
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

June 15, 2022 at 10:00 am

Commission Members Present (via Zoom):

Darrell Bolz, Chair, Eric Fredericksen, Vice Chair, Angie Barkell, Dan Dinning, Linda Copple Trout, Sean Walsh, Jim Woodward

Commission Members Absent: David Cannon

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

PDC Staff Members Present (via Zoom):

Jennifer Roark, Jared Ricks, Mark LaSalle, Tammy Zokan

Members of the Public Present (via Zoom): Stephanie Guyon, Idaho Attorney General's Office; Scott Zanzig, Idaho Attorney General's Office

Welcome and Call to Order – Chair Bolz

The meeting was called to order at 10:02 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.)

FY2022 Actual and Budget Report May

FY2022 Office Budget May

Approval of May 10, 2022 Meeting Minutes

Commissioner Trout moved to approve the Consent Agenda. Vice Chair Fredericksen 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

Sean Walsh, Member	Yes
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

Executive Director Report:

Ms. Elliott reported that according to the new legislation, the PDC must submit a certified report of county indigent defense expenditures to the Tax Commission by July 1, 2022. She said Eide Bailly is reviewing county expenditures and preparing a report that will be presented to the PDC Commission later this month. Ms. Elliott said the financial assistance subcommittee will be meeting later this month about FY2023 financial assistance applications and after review, will be making recommendations to the Commission. She reported there were 20 graduates from PDC² trial college this year and for the first time University of Idaho law students participated. She said the students were in their own group and were very engaged. She said the PDC may include additional groups of students next year. She reported that over the last two years 49 attorneys have graduated from PDC² and this equates to more than 10% of defending attorneys.

Vice Chair Fredericksen said he was lucky to teach at the trial college and Idaho has some very gifted new defenders, both students and attorneys.

Joint Regional Coordinator Report:

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

Legislative Update:

Ms. Elliott said she did not have anything to add to what she included in her report.

Chair Bolz reported he has not heard anything more about the new legislation and working group. He said when he hears something, he will share it.

Commission Barkell reported she attended the IACC annual meeting last week and Seth Grigg gave an update on this. She said he said he would be meeting with the Governor's office this week about forming the working group.

Temporary Rules:

Chair Bolz reminded the Commission that the Legislature did not adopt a concurrent resolution extending the PDC rules, so for the PDC to have any rules in place, it must adopt temporary rules. He said the PDC will have, if approved by the Commission today, temporary rules so that the rules that exist today are in place on July 1, 2022. He referred to the new legislation that terminates the rules in 2024 and said the PDC will have temporary rules until that time.

Commissioner Trout said she wanted to confirm the temporary rules contain no changes.

Chair Bolz confirmed. He said if the temporary rules are not presented to the Legislature, the PDC may do temporary rules again next year until the rules go away pursuant to the new legislation.

Commissioner Walsh said he will be opposing the Rules again because of the concerns he said he has expressed about lack of procedures and lack of due process. He said the Commission has seen that bear fruit, and it would have been helpful if the PDC had those procedures. He said the PDC could do better and should do better and would have done better if it had procedures in place. He said standards are needed but PDC could do better as a Commission.

Commissioner Trout asked about a motion.

Ms. Zokan said the Office of Administrative Rules Coordinator requires the motion be in a specific form.

Commissioner Trout said pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These rules,

61.01.01, General Provisions and Definitions;
61.01.02, Requirements and Procedures for Representing Indigent Persons;
61.01.03, Records, Reporting, and Review; and
61.01.04, Financial Assistance and Training Resources.

implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of the PDC's rules without due consideration and processes would undermine the public health, safety, and welfare, of the citizens of Idaho and deprive them of the benefit intended by these rules.

Therefore, Commissioner Trout moved to adopt this temporary rule to be effective upon July 1, 2022.

Vice Chair Fredericksen 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
Sean Walsh, Member	No
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

New Roster Member CLE Counting Policy:

Ms. Zokan reported that this is a new policy developed in response to questions PDC gets from Defending Attorneys who are new to one of the Rosters. Attorneys new to a Roster must complete CLEs to be on the Roster. Once an attorney is on a Roster, they must complete CLEs to remain on the Roster. Under this policy, if the attorney completed required CLEs as a new Roster member within the current reporting period, the attorney is not required to do additional CLEs to remain on the Roster until the following reporting period.

Vice Chair Fredericksen moved to approve the New Roster Member CLE Counting policy as presented. 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
Sean Walsh, Member	Yes
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

PDC Ethics & Standards of Conduct Policy:

Ms. Zokan reported this policy is part of the continued work to update PDC's 2018 General Administrative policies. She said the draft ethics/standards policy is an updated standalone version of the current policy and applies to all PDC Commissioners, appointed Committees and staff. It contains a general principles/expectations and conflicts sections, and process in the event of a conflict when PDC Staff are doing compliance reviews and making recommendations to the Commission. She said the draft policy does not replace or change the PDC policy adopted last year regarding the process in event of an actual or perceived conflict of interest related to Commission/Committee reviews of Defending Attorney qualifications.

Commissioner Walsh said as he previously stated, in his conservative view of law, he is uncomfortable applying the proposed policy to the Commission because the Commission is already covered by State law and the Commission does not have the authority to change it. He said he would approve the policy for PDC staff and Committees but not for Commissioners. He said as a principle of constitutional law he is opposed to adding to or subtracting from law as already applies to Commissioners.

Vice Chair Fredericksen asked Commissioner Walsh which laws he is referring to.

Commissioner Walsh said there are specific ethics laws that apply, and the Commission should not change them.

Commissioner Walsh moved to strike references to members of the Commission from the PDC Ethics & Standards of Conduct policy because he supports the policy as applied to PDC staff and appointed Committees.

Chair Bolz asked if there was a second.

Vice Chair Fredericksen said he had a substitute motion.

Vice Chair Fredericksen moved to hold the PDC Ethics & Standards of Conduct policy in abeyance until the Commission can determine what the conflict of law referenced by Commissioner Walsh may be and address it or adopt the policy as presented. Commissioner Walsh 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
Sean Walsh, Member	Yes
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

Executive Session:

Commissioner Trout 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. Vice Chair Fredericksen 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
Sean Walsh, Member	Yes
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

The Commission went into executive session at 10:29 am

Items discussed in executive session:

10:29 am – Discussion under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation (DAG Zanzig)

10:38 am -- Discussion under Idaho Code 74-206(1)(d) of records exempt from disclosure under Idaho Code 74-105(18)(a)

10:40 am Ms. Elliott and Ms. Zokan left the executive session

10:40 am – Discussion under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation (DAG Guyon)

Chair Bolz called the meeting back to order at 10:53 am.

Final Action or Decision on Items Considered During Executive Session:

Commissioner Trout moved to in the matter of Appeal No. 21-75308 follow the recommendation of the Hearing Officer and approve applicant's inclusion as lead counsel and co-counsel for trials on the Capital Defending Attorney Roster. Commissioner Dinning seconded.

Commissioner Trout said that with regard to her motion she profoundly disagrees with the findings and conclusions of the Hearing Officer but at this time does not think there is value in pursuing the matter in court, and instead thinks it is preferable to move on.

Chair Bolz said that when a Commission appoints a Committee to make recommendations and the Committee makes recommendations that are not followed, we have to consider the possible effect on the Committee. He said a Committee that works really hard may wonder about their efforts and reconsider their participation, if their recommendations are disregarded.

Vice Chair Fredericksen said he concurs with both Commissioner Trout and Chair Bolz. He said as the State Appellate Public Defender he believes he has the duty to abstain from voting on the motion.

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
Sean Walsh, Member	Absent (left during executive session)
Jim Woodward, Member	Yes
Eric Fredericksen, Vice Chair	Abstain
Darrell Bolz, Chair	Yes

The motion carried.

Future Meeting Dates:

Ms. Elliott reminded the Commission of the special meeting on June 30, 2022 at 10 am.

Next regular meeting: July 20, 2022 10:00 am

Adjournment – Chair Bolz:

Chair Bolz adjourned the meeting at 10:59 am.

Minutes approved by the Commission on June 30, 2022



Kathleen J. Elliott, Executive Director