

**INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING**

**Renaissance Hotel
11925 N. Meridian St., Carmel, IN**

**December 1, 2016
7 p.m.**

Minutes

I. Call to Order

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 7:13 p.m. EST on December 1, 2016, in the Carmel II Room of the Renaissance Hotel, Carmel, IN by Board Chairperson Neil Weisman.

Board members present were: Neil Weisman (Chairperson), Laura Paul (Vice Chairperson), David Shircliff (Secretary), Jim Abbs, Bob Hill, David Hennessy, Gojko Kasich, Chris Shema, Mark Nicholson, and Micki Kraus. Steve Owens was absent. Also in attendance were Council staff Don Murphy, Toni Schaney, and Larry Landis.

II. Approval of Minutes from Last Meeting

The minutes of the Board meeting on 10/1/2016, were reviewed. David Hennessy questioned including election vote totals which has never been done before. Larry Landis said they were included because of previous requests for vote totals. Bob Hill suggested that it was appropriate to include vote totals when there is a contested election or a roll call vote. No action was taken. Micki Kraus moved to accept the minutes as presented. David Shircliff seconded the motion, which passed 10-0, with Chris Shema abstaining.

III. Review and Approve Agenda

David Hennessy moved to accept the agenda as presented. Micki Kraus seconded the motion which was approved unanimously.

IV. Executive Director's Report

A. Administrative

Larry reported that there was no administrative changes. He distributed the new staff internal telephone directory and explained how to bypass the telephone reception list to direct a call to individual staff.

B. Financial Report

Larry Landis reviewed the expenditures for the current fiscal year. There is a projected surplus of \$11,000, and \$72,000 in uncommitted contractor funds. David Hennessy asked about the status of the new space and if the Commission and Juvenile Grant were paying rent yet. Larry said they would be paying but the Council is not paying anything for the space until the refurbishing is complete. Bob Hill asked whether the training rooms on the 5th floor could be combined into one room.

C. OJJDP Juvenile Grant Report

Larry reported there was no updates at this time.

D. ICJI Grant

IPDC has been approved for a new grant from ICJI for 2017 for \$188,914, which will fund 6 case managers for 29 counties in southern Indiana with no public defender offices so they can begin providing Recovery Works services. Micki Kraus reported that the Allen County Community Corrects organization voted down implementing Recovery Works.

In addition, 6 counties were awarded \$50,000 - \$70,000 to hire case managers to implement the Recovery Works program in their counties. Don created the grant application templates for counties to use.

Larry stated that counties were going to have to track their progress with quarterly reports, statistical reports and tracking of statistics and recidivism data for up to 3 years after a client exists the program.

Dave Shircliff reported that Lawrence County has done well with implementation, with few problems. They screen clients immediately to determine services needed.

Chris Shema stated that Vigo County is experiencing multiple problems with bottlenecks, mostly associated with payment. The frustration is increasing and clients are being told they need to move out of facilities.

Larry stated that this in the first year Recovery Works reimbursed \$2 M. This current rate of expenditure is \$2 million per month. Don Murphy stated that only the certified provider can be paid and that sub-contractors need to get their funds from the providers. Vigo was approved for a grant and Larry stated that they should hire a case manager to work through the issues.

Money will be available January 1, 2017. There was also a Marion County pre-trial screening grant approved. Bob Hill had questions and Larry said he would send him the grant request.

In response to questions, Don stated that IPDC will look further into the Vigo situation and will provide case manager training. Counties need to call to request it.

E. JRAC

No new information

F. Sixth Amendment Center

The Public Defender Commission, the Public Defender Council, and the State Public Defender have agreed to form a task force to address the systemic issues identified in the Sixth Amendment Center Report.

G. Request for Rule Making

Larry Landis reported that his impression was that the Supreme Court does not want to use their rule making authority to adopt a rule making it mandatory for all counties to comply with Commission standards. The feedback he has received is that the problems identified requires legislative action. Mike Sutherland will be holding a press conference on 12/15 to ask the Supreme Court to create a rule. The petition will request that the Court reinstate the 1992 case filed by ICLU and Legal Services Organization. The Supreme Court's response was that the problems identified are not unique to Marion County and invited organizations to submit a response dealing with indigent defense issues in the state. We filed such a response. The Court never ruled on the petition and the case was never closed.

V. Committee Reports

Neil Weisman announced that his intention was to ask committee chairs to report at each Board Meeting and asked the committee chairs to provide a report for each meeting.

A. Training Committee

Laura Paul reported that the committee has not formally met, but that there was a great deal of feedback at TPI. She will be talking with Diane Black (assigned IPDC staff) soon about regional training. Diane provided a list of proposed training for the first 6 months of 2017. Don Murphy and Diane will also be approaching the committee soon to talk about the second half of 2017 so they can at least get venues reserved.

Suggestions for training from the group include:

- Digital/electronic case management – Micki Kraus
- How to use iPads and tablets in court – Gojko Kasich
- How to use social media and other virtual resources – Chris Shema
- How to make technological personal – David Shircliff

David Hennessy reported that he used a laptop in a recent trial and actually got into the jury box and showed the jury his laptop screen. It helped the jury understand and they even asked to see it again later. Micki had a similar experience.

Laura asked that Board members send her suggestions by email.

B. Publications/Technology Committee

Mark Nicholson reported that they have not met yet, but that it would be a good idea to have a book of motions rather than just having it online. Need to make it easier to search or print out. He felt it also needed to be updated on the website

Suggestions for publications include:

- Can we get counties to provide additional motions they have used – Gojko Kasich (response was yes,)
- Create an affidavit bank – Chris Shema

Larry asked that members get with Paula to make suggestions. He also stated that there needs to be a means to review them before they are posted so we have some quality control over them. Mark Nicholson stated there should be a reminder that users need to research their case and not just use the template.

- Gojko Kasich asked whether we could ask the Judicial Center to call judges and tell them that they are wrong. Larry Landis said the Judicial Center staff is available to respond to questions from judges, but they will not initiate contact with judges.
- David Hennessy said members should be reminded to customize the motions to their case. He offered to provide instructions about how to write a motion.
- Laura Paul said she wanted to know more about firearms. It was suggested that the outline and PowerPoint by Kirk Freeman be published.
- David Hennessy asked if a link the Forensics Services Report on firearms could be added to our website.
- Neil Weisman suggested that we need to coordinate the publications initiatives and tools developed by this committee with the activities of the training committee.

C. Policy Committee

David Shircliff reported they had not yet meet, but they will schedule a meeting before leaving this meeting.

D. Outreach Committee

Chris Shema reported that they had not yet meet. He said he believes the committee activities will dovetail with the Recovery Works meetings. He said people in counties really feel isolated and there is a huge need to reach out to them. Chris stated that many people don't know enough about what programs and tools are available. Gojko Kasich suggested there be a group who can respond/help when judges come up with crazy ideas.

E. Executive Director Search Committee

Jim Abbs reported that there was a meeting before the Board meeting on 12/1 at which they have developed a draft job announcement and a general timeline. They will decide where to post the position, which will be in late January 2017 and run through 4/15/17. He said they hope to have interviews in May.

VI. Evidence Based Decision Making: Pre-trial Release Project

Neil Weisman reported that in St. Joseph County the only place where they are seeing much impact is in misdemeanors and some D or 6 felonies. For the most part they continue to adhere to the bond schedules. Mick Kraus reported that in Allen County there have been no changes in level 5 and above. Allen and St. Joseph are model counties. Larry Landis suggested that at each board meeting the members from pilot counties should report on what is happening in their county. Larry suggested that public defenders should be trained about how to effectively use CR 26. He also stated that money is available to counties for implementation. David Hennessy suggested that there is a need for training on the Risk Assessment tool. Neil Weisman suggested that a reminder to push the program be put in the weekly Defender Weekly and on Defendnet.

VII. Old Business

At the retreat it was discussed what to do with the 35 counties that are not in the state reimbursement system, either because they have never applied or dropped out. One of the options discussed was a court rule or legislation requiring that all counties comply with the Public Defender Commission standards. Larry reported that in 22 states indigent defense services are primarily county based and county funded. In 28 State these services are primarily state funded with state oversight. Idaho is the only state with county autonomy with statutes that authorize the state to take over if services are continually inadequate and require the county to pay 100% of the costs by withholding state tax payments to counties.

Bob Hill stated that one way to encourage more counties to participate is to increase the reimbursement rate for the chief public defender to 100%. He also said the Commission also needs to develop standards and guidelines as to what is expected of chief public defenders.

Larry stated that having a chief public defender is not a panacea for the problems of poor representation. One of the problems that needs to be addressed is that counties that are not in the reimbursement system can continue to provide services that do not meet Commission standards and no one has any authority or power to intervene. He stated that what is needed is a consequence for refusing to comply with Commission standards. David Hennessy observed that before you use a hammer on the counties there needs to be standards against which counties would be measured. Larry said the Public Defender Commission could adopt the Council's Performance Standards and audit against those standards. Larry said the policy issue that has never been decided is whether the Board supports the adoption of sanctions or interventions if the incentive of state reimbursement does not work.

Larry said at the present time the Commission is not authorized to take over a county program. Chris Shema asked if the Task Force to be appointed in response to the 6th Amendment Center Report would be addressing this issue. Larry said before he suggested to the Task Force that the legislation be enacted giving the Commission this authority, he needed to know if the Board supported such a policy.

Gojko Kasich moved that the Board support a statute providing that if all counties were required by court rule or legislation to comply the Commission standards and guidelines and the Commission determined that the county was unable or unwilling to comply with the standards and guidelines adopted by the Commission, the Commission would be authorized to intervene in a county and correct the deficiencies at 100% county similar to the provisions in the Idaho statutes. Bob Hill seconded the motion. Chris asked if this intervention would include counties not in the reimbursement program. Larry said this action is the enforcement mechanism premised upon legislation or court rule that made compliance with Commission standards and guidelines mandatory. The vote in support of the motion was unanimous.

Larry commented that there are lots of pieces and parts that would need to be part of this change, including the expansion of the Commission to include more criminal defense lawyers.

Bob Hill asked about the current draft of legislation for increasing reimbursement and increasing reimbursement for chief public defenders. Larry reported that the only bill currently being drafted was for increasing reimbursement for misdemeanors and increasing

the overall reimbursement from 40 to 50% based on action taken at the last meeting of the Public Defender Commission. He also reported on the meeting he and Derrick Mason had in the morning with the fiscal staff of the House and Senate re: the request for additional funding for the Public Defender Commission. Larry also reported that he had a meeting scheduled with Sen. Luke Kenley for Dec. 5, and would report the results of that meeting.

VIII. New Business

A. Seminar Registration Fees

David Hennessy said he would like to review training fees, particularly as they relate to new private attorneys. He said the rates for new private lawyers are too high. Larry Landis agreed. Neil Weisman suggested that the Training Committee review the fee schedule and make recommended changes at the next meeting.

Chris raised the issue of the increase in public defender appointments in DUI cases. He advocated for the importance of a strong private bar. Mark Nicholson added his experience. No action was taken.

B. Secret Ballot/Electronic Ballot for Board Election

Chris Shema raised the issue of doing away with paper ballots and require that all voting be by electronic means. After a discussion of the various issues of paper vs. electronic voting, Larry was requested to have Paula Sites report on how the electronic voting was done last year.

C. Pro Bono Exemption of Public Defenders

Chris Shema brought up that the current Supreme Court rule requires that all attorneys except prosecutors report pro bono work. Chris moved that the rule should be modified to exempt indigent defense counsel from this reporting requirement. David Shircliff seconded the motion. Bob Hill asked that the motion be modified to apply only to public defenders. Chris and David agreed to modify the motion. Bob Hill moved to call the question. The motion passed unanimously.

D. Responsibility for Representation on Purposeful Incarceration

Chris Shema raised the issue of who should represent convicted offenders who have been sentenced and are now seeking sentence modification on purposeful incarceration. Chris Shema believes this is the responsibility of the State Public Defender. Larry Landis expressed his opinion that it would only be the responsibility of the State Public Defender if the motion was "challenging the sentence or conviction. No action was taken on this issue.

IX. Next Meeting

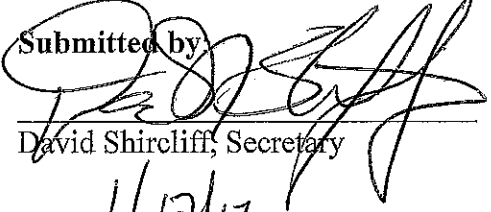
The next Board meeting will be determined at a later time. The place is to be determined.

ADJOURNMENT

The meeting was adjourned at 9:30 pm, EST.

Minutes prepared by Toni Schaney and Larry Landis.

Submitted by




David Shircliff, Secretary

Date

11/12/17

Approved by:



Neil Weisman, Chairperson

Date

11/12/17