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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

August 4, 2022 at 1:00 pm

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*Commission Members Present (via Zoom):*

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

*Commission Members Absent:* David Cannon, Jim Woodward

*PDC Staff Members Present at Meeting Site:* Kathleen Elliott, Mark LaSalle

*PDC Staff Members Present (via Zoom):*

Jennifer Cichocki, Jennifer Roark, Jared Ricks, Tammy Zokan

*Members of the Public Present (via Zoom):* Aaron Bazzoli; Leslie Hayes and Scott Zanzig, Idaho Attorney General's Office

*Welcome and Call to Order – Chair Bolz*

The meeting was called to order at 1:04 pm

*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 June

FY2022 Office Budget June

Approval of June 30, 2022 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:

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

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

The motion carried.

#### *Executive Director Report:*

Ms. Elliott thanked PDC staff and the subcommittee for their work on financial assistance. She referred the Commission to the email from Mr. LaSalle immediately before the meeting containing the subcommittee's final financial assistance recommendations to the Commission. She said the PDC has been getting questions about the Tax Commission's allocation to the counties. She reported the Tax Commission said it is paying each county's portion of \$34 million to the counties in four annual payments based on each county's percentage allocation.

#### *FY2023 Financial Assistance Applications:*

Chair Bolz referred to Mr. LaSalle's email today with the subcommittee's FY2023 financial assistance recommendations. He noted the two adjustments to Bonneville and Kootenai for the corrections described on page 2.

#### **Financial Assistance Awards**

Commissioner Copple Trout moved to approve the subcommittee's recommended Formula Financial Assistance and Workload Compliance Assistance as set out in the August 4, 2022 document titled FY2023 Subcommittee Recommendations 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 Copple Trout, Member	Yes
Sean Walsh, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

#### **One-time Additional Formula Financial Assistance**

Ms. Elliott reminded the Commission about the additional one-time additional Formula Financial Assistance amount awarded a few years ago in the amount of 30% of a county's 15% Formula Financial Assistance award. She reported that the PDC has some additional funds available this year that would allow the Commission to award a 3% to 4% one-time additional Formula Financial Assistance award. She said 3% would result in an additional \$141,000, 4% an additional \$188,000, more Formula Financial Assistance going out to the counties. She said the subcommittee recommended an additional one-time

award in the amount of 4% of 15% for the counties to use for their specific needs and expenses including increases to attorney pay to address recruitment and retention issues.

Chair Bolz reported the subcommittee discussed COLA requests by some counties and whether the Commission is authorized to provide financial assistance for such costs because the Legislature must approve state employee COLAs. He said they also discussed what attorney positions may be eligible and the importance of fairly distributing any additional funds so all counties are treated the same.

Commissioner Copple Trout said she assumes the percentage would be applied to the 44 counties based on each county's 15% formula amount.

Chair Bolz confirmed.

Vice Chair Fredericksen moved to approve the subcommittee's recommended one-time additional Formula Financial Assistance award to each county in the amount of 4% the county's 15% Formula Financial Assistance award for the counties to use for their specific needs and expenses including increases to attorney pay to address recruitment and retention issues. 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 Copple Trout, Member	Yes
Sean Walsh, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

### **General Recommendations**

Chair Bolz referred to the subcommittee's general recommendations as corrected and transmitted to Commission right before today's meeting.

Ms. Elliott reported the new language provides flexibility to counties to use remaining formula financial assistance while clarifying the use of actual remaining and not estimated amounts.

Commissioner Copple Trout moved to approve the subcommittee's general recommendations on page 3 of the August 4, 2022 FY2023 Subcommittee Recommendations 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 Copple Trout, Member	Yes
Sean Walsh, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

#### *Performance Report:*

Ms. Elliott reported PDC's Performance Report is due annually on September 1. She said the report looks at how the PDC did the previous year and the PDC's work was amazing. She highlighted training of 1,100 attorneys for 92 CLEs for a little over \$30,000. She said the PDC staff complete goals quickly and the columns with NA reflect performance goals that were previously met.

Commissioner Copple Trout asked if the Performance Report could be distilled to one page to focus on all PDC's accomplishments in the preceding year.

Ms. Elliott said the PDC does do some distillation just for the Legislature but it is longer than one page.

Commissioner Copple Trout said she thinks it may be helpful for the Supreme Court and judges, and perhaps cities and counties too, so they are aware of all the efforts of the PDC. She suggests one page because people are busy and may not have time to read more.

Chair Bolz noted Ms. Elliott's efforts to reduce the size of the annual Legislative Report.

Vice Chair Fredericksen moved to approve the Performance Report 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 Copple Trout, Member	Yes
Sean Walsh, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes
Darrell Bolz, Chair	Yes

The motion carried.

#### *Joint Regional Coordinator Report:*

Chair Bolz said he inadvertently skipped over this agenda item and asked Mr. Ricks and Ms. Roark if they had anything to add to their report.

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

#### *FY2024 Budget:*

Ms. Elliott reported on the FY2024 budget recommendation process and said the FY2024 PDC budget increase is currently estimated at 2.91%. She said Mr. LaSalle's projections show likely need for three additional workload attorneys and 1 staff member to support them, bringing the requested appropriation to \$11,631,300, which is a \$340,500 increase.

Vice Chair Fredericksen moved to approve the FY2024 Budget process and initial estimate as described by Ms. Elliott. Commissioner Copple Trout seconded.

Commissioner Dinning said Boundary County was joining with Bonner County to provide public defense. He asked if the budget estimate includes increases for potential new joint offices.

Ms. Elliott said she told the Governor's office about the Bonner and Boundary joint office. She said she is not aware of others and if there are others, the Governor's office needs to be alerted.

Chair Bolz said to keep in mind that budgets are always subject to change by JFAC and the Legislature, therefore if something changes the PDC can raise it to them.

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

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

The motion carried.

#### *Annual Election of Officers:*

Chair Bolz said each year the Commission holds an annual meeting and elects a new Chair and Vice Chair, and opened the floor for nominations.

Commissioner Copple Trout nominated Darrell Bolz to continue as Chair of the Commission and Eric Fredericksen to continue as Vice Chair of the Commission. 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 Copple Trout, Member	Yes
Sean Walsh, Member	Yes
Jim Woodward, Member	Absent
Eric Fredericksen, Vice Chair	Yes Chair/Abstain Vice Chair
Darrell Bolz, Chair	Yes

The motion carried.

Chair Bolz announced Commissioner Walsh is resigning from the Commission effective August 5, 2022. He expressed his appreciation for Commissioner Walsh's valuable contributions to the Commission and the importance of his input even in times of disagreement. He wished Commissioner Walsh the best in future endeavors.

Vice Chair Fredericksen said the Commission will certainly miss Commissioner Walsh and his valuable insight that others on the Commission do not have.

Commissioner Walsh said his service on the Commission has been meaningful. He said as he looks down the road, the concerns he has are going to be addressed. He said problems with process and the capital roster will get addressed. He noted that the rules have a sunset date. He said the PDC were pioneers. He said that to be honest with himself he is too invested in his relationships with defender colleagues. He said his fight has been for the underdogs, representing people, not corporations or governments. He wished the Commission all success in world in moving ahead with public defense reform. He said he is going to do everything he can to support it. He said he appreciates each and every one and noted that when there was disagreement it was because what we do matters.

Chair Bolz said he appreciates Commissioner Walsh speaking out in support of public defense. He said the Commission welcomes other comments and ideas Commissioner Walsh may have.

Ms. Elliott thanked Commissioner Walsh for everything he has done for the PDC.

*Appointment of Counsel in Capital Cases When Capital Defending Attorney Roster Members are Not Immediately Available:*

Ms. Zokan reported that in response to concerns raised about the availability of Capital Defending Attorney Roster members at initial appearance, the Court revised its ICR 44.3 to permit the court to appoint members of the Defending Attorney Roster at initial appearance instead and then appoint Capital Roster members within 14 days. The proposed PDC policy offers some guidance to judges that they should attempt to appoint Capital Roster members before appointing from the Defending Attorney Roster, and if appointing from the Defending Attorney Roster instead, make findings regarding the appointed attorney's qualifications.

Commissioner Walsh expressed his concerns about what the PDC is trying to accomplish with the policy and the potential damage to the PDC's relationship to the judiciary. He said the PDC has no supervisory authority over the courts and cannot impose deadlines like the 14-day deadline. He cautioned that the policy would upset the judiciary.

Commissioner Copple Trout agreed to a certain extent and said the purpose of the policy is to sync PDC rule with court rule and do so via a policy rather than rulemaking. She said it is an attempt to consolidate them and make them same.

Commissioner Dinning asked if the Commission should adopt the court's rule rather than the proposed policy.

Ms. Zokan referred to the rulemaking process and said the Commission cannot change its rules without going through rulemaking.

Commissioner Dinning suggested the Commission adopt a policy that mirrors the court's rule.

Ms. Zokan said the policy is very similar to the court's rule so that the court's and PDC's rules are synched, but it also clarifies that if Capital Roster members are available for appointment at initial appearance that is who the court should appoint.

Commissioner Walsh said if the PDC tries to improve on court rules it is going to blow up in our face. He said the benefit is so small and risk too large especially with the public defense reform that is in progress.

Chair Bolz asked if the draft PDC policy has been run by the Supreme Court, and if not, if it should be.

Ms. Zokan said it has not.

Commissioner Copple Trout said she could share it with the Court or the Commission could adopt a policy that mirrors ICR 44.3

Ms. Zokan expressed her view that the court's rule inadvertently removed any requirement for the appointment of Capital Roster members even if Capital Roster members are available for appointment. She said if the PDC adopts the Court's rule, there is no longer a requirement for appointment from the Capital Roster, even if attorneys are available. She said she wanted to make sure the Commission understands that this result is contrary to national and PDC standards for appointment in capital cases.

Commissioner Walsh said he agreed, and the court should not have changed the rule, however the Supreme Court gets to make the rule. He said the PDC cannot improve or fix the court rule because the PDC's action would be void under separation of powers and doing so is not a diplomatic approach. He said also by attempting to do so with a policy is from the PDC's weakest strength from an administrative law perspective.

Vice Chair Fredericksen moved to approve a PDC policy that is consistent with ICR 44.3. Commissioner Dinning seconded.

Commissioner Walsh asked to confirm that Vice Chair Fredericksen's recommendation is not to adopt the proposed draft policy.

Vice Chair Fredericksen confirmed.

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

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

The motion carried.

*Executive Session:*

Commissioner Dinning moved to pursuant to Idaho Code 74-206, convene in executive session under Idaho Code 74-206(1)(f) to communicate with legal counsel about pending litigation. Commissioner 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 Copple Trout, Member	Yes
Sean Walsh, 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 1:49 pm

*Chair Bolz called the meeting back to order at 2:04 pm.*

*Future Meeting Dates:*


September 29, 2022 at 10:00 am

*Adjournment – Chair Bolz:*

Chair Bolz adjourned the meeting at 2:07 pm.



Minutes approved by the Commission on October 11, 2022

  
Kathleen J. Elliott, Executive Director