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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

May 10, 2022 at 1:30 pm

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*Commission Members Present (via Zoom):*

Darrell Bolz, Chair, Eric Fredericksen, Vice Chair, Angie Barkell, Linda Copple Trout

*Commission Members Absent:* David Cannon, Dan Dinning, Sean Walsh, Jim Woodward

*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):* Anthony Geddes, Anne Taylor, Jordan Crane, Aaron Bazzoli, David Martinez, Daniel Lorello

*Welcome and Call to Order – Chair Bolz*

The meeting was called to order at 1:44 pm

Chair Bolz said some agenda items will be held until the next Commission meeting given the number of Commissioners unable to attend today's meeting.

*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 April

FY2022 Office Budget April

Approval of April 14, 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           | Absent |
| Linda Trout, Member           | Yes    |
| Sean Walsh, Member            | Absent |
| Jim Woodward, Member          | Absent |
| Eric Fredericksen, Vice Chair | Yes    |
| Darrell Bolz, Chair           | Yes    |

The motion carried.

*Executive Director Report:*

Ms. Elliott reported that financial assistance season is off to a good start. She said she and Vice Chair Fredericksen presented at the District Judge’s conference and good conversations have resulted from the presentation. She reported the PDC<sup>2</sup> trial college is less than one month away and that advanced cross-examination expert and author, Larry Pozner, will be the Montroy/PDC<sup>2</sup> keynote speaker. She referred to the PDC’s juvenile training series for defending attorneys and said it is getting a good response. She said the PDC did an internal training with the High Conflict Institute after previously doing a statewide training for defending attorneys and will be doing additional training at PDC<sup>2</sup>. She said the Institute offered to meet further with staff and to provide training to Commissioners.

*Joint Regional Coordinator Report:*

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

Commissioner Trout said she read the Annual Review Reports – much of the 500 plus pages in detail – and the Regional Coordinators did a great job. She said the Regional Coordinators called out the issues that need attention and did so in a professional and productive way. She said they also included and acknowledged the positive things counties are doing. She said the 555 pages tells us how much effort the Regional Coordinators put into the reviews. She said the review reports catalog all the accomplishments of the staff and the Commission and the Regional Coordinators should be very proud of their work.

Chair Bolz said he echoed Commissioner Trout’s comments. He said the Commission recognizes it has not been easy the last few years and staff have held up very well under the circumstances.

*Appointment of Financial Assistance Committee:*

Chair Bolz reported he asked Commissioner Trout and Vice Chair Fredericksen to serve on the financial assistance subcommittee with him and they agreed. He reminded the Commission that the subcommittee will make recommendations to the Commission for its review. He said the subcommittee’s recommendations are not final and the Commission can ask for more information or take other action they deem appropriate.

*Change in Employee Compensation (CEC) Plan:*

Ms. Elliott referred to CEC matrix compensation chart. She reminded the Commission that the Legislature passed an automatic 3% increase to bring State employees closer to market rates, and \$1.25 per hour for employees who are meeting expectations. She explained that a “meeting expectations”

rating means the employee is doing their job. Employees doing solid/sustaining work do extra every day and qualify for \$1.50 per hour (or \$1.40, if the employee is above market); and employees doing exemplary work have done something extraordinary and qualify for \$1.75 per hour (\$1.65, if the employee is above market). She said the PDC's CEC will be submitted to DHR this week and will then go to DFM.

Vice Chair Fredericksen moved to approve the CEC plan matrix as presented and to the extent DHR and/or DFM make adjustments to it, that the Commission incorporate them when made. 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           | Absent |
| Linda Trout, Member           | Yes    |
| Sean Walsh, Member            | Absent |
| Jim Woodward, Member          | Absent |
| Eric Fredericksen, Vice Chair | Yes    |
| Darrell Bolz, Chair           | Yes    |

The motion carried.

#### *Legislative Update:*

Chair Bolz referred to the Legislative key action summary he mentioned at the last Commission meeting and said the Sine Die report is another good resource for information about the Legislative session. He said with regard to 735a, only a few pages deal with public defense and the rest with indigent care. He said the PDC must provide a report on county public defense expenditures, which is due by July 1, 2022. He said the legislation is based on the percentage of a county's actual expense and this does not take into account the differential between a high population county and a low population county with great need. He said the legislation also says that on October 1, 2024 all the rules go away, meaning all PDC training, reporting, oversight and standards go away. He expressed concerns about what this means for the *Tucker* litigation because those litigants are very concerned about standards and how public defense is being provided in Idaho. He said if all go away, there is no control about what happens with public defense in the state, which was the reason for lawsuit. He said it will be interesting to see if the Governor's working group will include public defense standards in the legislation they draft.

Commissioner Trout asked if the next step is the creation of the working group and said she did not see mention of a working group in the legislation.

Chair Bolz said the working group is the next step and that it is not addressed in the legislation but is what he has heard from the Governor's Office. He said he understands it is supposed to be an informal working group.

Commissioner Trout said from what she gathers from the legislation, the plan is for the State to take over public defense completely and this results in tax relief because the counties will not have to pay for public defense and therefore cannot collect tax for it.

Chair Bolz said the legislation relieves counties from funding indigent defense and indigent care. He said tax relief was the key component of the legislation. He said the State now needs to provide the structure for public defense. He hopes positive changes come out of the working group. He referred to the years spent by the Interim Legislative Committee and this Commission on public defense, and said he wonders how the working group can come up with a public defense structure in the next few months.

Commissioner Trout said she wonders how public defense funding will work without county contribution in leaner years when there is not a surplus budget.

Chair Bolz noted that cities have agreed to contribute some money to public defense. He said the State also plans to use "Wayfair money" for future public defense funding.

Commissioner Barkell said funding for public defense the first two years will come from the general fund. She said there is some reallocation of tax funds and cities will be contributing because until now the counties have covered the cost of public defense related to city laws.

Chair Bolz expects to see activity on the working group within the next few weeks after the primary elections.

Chair Bolz referred to the joint NACDL PDC project on vertical representation in Idaho and said he had a meeting with NACDL representatives and NACDL is very excited about the project. He said NACDL is planning to visit Idaho to get more information about public defense in Idaho and the PDC will be working on compiling information and contacts for their review. Chair Bolz said he asked NACDL about the Governor's working group and if NACDL has information about what has and has not worked in other states that may be of interest to the working group.

#### *PDC Ethics & Standards of Conduct Policy:*

Chair Bolz said this agenda item will be held until the next Commission meeting given the number of Commissioners unable to attend today's meeting.

#### *Executive Session:*

Chair Bolz asked if any executive session items should be considered today.

Ms. Zokan said there is a recommendation from the Capital Counsel Review and Recommendation Committee for the Commission's review.

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), 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           | Absent |
| Linda Trout, Member           | Yes    |
| Sean Walsh, Member            | Absent |
| Jim Woodward, Member          | Absent |
| Eric Fredericksen, Vice Chair | Yes    |
| Darrell Bolz, Chair           | Yes    |

The motion carried.

The Commission went into executive session at 2:16 pm

Items discussed in executive session:

2:16 pm -- 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 2:20 pm.*

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

Commissioner Trout moved to adopt the recommendation of the Capital Counsel Review and Recommendation Committee to approve applicant #28 as lead counsel for capital trials under the alternate requirements. 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           | Absent |
| Linda Trout, Member           | Yes    |
| Sean Walsh, Member            | Absent |
| Jim Woodward, Member          | Absent |
| Eric Fredericksen, Vice Chair | Yes    |
| Darrell Bolz, Chair           | Yes    |

The motion carried.

*Future Meeting Dates:*

Chair Bolz asked the Commissioners present about their availability in June.

Ms. Elliott said staff will send out a survey to all Commissioners for their availability on the dates identified today.

*Adjournment – Chair Bolz:*

Chair Bolz adjourned the meeting at 2:24 pm

Minutes approved by the Commission on June 15, 2022

*Kathleen J. Elliott*

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Kathleen J. Elliott, Executive Director