended tabling this policy until additional Defending Attorneys are appointed to the Commission.

Chair Bolz said that is wise and the PDC does not want there to be a perception that the Commission is adopting policy impacting Defending Attorneys without their input.

Vice Chair Fredericksen moved to table the PDC Workload/Caseload Counting and Financial Assistance Policy. Commissioner Trout seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

Chair Bolz said Commissioner Dinning requested to address the Commission before going into executive session.

Commissioner Dinning said that if this is his last Commission meeting, he wanted to take the opportunity thank everyone for all their work and the opportunity to work with them. He said he started his appointment from the position of someone who resented the Commission and he now values it. He said Commission and staff have all played a significant role in advancing public defense in Idaho.

Chair Bolz expressed his appreciation to Commissioner Dinning as a valuable member of the Commission, and thanked him for his important perspective and significant time and effort.

Chair Bolz reported that he advised Commissioner Dinning prior to the meeting that Idaho Code 67-303 provides that a person remain in their appointment until replaced, unless the underlying statute provides otherwise.

#### *Executive Session:*

Commissioner Dinning moved to pursuant to Idaho Code 74-206, convene in executive session under Idaho Code 74-206(1)(d) to discuss records exempt from disclosure under Idaho Code 74-105(18)(a) and under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation. Commissioner Trout seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent

Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

The Commission went into executive session at 10:43 am.

Items discussed in executive session:

10:43 am – Discussion under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation; Deputy Attorney General Scott Zanzig, Paralegal Rena Rallis and Special Deputy Attorney General Joe Aldridge, were present

10:53 am -- Discussion under Idaho Code 74-206(1)(d) of records exempt from disclosure under Idaho Code 74-105(18)(a)

*Chair Bolz called the meeting back to order at 10:58 am.*

*Final Action or Decision on Items Considered During Executive Session:*

Vice Chair Fredericksen reported he would be abstaining on voting on items from executive session.

Commissioner Trout moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #35 as lead counsel for capital appeals/post-convictions under the alternate requirements. Commissioner Dinning seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Abstain
Darrell Bolz, Chair	Yes

The motion carried.

Commissioner Trout moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #36 as lead counsel for capital appeals/post-convictions conditioned on their admission to the Idaho State Bar or permission to appear pro hac vice. Commissioner Dinning seconded.

And the roll call vote to do so was as follows:

Angie Barkell, Member	Yes
David Cannon, Member	Absent

Dan Dinning, Member	Yes
Linda Trout, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Abstain
Darrell Bolz, Chair	Yes

The motion carried.

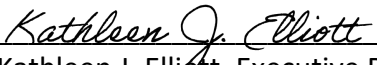
*Future Meeting Dates:*

January 26, 2023 at 10:00 am

*Adjournment – Chair Bolz:*

Chair Bolz adjourned the meeting at 11:03 am.

Minutes approved by the Commission on January 26, 2023

  
Kathleen J. Elliott, Executive Director