

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

**Oakwood Resort
Syracuse, IN**

**September 30, 2017
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 9:05 a.m. EST on September 30, 2017, in Conference Room 1 of the Oakwood Resort Syracuse, IN by Board Chairperson Neil Weisman.

Board members present were: Neil Weisman (Chairperson), David Shircliff (Vice Chairperson), Mark Nicholson (Secretary), Bob Hill, Chris Shema, David Hennessy, Gojko Kasich, Jennifer Sturges, Micki Kraus and Steve Owens. Ashley Spolarich was not in attendance. Also in attendance were Council staff: Bernice Corley, Diane Black, Larry Landis and Toni Schaney.

II. Approval of Minutes from Last Meeting

The minutes of the Board meeting on June 8, 2017, were reviewed. David Shircliff moved to accept the minutes as presented. Micki Kraus seconded the motion, which passed with Chris Shema abstaining.

III. Review and Approve Agenda

Micki Kraus moved to approve the agenda. The motion was seconded by Jennifer Sturges and approved unanimously.

IV. Executive Director Report

A. Financial

Larry Landis provided an overview of the Council's budget and the 2 revenue accounts for the new board members. The IPDC's annual budget is approximately \$1.3 million. Approximately \$1 million is personnel, and \$300,000 is operating expenses. A spreadsheet of projected revenues and expenditures for FY2017 and 2018 for the 3 accounts was provided.

B. Training Budget

Larry explained that the 3 fund accounts – state account, training account and publication account. The training and publication funds are both non-reverting revenue accounts.

Larry stated that unless the state budget is increased the training fund needs to be self-supporting so that funds from the state account would not have to be used to pay training expenses.

Larry was asked if Tina Mahern is worth the \$40,000 she is being paid to manage 8 seminars. David Hennessy asked if it is cost effective compared with when Teresa Campbell managed the process. Gojko Kasich stated there were problems with the hotel for Paula Sites Capital Defense Seminar. Mark Nicholson asked if anyone was looking at the cost effectiveness of Tina v. Teresa. Chris Shema stated that Teresa also answered phone and he believes this was a very good service. Bob Hill brought up that the logistics for award recipients and guests' seating at lunch at the 2016 annual update was poorly handled. Larry explained this was due to his failure to communicate the need for seating to the new staff and event planners. Larry said the site planning and registration using Tina is running smoothly, but the cost-effectiveness needs to be evaluated before a new contract is signed.

Gojko asked about May and June seminar losses. Larry and Toni Schaney explained that some of the loss was due to fewer attendees, but some only appears as a loss due to revenue not coming in until after the end of the fiscal year.

C. Payroll

Neil Weisman asked if granting raises to staff comes out of the Council budget or if additional state funds are provided. Larry responded that all raises have to come out of the Council budget. Steve Owens suggested that the Council should contact Aaron Hood at the Supreme Court because there might be monies available for raises through them. Steve said there are new guidelines and there might be some help. Steve will send Larry information about this.

Bob Hill asked if IPAC got budget increases. Larry stated IPAC receives less state funding than IPDC and that their raises only must come out of their annual appropriation since they also do not have access to the Executive branch contingency fund. However, they have some IV-D incentive income from the federal government and the state interdiction fees.

David Hennessy asked about staff training funds as a line item in the budget. It was explained this is budgeted funds to send staff to outside training programs.

D. Publications

Larry reported that the publications fund is in good shape in spite of the fact that sales are down because more members are using digital information and buying fewer manuals. Lexis subscriptions generate a small profit for now, but the profit margin continues to shrink. IPDC is looking into discontinuing use of InReach because the level of usage is not what was expected and the service is very expensive.

E. Lease

David Hennessy asked about the lease reimbursement from the Juvenile Grant and the PD Commission. Larry responded that these entities are paying for about 2/3 of the cost for the 5th floor offices and the reimbursements show up as line items in the operating fund budget.

F. Staffing

Larry stated that Stacey Uliana declined the Council's offer of a full time position, but may work on special projects. The Council will be contracting with Paula Sites to update

death penalty information that is housed on the IPDC website and to maintain the death penalty database. She estimated she will work about 5 hours per month.

The Council is in the process of determining how to provide death penalty mentoring support in the future. Current options on the table are to hire an additional general research person who is interested in building defense expertise or to contract with a specialist such as Eric Koselke to provide this assistance. Bernice Corley, Larry and Jack Kenney are working on this and anticipate a quick decision since there are several new death penalty cases. Bob Hill stated that a death penalty resource person needs to be someone who has a lot of experience, not a new research person. This is very much needed now, especially with the election year coming up.

Michael Wilson is a law student who is working on the Council's website and also doing legal research.

G. Phone Calls

Larry stated that changes have been made to the phone answering system and requested feedback. Chris Shema stated there is still a value in having a human say "we understand and will have someone call back." Bob Hill agreed and said people have problem solving capabilities that phones don't.

Toni Schaney provided information about several new practices associated with directing calls to researchers. The most direct updates are to put the direct research phone number on the website so that callers don't need to go through the automated routing process and to institute a policy such that if the assigned researcher will not be at their desk phone for an extended period, they will either forward their phone to their cell phone or to another researcher. Voice mail messages are transcribed to emails so the researcher sees the message even if they are not at their desk. All of the researcher's phones are set up in a call group so that they can pick up other phones if they find it is necessary. Also noted was that the research call log now contains a field on each record so that the source of the request for assistance can be tracked and reported on.

Larry said he understood the preference for a human voice, but he thought the most important issue was the response time to the caller. This is an issue he is trying to track and would appreciate feedback if Board members hear of someone who feels they did not get a prompt response to their call or email.

H. JRAC

Larry reported that the DOC receives \$20 million per year for community corrections grants for collaboration projects to provide Recovery Works services. Funding for public defender case managers is available, as long as it is part of a county collaboration project. Public defenders will need to work with their local community corrections programs. County applications are due 1/31/18.

Gojko Kasich asked if the Council can find out which counties in the system are not using Recovery Works. He noted that Lake County can't get any money currently because it needed to come out of their budget first (which they done have) and the County Council won't approve an ordinance to get the process started. Marce Gonzalez has been consulted, but he has a lot of other things on his plate so he does not have time

to devote to this at this time. It was decided that it may be necessary to put together an information package to help Lake County and other county offices:

Larry stated people need to document and report problems with Recovery Works so the problems can be addressed.

I. EBDM

Larry gave a slide presentation on Evidence Based Decision Making (EBDM), which he said will be implemented in many counties in the next few years and is going to have a significant impact on all criminal justice services in the future.

J. PD Commission - IN Task Force on Public Defense

Larry reviewed the PD Commission's plan to appoint an Indigent Defense Task Force to review the structure and funding of indigent defense services in Indiana.

1. Bob Hill moved and Mark Nicholson seconded a motion support a policy of a fulltime chief P.D. in each county or region (multiple counties) who is paid the same as the prosecutor and that the PD Commission have oversight over these chiefs. The motion passed unanimously, with Chris Shema abstaining because he wanted to see a plan first.
2. The following issues were discussed without action being taken:
 - Who will head the PD Commission task force?
 - There was concern expressed that there are no paid public defenders with a vote on the Commission's non-statutory task force created in reaction to the 6th amendment study.
 - Larry stated that some of the reasons for the makeup of the task force were:
 - (1) conflict of interest of public defenders;
 - (2) a desire to keep the size of the group to 17 or under, and include the three branches of State government, county officials and criminal defense lawyers without a stake in the present delivery system;
 - (3) a desire to have members with some political clout who could influence legislators if they felt systemic change was needed; and
 - (4) a recognition that if a county public defender was appointed they might need to appoint 5 members because of the nature and variety of the county systems.
 - Jennifer Sturges suggested that Larry carry the Board's concerns to the task force. Larry stated that he would do that but thought the public defenders should also be their own advocates before the task force.
 - Chris Shema brought up that he was told that the Council does not speak for or advocate for public defenders, only for the indigent defense services. Larry stated this is true in that the Council is not a trade association advocating for what is best for the attorneys, but is a taxpayer-funded State agency to improve the quality of indigent services. Usually the interests are compatible, but not always.
3. After discussion, Bob Hill moved that the Board instruct Larry to request that 3 public defenders be appointed to the Task Force as voting members. On David Hennessy's suggestion Bob amended his motion to provide as follows:

- That the Board Chairperson make a written request to the PD Commission that three public defenders be added as voting members of the Task Force;
- That the Board select 3 members to represent various size counties on the Task Force;
- That the Board establish a 3 member (appointed by the chairperson) Board task force on public defense to independently study the issues and the actions of the Task Force on Public Defense.

Chris Shema seconded the amended motion. During discussion, Jennifer Sturges asked if the three representatives must be chief public defenders. It was agreed by acclamation the representatives do not have to be chief public defenders. The motion passed unanimously.

Larry suggested some of the issues the Task Force will review include:

- establishment of a statewide CHINS office;
- whether Indiana should stay with county based/county funded or move to more State oversight/control and
- how should chiefs be selected, and how they should they be removed if they are not performing adequately.

Neil Weisman requested the Board task force make recommendations of names for appointment to the PD Task Force. Neil appointed Steve Owens as chair the Board task force. Other members appointed were: Bob Hill, Micki Kraus, Chris Shema, and Jennifer Sturges. Neil said that if any member of the Board task force is appointed to the Commission task force they will be replaced on the Board task force, and that one of the spots should be reserved for a chief P.D.

K. Structure and Funding of Indigent Defense Services

Larry stated that fixed fee contracts have become a major problem with regard to quality of representation. One option is to recommend that the PD Commission adopt a new standard or guideline that reimbursements be based on hours expended, not a fixed fee. David Shircliff moved, and Bob Hill seconded, a motion to recommend to the Commission that they abolish fixed fee contracts and that reimbursement be either at the full time salary level or by hourly contract.

After some discussion, David withdrew his motion and it was decided to discuss this at the next Board meeting after more information is gathered.

The meeting broke for lunch at noon and re-convened at 1:03.

V. IPDC Services

A. Training

David Shircliff reported that the Training Committee's report was incorporated in Diane Black's report.

1. Diane reported on the training programs conducted and provided a comparison with the previous year's training events.

Diane reported that NACDL will be presenting a free sex crimes seminar in March 2018. New goals for 2018 were included in the Board materials. In the future, Diane would like to split up 1 day seminars and have a new lawyer afternoon track. This would be in place of the New Lawyer training. David Hennessy felt it might be a challenge to cut it down to ½ day, but they could cover trial preparation in that time. Chris Shema suggested that there also be an “old lawyer” track or other breakdowns.

Diane stated that TPI had 15 registrants, but expected to have more registrations closer to the event. David Shircliff suggested that when the program is a full week there should be more lead time for registering. Neil Weisman asked if seminar attendance is lower because of the outreach training to counties. Diane said that may be the case, but it is too early to tell for sure. For TPI, it was also suggested that perhaps it be broken into a couple of shorter sessions and that those who are not first time attendees pay a higher fee.

One of Diane’s goals going forward is to put testimonials for seminars on the website. She is also planning to begin charging a minimal fee per person for local training to cover basic expenses. David Hennessy asked how many members vs. non-members are attending seminars and also the per person cost per seminar.

Diane reviewed the charts and spreadsheets of revenues and expenses shown in the handouts to indicate that the training budget surplus will vanish if the Council continues to lose money on the one-day statewide seminars. Bob Hill asked if there would ever be a time when public defenders would not need to pay for training by having the funding coming from other sources. David Hennessy said that the Council should never get away from larger meetings, but needs to find ways to save money.

Neil stated that his staff likes to come to Council seminars because they are treated nicely so he doesn’t want to stop offering statewide meetings. Toni Schaney described the State government center and IPDC office facilities that can be used. Neil asked that other suggestions be brought to the attention of the Training Committee, but suggested that the Council should continue with the core Indianapolis seminars, provide more regional training, and raise fees for all attendees except new attorneys.

David Hennessy said he would like to extend the time period limitation on the new lawyers registration from 2 years to 3 years and reduce the cost for new lawyers to \$50. Chris Shema suggested that repeat TPI attendees pay more than first time attendees. Mark expressed his support for this change. There was also was a suggestion that the annual update fee be increased.

No changes were agreed upon as a result of this discussion except: (1) allowing new private attorneys to attend seminars at the same fee level as public defenders; and (2) TPI will be kept as it is at 1 full week.

Diane asked if there is a minimum number of seminars. David Hennessy stated that the Council went from 14 to 7 and back to 14 several years ago. David also

mentioned that the Council was providing mentoring when there were only 7 seminars. It was discussed that the Council should focus on just 5 "standard" seminars and then do nuts and bolts training at regionals. No decision was made.

Mark Nicholson asked when the last time the TPI fee was increased. Larry stated that it was purposely kept low for part time members because they paid the fee and lodging expenses and were losing income from private practices. He suggested it might be time to charge more if the county office pays the registration fee. David Hennessy suggested that perhaps scholarships should be offered.

Chris suggested that there should be a question in a survey to determine if people would be willing to pay more for TPI.

2. Don Murphy asked if the Council should re-initiate mentoring and coaching, assuming there would be a cost to pay someone to do it. Chris suggested that this would be a question for a survey. This will be put on the agenda for the Training Committee.
3. David Hennessy asked about the Deliberate Practice Demonstration Project. David Shircliff explained the project and indicated he and Don Murphy have looked into participating in this study. Don has prepared a decision point list and they are looking into reaching out to someone to collect data so a program can be developed for new public defenders.
4. Larry discussed the Measuring Justice document by ILF and suggested that it would be a good process for counties to use for measuring the quality of services/performance.
5. Larry reported that the PD Commission has authorized a workload study to be conducted by the ABA. Several Indiana public defenders and private attorneys will be contacted to participate in this study and to help brainstorm areas to be measured.
6. Larry reported that he and Bob Hill made a presentation to the Interim Study Committee on Corrections and Criminal Code re: funding for misdemeanors and CHINS cases using some of the \$9 million surplus in the Public Defense Fund.

B. Outreach

Chris Shema suggested that Larry Landis prepare a presentation for public defenders to use when talking with legislators and encourage public defenders to be pro-active in talking about indigent defense.

C. Publications

Larry reported there have been several updated publications in the past few months. Board members interested in paper publications should complete an order form. There are a couple of new publications in the works: (1) a "Bail Bond Book" that may be authored by a representative from NACDL who is going to be visiting the Council office in early October; and (2) a new screening tool pamphlet that is in the works.

Mark Nicholson suggested that when the mental health manual is updated information pertaining to veterans and Recovery Works should be added. Mark also suggested that the Council should either upload a copy of the Commission's "Am I in Compliance with the Commission's Standards" or provide a link to it on the Council website.

D. Other Committee Reports

Chris Shema suggested that the outreach and the training committees should be combined. The consensus was that this would not be a good idea.

Mark Nicholson asked if the policy regarding amicus briefs for the juvenile project was resolved. Micki Kraus stated that she did not have time to prepare it. Larry Landis said he thought the draft prepared by the juvenile staff was too broad.

There was no report from the Policy and Liaison Committee. Larry Landis provided the following updated information:

- The current civil forfeiture statute was deemed unconstitutional. David Hennessy suggested that if the State loses a civil forfeiture case they should be required to pay attorney fees. Gojko Kasich moved to add this to the civil forfeiture statute; Mark Nicholson seconded. This motion was passed unanimously.
- There was discussion about the current felony offenses of escape, possession of paraphernalia, dealing, domestic violence, etc. and that these should be reduced to misdemeanors if the offender completes treatment.

VI. Old Business

The Board voted to approve filing an amicus brief in Newton v. State by a vote of 9-0, with Steve Owens abstaining.

David Hennessy moved that new attorney seminar fees should be the same for both private attorneys and public defenders, and that the new attorney period should be changed from for the first 2 years to 3 years after passing the bar. Mark Nicholson seconded. Six members voted for the motion and 4 (David Shircliff, Micki Kraus, Gojko Kasich and Bob Hill) were opposed. The motion passed.

VII. Election of Officers

Neil Weisman was re-elected as chairperson, David Shircliff was re-elected as vice chairperson and Mark Nicholson was re-elected as secretary.

VIII. New Business

No new business

IX. Next Meeting

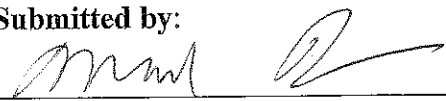
The next Board meeting was not set at this time.

ADJOURNMENT

The meeting was adjourned at 3:20 pm, EST.

Minutes prepared by Toni Schaney and Larry Landis.

Submitted by:



Mark Nicholson, Secretary

12/7/17

Date

Approved by:



Neil Weisman, Chairperson

12/7/17

Date

