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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

April 14, 2023 at 9:30 am

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*Commission Members Present (via Zoom):*

Darrell Bolz, Chair, Eric Fredericksen, Vice Chair, Ben Andersen, Angie Barkell, Dan Dinning, Melissa Wintrow

*Commission Members Absent:* David Cannon, Linda Trout

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

*PDC Staff Members Present (via Zoom):*

Mark LaSalle, Jared Ricks, Tammy Zokan

*Members of the Public Present (via Zoom):* Special Deputy Attorney General Joe Aldridge; Counsel and Policy Advisor to Governor (and liaison to the PDC and SAPD) Jared Larsen

*Welcome and Call to Order – Chair Bolz*

The meeting was called to order at 9:33 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 March

FY2023 Office Budget March

Approval of March 21, 2023 Meeting Minutes

Approval of April 4, 2023 Special Meeting Minutes

Vice Chair Fredericksen moved to approve the Consent Agenda. Commissioner Dinning seconded.

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

Ben Andersen, Member	Yes
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Angie Barkell, Member	Yes
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David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Absent
Melissa Wintrow, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

*Executive Director Report:*

Ms. Elliott reported PDC staff are currently working on a convergence of three significant activities: Defending Attorney Annual Reports (DAARs), Annual Review of the counties' support of public defense, and financial assistance applications. She referred to Mr. LaSalle's DAAR status graphic in the meeting materials. She reminded the Commission that the DAARs were due on November 1, 2022 and the Commission received more than the previous year but there were still many outstanding. She said the PDC gave counties an opportunity to encourage their defending attorneys to submit their DAARs so the information could be included in their financial assistance application forms, and this resulted in the submission of 72 additional DAARs. She reported this additional reported data roughly translates to 420 additional felony case equivalents and two additional attorneys statewide. She reported the Regional Coordinators have been working on the Annual Reviews the last three months and meeting with county representatives, and Annual Review reports will be provided to the counties on April 17 and be published on PDC's website. She said the Regional Coordinators did an excellent job and continue to encourage progress by the counties during the next 15 months. She reported the PDC prepared financial assistance application forms for each county prepopulated with data the PDC already had, leaving less for each county to complete. She said these were sent on April 1 to counties for which all DAARs had been received or who elected not to take the opportunity to submit missing DAARs. The counties that elected to submit additional DAARs by April 7 will get their financial assistance form populated with this data today. The applications are due on May 15 and the PDC has already received two. Ms. Elliott reported she is continuing to work through the change in compensation (CEC) process. She said it is a little different this year because of the statutory changes. She said she is working with DHR and DFM on this and plans to implement CEC early. She noted the PDC's salary savings due to the vacant position. Ms. Elliott reported the PDC's preparation for the PDC<sup>2</sup> trial college and the Pozner Idaho Tour is on schedule. This month the PDC hosted a former LA Times and AP journalist to discuss working with the media during criminal cases and Keith Roark on storytelling. She said the courses have been well received by defending attorneys. She thanked PDC staff for their ongoing efforts to publish applications, reports and reviews on time, answer stakeholder questions and provide support to defenders, clerks and commissioners and said the state is fortunate to have them. She expressed her gratitude for the Commission.

Chair Bolz thanked Ms. Elliott and PDC staff for all their work and noted that it has been difficult at times.

*Joint Regional Coordinator Report:*

Mr. Ricks said he did not have additional information to add to the Regional Coordinators' written report.

*H0236 and H0367:*

Ms. Elliott reported she met with DFM and DHR earlier in the day about the transition to the new system and they are being supportive. She said each time she reads through the new legislation she notices something new. She said she expects a lot of changes.

Chair Bolz noted that H0236 covers the changes to the public defense system, H0367 provides the budget for it and H0380 provides the funding for the transition to the new system. He asked Mr. Larsen if he wanted to make any comments.

Mr. Larsen noted that H0367 is the trailer bill containing the appropriation providing the funding as stated in the H0236 Fiscal Note. Mr. Larsen reported that this year's legislation is the second phase of what passed last year, HB735 as amended. He said last year's legislation relieved the counties of their responsibility to fund public defense. He said that was done first and then this year's legislation provided that public defense would be fully funded and operated by the State. He said H0236 is the result of a long effort by public defenders along with others, some behind the scenes and some upfront. He summarized some of the provisions in H0236 including that it contains a timeline for the handoff for the State's operation and fully funding of public defense in Idaho. He said the State is essentially already completely funding public defense for counties as of FY23 and FY24, so in essence Idaho already has a state funded public defense system. He noted that the State Public Defender will be responsible for public defense in the state and this person will be vetted by a commission that will submit a list of three to five nominees to the Governor. He reported the reason for this is the desire for political independence. He said there was also a desire for local involvement and influence on public defense in Idaho and the nominating commission was a compromise that also addresses this desire. He said the work to organize the nominating commission and then their work to vet nominees begins immediately so the State Public Defender can be appointed by July 1, 2023. He said the State Public Defender will be located in the PDC and will be working with the PDC to carry out designated functions for the year. He said the State Public Defender is authorized to hire nine additional staff and they will also be employees of the PDC. He reported the regional component of the new system is in response to the desire for local influence on public defense. He said the district defenders will be hired by a modified magistrate commission and the State Public Defender may nominate two attorneys. He said this is a unique system that Idaho has not done before but it is meant to address the desire for local control because of the impact of public defense on counties even with a state system. He described how the State Public Defender may be removed and the purpose in protecting that role's independence. He said while the State Public Defender will not directly hire district public defenders, the State Public Defender can remove them for specific reasons. He said effective October 1, 2024 the funding for the State office will include \$12 million from sunseting the PDC plus \$36 million appropriated to the Public Defense Fund. He said any other additional funding needs will go through the regular State budget and appropriation process. He reported some concerns about the adequacy of the funding but said it is important to understand that the initial year is only three quarters of a year and then the State will have several

months to study the needs to see if funding is adequate. He said if funding is inadequate, he is comfortable there will be sufficient opportunity to review and address this in the FY26 budget.

Chair Bolz asked Mr. Larsen to confirm that the State office will be on the State fiscal year starting FY26.

Mr. Larsen said that is correct and the office will set its budget during the State's FY25 for FY26, and then on and after FY26 will be on the State's fiscal year. He reported that some of the other bills passed by the Legislature this year impacted the new legislation and one of the pieces he did not get is the continued funding escalators for public defense. He said this was part of the reason the Governor vetoed one of the bills. He said the Legislature fixed other pieces but not this one, but he still feels like the State has ample wiggle room. He said one change was from quarterly to annual funding of the Public Defense Fund. He said this gives certainty that funding will be there even if there is a massive unforeseen reduction in sales tax, and money will be available the first day of the fiscal year.

Chair Bolz noted that the PDC statute has not been amended to include the State Public Defender.

Mr. Larsen said the State Public Defender will be an employee and not a member of the Commission. Mr. Larsen said he echoes Ms. Elliott's earlier comments. He expressed his appreciation for the work the Commission has done and will continue to do. He said he has no doubt the State is in a much better place than before the Commission. He said public defense has advanced in the state and the credit goes to the State and the people around the state ensuring constitutional representation. He said on behalf of the Governor he appreciates how much work Ms. Elliott, the Commission and PDC staff are doing. He reported that his office is committed to making the new system successful and all are welcome to call him if needed.

Commissioner Wintrow asked how Mr. Larsen foresees all the work PDC has done on standards and other work to improve public defense will transition to the State Public Defender.

Mr. Larsen said there are two ways. He said the transition will depend a lot on the person selected as the State Public Defender and the team they hire. He said in consultation with the Commission the work PDC did on the rules needs to be respected and these could be proposed as rules next Legislative Session, or handled as a matter of employment or contract by the State Public Defender. He said the State Public Defender will set the standard on what they are going to do. He said he thinks the Commission can have a large influence on this. He said when the panel presents nominees for State Public Defender to the Governor, the Governor will support a person who supports the work of the Commission and a constitutional defense system.

Commissioner Wintrow thanked Mr. Larsen. She said she knows all the work the Commission and staff do and she appreciated that this work is going to be elevated.

Mr. Larsen said it is abundantly clear that H0236 is not the last bill about public defense in Idaho. He said the aim of H0236 was to set up the framework and foundation for a State public defense system and now that is in place, we will see how it is going and he thinks there will be more desire by people working in local systems to work together now that they will be working within the State system. He

said another thing that may be considered is whether or not the State wants the State Public Defender Office to roll in CPA cases and whether or not the State wants to roll the PDC standards into the new system. He reported the people involved in the transition will make these recommendations.

#### *2024 Financial Assistance Subcommittee:*

Chair Bolz reminded the Commission that for the last three years the Commission has used a subcommittee to review financial assistance requests and make recommendations to the Commission. He said if there are no objections, the Commission can move forward with the same subcommittee this year.

Ms. Elliott reported this approach has worked well and is efficient. She said Chair Bolz, Vice Chair Fredericksen and Commissioner Trout have been on this subcommittee. She noted she has not asked Commissioner Trout about her availability for the subcommittee this year.

Chair Bolz said since there is no objection, the Commission will use the subcommittee again this year.

#### *Tucker – Public Update:*

Special Deputy Attorney General Joe Aldridge reported discovery deadlines have been extended at the request of Plaintiffs and the State reluctantly agreed to the extensions. He said there is a status conference on May 5, 2023 and all the changes Mr. Larsen described and their effect on the Tucker litigation will be discussed. He said this discussion will include whether the litigation should be wrapped up or moved forward and the parties disagree on this. He noted the State did not want to deal with a motion to compel, and the State is continuing with document production and depositions have been scheduled.

Chair Bolz said he did not know if Mr. Aldridge heard the Plaintiff's testimony during the Committee hearing on the new legislation. He said they testified that the new law would not resolve the litigation.

Mr. Aldridge said he did hear Plaintiff's testimony and Plaintiff's attorney's presentation on Idaho Reports about the new legislation. Mr. Aldridge noted the Plaintiff's demand for a vague concept of constitutional system but they will not tell us what this means in terms of their litigation. He said Plaintiffs have said it is the State's job to figure it out. He said in light of all the changes he intends to tell the court about the new State public defense system and the need for this system to be given the opportunity to work. He said the litigation will be discussed in more detail in executive session.

#### *Executive Session:*

Vice Chair Fredericksen moved to convene in executive session under Idaho Code 74-206(1)(d) to discuss records exempt from disclosure under Idaho Code 74-105(18)(a), under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation, and under Idaho Code 74-206(1)(b) and (d) to discuss employee evaluations and information exempt from disclosure under Idaho Code 74-106(1). Commissioner Dinning seconded.

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

Ben Andersen, Member Yes

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

The motion carried.

The Commission went into executive session at 10:15 am.

Items discussed in executive session:

10:15 am – Discussion under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation; Special Deputy Attorney General Joe Aldridge was present

10:26 am -- Discussion under Idaho Code 74-206(1)(d) of records exempt from disclosure under Idaho Code 74-105(18)(a)

10:30 am -- Discussion under Idaho Code 74-206(1)(b) and (d) to discuss employee evaluations and information exempt from disclosure under Idaho Code 74-106(1); Ms. Elliott was the only PDC staff member present

*Chair Bolz called the meeting back to order at 10:43 am.*

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

Commissioner Wintrow moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #43 as co-counsel for capital trials. Vice Chair Fredericksen seconded.

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

Ben Andersen, Member	Yes
Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Absent
Melissa Wintrow, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

Commissioner Wintrow moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #44's continued eligibility as lead counsel for capital appeal/post-convictions and co-counsel for capital trials. Commissioner Dinning seconded.

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

Ben Andersen, Member	Yes
Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Absent
Melissa Wintrow, Member	Yes
Eric Fredericksen, Vice Chair	Abstain
Darrell Bolz, Chair	Yes

The motion carried.

Commissioner Wintrow moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #45's continued eligibility as lead counsel for capital appeal/post-convictions. Commissioner Dinning seconded.

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

Ben Andersen, Member	Yes
Angie Barkell, Member	Yes
David Cannon, Member	Absent
Dan Dinning, Member	Yes
Linda Trout, Member	Absent
Melissa Wintrow, Member	Yes
Eric Fredericksen, Vice Chair	Abstain
Darrell Bolz, Chair	Yes

The motion carried.


*Future Meeting Dates:*

May 9, 2023 at 9:30 am

*Adjournment – Chair Bolz:*

Chair Bolz adjourned the meeting at 10:51 am

Minutes approved by the Commission on May 9, 2023

  
Kathleen J. Elliott, Executive Director