

Minutes of the
INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS
Marion County Public Defender
5830 N. Post Road
Indianapolis, IN

October 16, 2019

11:00 am

Minutes

I. Call to Order

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 11:12 am EST on October 16, 2019 in the Executive Conference Room of the Office of the Marion County Public Defender. The meeting was chaired by Mark Nicholson.

Board Members present were: Deana Martin (secretary), Robert Hill and David Hennessy (vice chair) were present in-person and David Shircliff, Mark Nicholson (chair) Christopher Shema and Ashley Spolarich were present by phone. Staff present were Bernice Corley (Executive Director) and Michael Moore (Assistant Executive Director). Diane Black (Training Director) was present by phone. The meeting was called to order at 11:12 a.m. EST.

The Board discussed the petition drafted in response to the Supreme Court's decision to include representatives from the Office of the Attorney General's Office and the Indiana Prosecuting Attorneys' Council (IPAC) in the interviewing of candidates for the position of State Public Defender. The Board discussed recommended additions and modifications to the draft petition. An online version of the petition has been created, which will allow individuals to sign the petition electronically. A link to the petition will be available on the Council's website and through other contact means, such as the defendnet listserv.

Mr. Hennessy asked whether the petition should be shared with the criminal section of State Bar. Mr. Hennessy would like the petition to go the section's members. He'd like people to have access to the petition through multiple outlets, including a link in an email through the Councils' regular mailings. Ms. Corley explained that the petition can be placed on the public facing portion of the Council's website.

Mr. Shema asked about timelines for the selection process, when interviews will begin, a description of the process. Ms. Corley shared information about the process and explained that

the timeline had not yet been shared with her. Interviews will likely begin early to mid-November. Ms. Corley suggested forwarding the letter to the Court by the end of the week. Mr. Shema suggested the letter be shared with all members and that “Urgent” be placed in the subject line of the email. Mr. Moore explained that the Council can use its existing service through Salesforce or through a mass email from an email account. Mr. Shema asked whether a motion was needed in order to distribute the letter and petition through other means other than defendnet. Ms. Martin asked for explanation of how the petition will be distributed and how the petition will ultimately make its way to the Supreme Court. Mr. Moore explained that it would work similar to a Doodlepool and that the petition could be pulled any time and distributed to the Supreme Court. Ms. Corley clarified that the Council staff would refer the petition to the Court once it is closed. Mr. Hennessy suggested changes to the petition, which were adopted.

Mr. Hill made a motion to adopt the petition as drafted with the changes suggested by Mr. Hennessy incorporated within the petition. That motion was seconded by Ms. Martin. A roll call vote was made. Motion passes unanimously

Mr. Shircliff inquired whether anyone had reached out to the Chief Justice and had a conversation about the Council’s concerns about the make-up of the committee to review candidates. Ms. Corley explained that she spoke with the Chief Justice on 3 different occasions and shared the concerns of the Council. Ms. Corley also explained that she spoke with staff from the Court about the concerns of the Council as well.

Mr. Shema asked about the prior process for selection the State Public Defender. Ms. Corley explained the process that took place when she applied for the position eight years ago. Mr. Shircliff asked about how other states handle PCR /habeas work—is their process similar? Ms. Corley shared that she spoke with Ernie Lewis (NAPD) who thought the process in Indiana was an anomaly. He shared the process in Minnesota, which wasn’t similar enough to Indiana’s to have any utility.

The Board discussed the letter to the Chief Justice further. Mr. Hennessy explained that deputy state public defenders regularly allege substantive and procedural violations (i.e. *Boykin, Giglio, Brady*) by prosecutors and judges as part of their PCR work. This creates a conflict with allowing judges and prosecutors to participate in the choice of the State Public Defender. He asked whether the letter should include this point.

Mr. Nicholson pointed out a needed change in the letter with respect to courts hiring public defenders. In many counties, judges still hire the public defenders. Mr. Hill asked if we have data regarding the counties wherein the judge hire the public defenders. Mr. Shema listed a number of counties in his region in which the judges hire the public defenders. Mr. Shircliff and Hill both agree that the letter should include the typical arguments made by deputy state public defenders in PCR matters. Adding prosecutors and judges to the hiring process could have a chilling effect on deputy state public defenders. Mr. Nicholson and Shema agree.

Mr. Shema asked how long it would take to modify the letter as voted upon. Mr. Hennessy asked whether the board would need to reconvene, will there be enough time to obtain a quorum; otherwise, it needs to be clear that Ms. Corley has the requisite instructions from this board meeting to proceed. Mr. Hill suggested giving Ms. Corley the instructions and authority to submit the letter and move forward on the petition now with the understanding that Mr. Hennessy will make the edits. Mr. Shema agreed to this approach.

Mr. Hennessy shared a suggestion that the letter should not only include the concerns the Board has with the hiring committee's make-up, but also a suggestion of individuals who should be part of the hiring committee. For example, the Board could consider suggesting that a member from the Commission, a representative of the Chiefs Association, Prof. Schumm, etc. Mr. Hill suggested following the process often used in other state agencies, i.e. a committee made up of designees from the governor's office and the state legislature. Ms. Corley explained that the Commission is made up of designees from the governor's office, the courts and the state legislature so having a representative from the Commission would serve this purposes.

Ms. Spolarich suggested that if the decision to have a representative from the courts, IPAC and AG is unlikely to change, the letter should recommend adding other public defenders as a balance. Mr. Hill discussed the potential push-back of having public defenders on the committee since the most common argument in a PCR petition is ineffective assistance of counsel so the Board will need to be prepared to address this push-back. Mr. Shircliff expressed the need to push for more public defender representation understanding the potential push-back. Ms. Martin suggested adding a representative from the law school in Indianapolis. That person would have the same understanding of running a large state institution.

Mark Nicholson arrived in-person at 11:54 a.m.

Mr. Hill pointed out the good work and support of the Supreme Court and the CJ, including the better salaries of deputy state public defenders. Their pay scale is good and predictable. Discussion were had drafting the letter in a manner that would not make the Court feel that it is being attacked. The focus needs to be who is on the hiring committee.

Mr. Hennessy asked about the role of the hiring committee. Ms. Corley explained that the committee would be tasked with interviewing and then moving a smaller number of applicants forward for final interviews. Mr. Hennessy asked whether the position was posted. Ms. Corley explained that it was and that she forwarded the post on defendnet.

Further discussions were had on what the next steps the Board would like Ms. Corley to take.

Mr. Shema left the meeting at 12:02 p.m.

Mr. Nicholson moved that Ms. Corley draft a final version of the letter to the S. Ct. with assistance from Mr. Hennessy and any other board member who wishes to have input. Mr. Shema seconded the motion. A roll-call vote was taken: Yes: Spolarich, Shircliff, Nicholson, Hill, Martin; No: Hennessy. Motion passes.

Mr. Hennessy moved to adjourn, seconded by Mr. Nicholson. Motion passes unanimously

Meeting adjourned: 12:09