

**INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING
West Baden Springs Resort
French Lick, Indianapolis, IN**

**October 1, 2016
9 a.m.**

Minutes

I. Call to Order

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 9:03 a.m. EST on October 1, 2016, in the Dolly Ballard Room of the West Baden Springs Resort Hotel, French Lick, IN by Board Chairperson Steve Owens.

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

II. Approval of Minutes from Last Meeting

The minutes of the Board meeting on July 28, 2016, were reviewed. Micki Kraus moved to accept the minutes as presented. David Shircliff seconded the motion, which passed unanimously.

III. Review and Approve Agenda

David Hennessy moved to approve the agenda except for a request to move the election of officers be move to before lunch at the Chairman's call so that Bob Hill and Chris Shema are able to participate by conference call. The motion was seconded and approved unanimously.

Gojko Kasich inquired about an executive session he requested. Steve Owens responded that he did not put an executive session on the agenda because the issue was discussed at the last meeting in executive session and he put the subject on the regular agenda at 3 p.m. for this meeting.

IV. Improving Indigent Defense Services

A. Quality Issues in Indigent Defense Services

Larry Landis asked that each Board member identify causes for ineffective representation or poor quality of representation and the solutions or fixes to the problems. The following issues were raised for consideration:

1. Neil Weisman
 - a) The exclusion of misdemeanor cases from state reimbursement, and
 - b) Counties not being required to comply with the standards and guidelines of the Public Defender Commission.
2. Mark Nicholson
 - a) Lack of training

- b) Lack of courage
- 3. David Hennessy
 - a) An environment
 - b) Last minute pleas
- 4. Micki Kraus
 - a) Lack of training
 - b) Regional differences
- 5. Jim Abbs
 - a) Salary
 - b) Workload
 - c) Independence or job security
- 6. Chris Shema
 - a) Caseload
 - b) Compensation
- 7. Bob Hill
 - a) Caseload
 - b) Compensation
- 8. David Hennessy
 - a) Should be an emphasis on types of training –Neil Weisman
 - b) Regional discrepancies in standards and practices –Micki Kraus
- 9. Gojko Kasich
 - a) Quality assessment by competent evaluators
 - b) Need a joint bench-bar conference
- 10. Bob Hill
 - a) Standards must be defined for different size offices – one size does not fit all
- 11. Mark Nicholson
 - a) Lack of training
- 12. David Hennessy
 - a) Need to develop a quality model and measure results, e.g., doctors in emergency care
- 13. Neil Weisman
 - a) If we want to address statewide improvement, we need a statewide system
- 14. Chris Shema
 - a) Need independent assessment
- 15. David Shircliff
 - a) Lawyers who are underperforming are often shutdown emotionally due to excessive caseloads
 - b) It all comes down to caseloads
- 16. Laura Paul
 - a) Isolation in counties without an office or support group
- 17. Chris Shema
 - a) Excessive caseloads applies to part-time as well as full-time
- 18. David Hennessy
 - a) Excessive caseloads also causes over reliance on support staff
- 19. Neil Weisman
 - a) Need training on how to get better plea offers
- 20. David Hennessy
 - a) Need training to enable PDs to see each case is triable and learn how to work-up a case to get better plea offer

21. Chris Schema

- a) PDs need help to develop courage to push back on judges to keep them from just pushing cases through
- b) In some counties, PDs don't try cases at all, and if counsel outside the county comes in and takes a case to trial they are not welcomed
- c) Change needs to be imposed, like the civil rights movement

22. Gojko Kasich

- a) In counties where PDs are selected by judges, PDs do not want any change in the system because they are the ones who have the jobs or get the appointments

B. Suggestions for Addressing Quality Issues

The following suggestions were offered to address the quality of services issues that were identified.

- 1. Bob Hill – Increase funding for the Public Defender Commission to enhance the financial incentive to join the reimbursement system – there are 35 counties not participating.
- 2. Laura Paul – we need all counties participating the reimbursement system; there is no downside so participation should be mandatory.
- 3. Laura Paul – establish regional offices that provide supervision and coordination. David Hennessy said he thought there would be tremendous push back based on other recent attempts for other agencies to do this.
- 4. Bob Hill – ensure quality control through Commission reimbursement.

V. Election of Officers

A discussion was held about the voting method of officer selection, i.e., whether to do it by secret ballot or a show of hands, and whether to follow a succession policy or open nomination. David Shircliff moved to use secret ballot, Micki Kraus seconded. The motion passed by a vote of 7-3 (David Hennessy, Bob Hill and Gojko Kasich voted against the motion).

Gojko Kasich, Neil Weisman, and Laura Paul were nominated for Chairperson. The voting was done via secret ballot with Chris Shema voting by phone to Toni Schaney and Bob Hill texting his votes to Toni. The vote was 4 for Gojko, 4 for Neil, and 3 for Laura. On the second vote for the top two candidates, the vote was 7 for Neil and 4 for Gojko.

Laura Paul, Gojko Kasich, and David Shircliff were nominated as vice chairperson. The vote was Laura - 5, Gojko - 4, David - 2.

David Shircliff and Mark Nicholson were nominated for secretary. The vote was David - 8, Mark - 3.

Steve Owens suggested and David Shircliff moved that Neil take over as Chairperson after lunch. Micki Kraus seconded the motion which passed unanimously.

VI. Improving Indigent Defense Services

A. Quality Issues in Indigent Defense Services – Continued

After a continued discussion of ways to address the quality issues identified, Bob Hill moved that the #1 legislative priority for 2017 be an increase in funding for the Public Defender

Commission to provide 50% for all reimbursements (including misdemeanors), 100% reimbursement for the compensation paid to the chief and deputy chief public defenders, and an increase in reimbursement for CHINS and TPR cases. Jim Abbs seconded the motion, which passed unanimously.

Larry Landis recommended that the Public Defender Commission statute be amended to increase the membership of the PD Commission from 11 to 15 members; with 2 additional members appointed by the Deans of the 2 State-funded law schools and 2 additional members appointed by the Indiana State Bar Association.

Chris Shema moved that the Council adopt a resolution that the IPDC Board be permitted to elect a criminal defense attorney to be a member of the PD Commission. Micki Kraus seconded the motion which passed unanimously.

Laura Paul moved that the membership of the PD Commission be increased from 11 to 15 with 1 member appointed by one of the Deans of the State-funded law schools, the appointment alternating between the two law schools, and 2 appointees of the ISBA (5 years criminal experience required and no more than 1 person from the same political party). Micki seconded the motion which passed 10-1. Gojko Kosich voted No.

B. Sixth Amendment Center Report

Larry Landis provided a handout outlining the IPDC opportunities for change including: information related to the PD Commission, appointment of a task force to respond to issues identified in the 6th Amendment Center Report; additional standards and guidelines for the Public Defender Commission; the distribution of \$40M by the Justice Reinvestment Advisory Council (JRAC); the evidence-based decision making pre-trial release pilot project, and the juvenile grant project.

C. Strategic Directions

1. Public Defender Commission

Larry Landis asked what, if anything, the Public Defender Commission should do re oversight of underperforming systems other than withhold or terminate state reimbursement for non-compliance.

- Bob Hill suggested that the Commission should develop guidelines as to what chief public defenders should do.
- Jim Abbs suggested there should be guidelines on the maximum caseloads of chief public defenders.
- David Hennessy suggested that the chief public defenders create some standards/guidelines over the next few years.
- Laura Paul suggested that the Council should be able to assist counties that are having problems rather than just coming in and taking away the reimbursement.
- David Shircliff reiterated that it all comes back to caseloads, and asked what can be done about the caseload standards.

Larry responded to David Shircliff's question by informing the Board that the ABA will be conducting a case-weighted study and they are looking for 10 volunteer counties to

participate in the study which will involve a time study. So far, Lawrence, Marion, and Noble have volunteered.

Larry said that if we are going to keep a county-based and county-funded indigent defense system, there needs to be some authority at the state level to do an intervention or a state take over if a county is clearly not providing adequate assistance of counsel. Bob Hill proposed that Larry research what other states do re interventions in county-based systems.

2. Proposed Criminal Rule 27

Larry Landis recommended that the Board support the proposed Criminal Rule 27. Laura Paul moved that the Council recommend adoption of proposed Criminal Rule 27. Jim Abbs seconded the motion. David Hennessy asked if the motion was regarding the current draft. Larry answered in the affirmative. Gojko Kasich asked if this was a difference from the earlier version. Larry said the current draft makes the Commission responsible for the standards and guidelines, not the Supreme Court. After further discussion, Laura amended the motion to approve the concept as amended and provide 30 days for Board to make comments. Neil seconded and the motion, which passed unanimously.

VII. Legislation

A. IPDC Biennium Budget Request

Larry Landis reviewed the biennium budget request.

B. JRAC Funding

Larry Landis summarized the anticipated request for funding by the DOC and DMHA for request for JRAC services.

C. Right to Counsel at Initial Hearing

Larry Landis asked for suggestions as to what can be done to get lawyers appointed before initial hearing so counsel can be present and prepared to advocate for the client at the initial hearing.

1. Jim Abbs said he was concerned about conflicts in a small public defender office if office attorneys or staff interviewed all persons arrested prior to the initial hearing.
2. Laura Paul said there is a benefit to having someone talk to arrestees before the initial hearing, especially for more difficult bail hearings.
3. Micki Kraus summarized the procedure used in federal courts.
4. Bob Hill moved that the PD Commission create a standard requiring that each county develop a procedure to have indigency established before the first appearance and that counsel be present and prepared at first appearance before a judicial officer to advocate for pretrial release, and that reimbursement for staff to perform this function should be 75%. Laura Paul seconded the motion, which passed unanimously.

Lunch break at 12:15 pm until 1:17 pm.

D. Other Legislation

1. Neil Weisman asked about misdemeanor sentencing. Larry Landis indicated that he was looking for a sponsor to carry legislation to change the maximum sentence from 365 days to 364 days for a misdemeanor.
2. Jim Abbs brought up the issue of school resource officers in schools sitting in on discussions with kids without parents present. The SRO's don't ask questions and the principal writes up the report. Larry suggested creating an evidence rule and will send Jim the proposed legislation prepared by Jack Kenney and Stacy Uliana.
3. Gojko Kasich suggested a need for an evidence rule or legislation with a sanction for the state's failure to disclose discovery, and a prohibition against charging the defense for copies. Micki Kraus asked if IPDC staff could do some research to see if other states have rules dealing with sanctions for discovery violations.
4. David Hennessy said there is a need to set time limits or staleness provisions on use of prior arrests/convictions in determining enhancements. Seven years was suggested.
5. Chris Shema said there should be a right to get a copy of any document used by police to establish probable cause.
6. Chris Shema said there is a need to address the offenses of common nuisance and possession of a syringe as a felony which is greater than the offense of misdemeanor possession.
7. Neil Weisman said were no sanctions regarding the use of expunged information for denial of services, such as housing or employment. Larry said this might require changes to civil rights legislation.
8. Chris Shema said there is a need to address the current law that makes any violation of home detention rules a new offense of escape, e.g., finding beer in refrigerator.
9. Chris Shema said in Vigo County the practice is for an officer at the initial probable cause hearing to read information without producing a paper copy for the record. He believes there should be a requirement that any document used to establish probable cause be provided to the defense immediately, not 30 days out or never.

VIII. Training Report

Don Murphy introduced Diane Black, the new Training Director, to present her suggestions for training. The following subjects were suggested, which included suggestions generated from David Hennessy's solicitation on Defendnet:

- Evidence bootcamps
- Sex crimes
- Search and seizure
- Forensics within topics
- Mitigation and sentencing
- Homicide
- 3 hour ethics - moving around the state each year
- Creating regions consisting of contiguous counties and presenting regional training in the future
- Targeted seminars – may be county-based

Don explained that Diane will be taking over the responsibilities for the training programs and they would share outreach duties, including creating a mentoring program. The following training suggestions were offered by Board members:

- Understanding discovery rules – Micki Kraus
- Presentations should include practical applications or how-to's on the strategies taught – David Hennessy
- Need an hour of ethics at the Annual Update – Neil Weisman
- Regional training on Immigration issues – Neil Weisman
- Should the death penalty program content be separate from the forensics content? – Laura Paul
- I learn better by role playing and practicums – Mark Nicholson
- Evaluation –
 - I like paper evaluations that can be filled out after the presentation. – David Hennessy.
 - NCCD does electronic monkey surveys at the end of each day. – David Shircliff.
 - Why not do both? – Mark Nicholson
- We need something on compassion fatigue – David Shircliff
- We need something on new social media and how to get information from Twitter and Facebook. – Chris Shema
- Is there going to be training on E-filing? – Mark Nicholson
- We could have training circulars – Neil Weisman

IX. Old Business

A. Performance Guidelines

Larry Landis referred Board members to the performance guidelines in the materials and the two checklists which were requested to be included in the last Board meeting. A discussion followed regarding the use of performance guidelines and the checklists. Don Murphy clarified that the performance guidelines were last updated in 2014 and made available online 2015. They have not been reprinted since 2004.

B. Public Defender Commission Compensation Standard

Larry Landis asked what the Board would like to do re establishing a statewide compensation schedule. He informed the Board that the Prosecuting Attorneys Council (IPAC) supports doing a joint salary schedule. The consensus was to proceed with a joint salary schedule.

C. Rapid Response/Strike Force

Gojko Kasich suggested that mentors should be made available through IPDC and Defendnet to help lawyers in need in small counties. Neil Weisman suggested a crisis line. Mark Nicholson suggested using Defendnet as a first call for help without communicating privileged or sensitive information. Don Murphy stated that based on statements made by attendees at the new lawyer training, they were operating with a lot of fear.

Gojko stated that his original concern was to help lawyers in the smaller counties who do not work in an office or have a support group.

Mark Nicholson moved that the Board create a list of attorneys by region who are willing to serve as mentors to help lawyers who feel bullied by judges. Laura Paul seconded the

motion. Neil suggested putting the list on the website and the Defender. Larry Landis suggested that this list should be vetted by the Board before publicizing the list. The motion passed unanimously.

X. Executive Director Report

A. Financial Report

1. Larry Landis reviewed the IPDC budget and expenses for the current fiscal year and the budget request for 2017-19. He anticipated there would be adequate funding in the 2017 budget to pay all expenses, including some of the training expenses. The budget request for 2017-19 includes funding for the first year for a new position of assistant executive director.
2. Larry also advised the Board that the IPDC Personnel and Policy Manual was included in the packet, as was the salary schedule.
3. Larry reported that building renovations have begun, the conversion of the computers to IOT is complete, new phones should be installed in mid-November, and the new website will come up in late October. Feedback would be appreciated.
4. Paula Sites is now back to work part time.
5. The new OJJDP grant starts 10/1 and the grant staff are in the planning process.

B. Criminal Justice Policy Report

Larry Landis stated that there are a number of statewide initiatives that provide opportunities for improvements in the criminal justice system.

1. Sixth Amendment Center Report

One item will be a request that the Chief Justice create a broad-based, statewide task force to review the issues raised by the 6th Amendment Center Report. Jim Abbs stated that they need to get as many people as possible to support this request. Larry said the primary issue this session will be the push for more funding for IPDC and the Public Defender Commission.

2. Public Defender Commission

Larry reported that the PD Commission will be pursuing the case-weighted study using Delphi panels to validate the average time spent on various tasks. These panels will include private lawyers who are doing the work that needs to be done.

3. Evidence Based Decision Making (EBDM)

Larry referred the Board members to the handout with information about evidence-based decision making. He said he participates in meetings twice a month with the state team. This would be a good place for the assistant executive director to start meeting various state policy makers.

4. Justice Reinvestment Advisory Council (JRAC)

Larry reported on the funding provided by JRAC to the DOC and the Division of Mental Health and Addiction. (DMHA). He said the funding for DMHA is for Recovery Works which has been slow to get established because of the shortage of certified providers. He also recommended that county public defender offices create a position of case manager to coordinate these services. David Hennessy mentioned that Recovery Works services

are not just for public defender clients and that counties need case managers in probation or community corrections to help oversee the services.

5. Pre-trial Release Project.

Larry reported that the Pretrial Release Project created by Justice Dickson has been morphed into the EBDM Pretrial Release Project and will have 11 pilot counties. Larry and John Surbeck are co-chairs. The IRAS-PAT is the pretrial release tool that will be used by the pilots. A draft of expectations for the pilots has been developed and will be submitted to the state EBDM team for approval in November. Some of the counties have already begun to implement this project, including St. Joseph County. Neil Weisman said he will give a report on St. Joseph County at the next Board meeting.

6. Other

Chris Shema brought up the issue of prosecutors not releasing criminal history information that they receive from IDAC/NCIC. Micki Kraus said she cannot get the report in Allen County but can get the information if it is copied or hand written. Mark Nicholson reported on his experience in getting this information and was told by the FBI that criminal defense attorneys can have access to this information. Larry reported that he has contacted IPAC and requested their position on the release of IDAC/NCIC criminal history information. He will let everyone know when he receives a response.

XI. Executive Director Retirement and Succession

A. Executive Director Retirement

Larry Landis provided a copy of his job description and other related materials. He stated that he will also draft a list of the attributes he would recommend that the Board consider when looking for a new executive director. The chief public defenders association (CPDA) have recommended that there be a minimum of 1 year overlap between Larry and the new Executive Director. The chief public defenders would also like to have one person from CPDA (not on the Board) as a non-voting member of the selection committee. David Hennessy suggested that there might not be a need for a full year as long as the summer sessions and one legislative session is covered.

Larry informed the Board that he would be retiring on 7/1/18. Jim Abbs moved to set Larry's retirement date as 7/1/18. Micki Kraus requested that the motion be amended to provide that Larry be permitted to determine his retirement date of 7/1/18. Jim agreed to the amendment. The motion was seconded by David Shircliff. After a brief discussion, the motion was called for a vote. The motion passed by a vote of 8-0-2 (David Hennessy and Gojko Kasich abstained). Bob Hill was not present.

David Hennessy said he prepared a job notice based on information Larry provided and recommended that a succession committee be created and a timeline be created. Neil Weisman stated he wanted to look at all of the committees and re-do them and asked Board members to let him know which committees everyone would like to serve on. David Hennessy moved that the By-Laws Committee be abolished. David Shircliff seconded the motion, which passed unanimously. Neil Weisman asked if there was any objection to combining some of the committees. There was a consensus to have the following committees: Training; Publications and Technology; Policy and Liaison; Member Outreach; Executive Director Evaluation; and Executive Director Search.

B. Assistant Executive Director

David Shircliff asked whether the Board had voted on the issue of whether to hire an assistance executive director that would overlap with the executive director and that would become the executive director upon Larry's retirement on 7/1/18. It was agreed that no formal action had taken place. David Shircliff moved the Board hire an Assistant Executive Director to overlap with the Executive Director for a term to be determined by the Executive Director Search Committee. Jim Abbs seconded the motion. During the discussion, David Shircliff said he wanted to clarify that his motion was not intended to bind the Board to hire the Assistant Executive Director as Executive Director if the Board did not think they could do the job. After further discussion the motion the passed by a vote of 6-0-4 (David Hennessy, Chris Shema, Gojko Kasich, and Mark Nicholson abstained). Bob Hill was not present.

XII. New Business

Neil Weisman stated that folks need to tell him who wants to be on what committee within 7 days of the meeting (10/8 deadline) and make recommendations for other than Board members to be included. Neil will let everyone know who is on what committee by the end of October.

XIII. Next Meeting

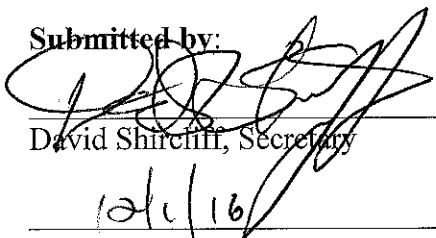
The next Board meeting will be at the Renaissance Hotel in Carmel on 12/1/16 at 7 PM.

ADJOURNMENT

The meeting was adjourned at 4:07 pm, EST.

Minutes prepared by Toni Schaney and Larry Landis.

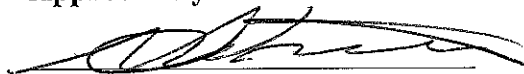
Submitted by:



David Shircliff, Secretary
12/1/16

Date

Approved by:



Neil Weisman, Chairperson
12/1/16

Date