

INDIANA PUBLIC DEFENDER COUNCIL  
BOARD OF DIRECTORS MEETING  
Residence Inn Carmel  
11895 Meridian Street  
Indianapolis, IN

April 25, 2019

7:00 pm

Minutes

**I. Call to Order and Approval of Minutes from last meeting**

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 7:13 pm EST on April 25, 2019, in a conference room at the Residence Inn, Carmel, IN by Chair David Shircliff.

Board Members present were: David Shircliff (chair), Mark Nicholson (vice chair), David Hennessy (secretary), Ashley Spolarich, Jennifer Sturges, Jennifer Culotta, Gojko Kasich, Robert Hill, Deana Martin, Stephen Owens, and Christopher Shema. Council Staff present were: Bernice Corley, Michael Moore, P. Michael Wilson, Mark Carnell, Amy Karozos, Diane Black, Suzan Ristich, Joel Weineke, and Juli Byrne. Present via webex were: Ruth Johnson & Andrew Cullen.

Jennifer Sturges made motion to accept minutes from February 28, 2019 meeting, seconded by Deana Martin. Motion passed unanimously.

Jennifer Culotta made motion to approve agenda, seconded by Ashley Spolarich. Passed unanimously.

**II. Executive Director report**

Bernice Corley reminded board of an issue, brought up at the retreat, about a DCS person volunteering on the Allen Co. board, our board believed that there was a conflict and wanted to bring it to the Commission and hoped the Commission would take some action.

- Update – PDComm. amended their bill around county board structure and specifically prohibited a DCS employee from serving on the board. The bill did pass. David Hennessy requested that Bernice Corley send him the final language on the bill.
- David Hennessy wanted to know if they addressed the issue in regards to a best friend of the Judge being on the board. David Shircliff stated that they did address the issue and changes had been made so that one of the members, of the three person board, has to be appointed by the Commission which means that the judges only have one selection now.

The pretrial Criminal Rule 26 update. Court Services is moving forward and wants to do a certification so if a court wants to make themselves available for grant dollars, they must become a Rule 26 certified court. When we last met there was a desire to take on the bail statutes, to change those as well and all move along at the same time. Court Services leadership decided that it would take too long to work through statute changes and try to create the certification process at the same time, so bail statutes has been tabled. The only focus right now is the certification program with the goal being that it is in effect by January 1, 2020 which is the same time as Criminal Rule 26.

Recovery works update was provided – everything is pretty much the same. Christopher Shema inquired about an increase, Bernice Corley will double check to see if they received an increase. Gojko wanted to know what they (Recovery Works) have in their account currently. Bernice will research and send her findings to the board.

Discussed the Council's appropriation and where we are right now. Total appropriation is currently at \$1.3 million, we currently have about \$430,000 left in the account. We may have around \$80,000 at the end of the year, David Hennessy inquired if we will be able to move that to training.

- David Hennessy requested that when we have the revised budget and total actual, he wants a column added that gives how it matches up with the budget itself, over/under, using red and black numbers.
- David Hennessy wanted to know if we still had a separate training fund. Suzan Ristich stated that we do still have a training fund. He wanted to know why it was blank on the spreadsheets, Suzan Ristich stated that the blank that he was looking at is where the transfer from the general fund would go.
- Bernice Corley stated that the Chief Justice approved 2.2% cost of living for the judicial branch, those were applied to the salaries provided excluding Bernice Corley due to her position is treated differently. David Hennessy inquired about the board and director going through the employees' salaries one at a time and make determinations/approvals on salary adjustments of the PDC staff. Just wanted to bring the history forward.

Juvenile Project funding. We did not get any increase for the juvenile project. What can we do with the money we have to sustain the juvenile project? Bernice Corley has reached out to Chief Justice Rush, who stated that she will work to get us the money needed. Juvenile grant ends in August. The MOU that we received from the Supreme Court is our money, it does not revert back and is to be spent on the juvenile project. We have the ability to continue the project (with what we currently have) until June 30, 2020. David Hennessy is confident that more money can be found from the contracts, seminars, publications, and membership. David Shircliff suggested that since this is for year 2020 - 2021 that at the retreat we can focus on a way to continue the juvenile project beyond 2019. All the board members are in agreement to put the Juvenile Project on the agenda for the retreat 2019. Amy Karozos is also currently working on a grant as well. David Shircliff wanted to reiterate

the value of the project and they want to continue it. The board is willing to do whatever they can to make it happen.

Gojko Kasich inquired on why the Appellate training expenses are so high? Diane Black explained that the seminar is at a venue which causes you to incur room cost, Tina handles the bigger seminars which is a contract cost, food costs, etc. The most expensive part is the food. Mark Nicholson inquired about, when downtown, can we validate parking. Diane Black explained that depends on if the Legislature is in session, the mall parking is the cheapest closest place.

Legislative. Mark Carnell stated that the legislature session came to an end around 11:10 pm on 04-24-2019. Mark Carnell felt that this session was one of the most prolonged order sessions that he had ever seen. He stated that our sponsored agenda did not do well.

- We had several good looking initiatives, and a couple of them were moving along nicely, and they stalled and died in the house. One was the Woods v. State, leaving the scene of a motorboat accident bill which didn't get a hearing in the house Natural Resources Committee. The other one was SB486 which had escape provisions, it had common nuisance provisions, this one stalled in the house.
- SB279 which was the juvenile waiver had other stuff added to it in committee including making it a crime for a former juvenile offender to possess a firearm until the age of 26 or 28. Also, there would be a limit on expungements until they were 26 or 28. This is one place that we were successful, and all those provisions were removed in the house.

Bernice Corley stated that she felt that we missed out on interim educating members about what our priorities are, what the council wants to see. We didn't really hit the ground until later during the retreat. If the retreat would have been in June we would have had more time to educate and bring these topics up. She felt that we did pretty well considering we got out of the gate late. We need to stick with the legislative agenda that has been created and maybe hone some things off, but things that passed the first house need to be brought up again because she felt like there should be no reason that we shouldn't be able to get it across the finish line in the other house.

- Items that we need to be thinking about
  1. 279, the waiver bill that would have waived a 12 year old. That issue was coming back. We want to be proactive and have some work ready.
  2. 551, had really obnoxious language that would have limited the defense council's access to a child that was alleged to be a victim to a sex crime. The language would have prohibited the council from interviewing the child without the parent's permission and would only allow a child court to approve a deposition if the child was believed to be unavailable for trial. It expressly prohibited the defendant from being at the deposition. We testified against that. We need to be ready to take this on and be proactive.

Christopher Shema expressed wanting some kind of training to help with the lobbying by showing the board what the council specifically wants the board to advocate for, and here

are the buttons you can push. Bernice Corley responded that yes the council can definitely do that by putting something together. Ashley Spolarich requested a synopsis on the items that Bernice Corley thinks are coming back. Bernice sees that IPAC is not going to let go. Bernice Corley stated that she does have some ideas and will bring them to the retreat.

3. Bernice Corley stated that this is the first year that the Commission and the Council had separate teams contacting the legislature about things. This caused a great deal of confusion, there were a lot of law makers who had no idea that there are three defense agencies. We received many comments on how incredibly confusing it was, and having a lot of trouble keeping straight who does what. The CJ brought up that she has found it confusing as well and does there need to be a restructuring of agencies. For the retreat or at some point, it would be beneficial, for the council board have a position on how we think about these structures. David Shircliff requested that we put this information on the agenda for the retreat.
4. Bail. Bernice Corley stated that the National Institute of Correction is the entity that has funded evidence based decision making that the Court Services is working on. They came to Indiana early to do a pretrial training. She has them all written out and will e-mail it to the board. The message that was in the legal presentation was that Indiana really needs to have preventative detention. It was expressed to have a pretrial program there needs to be a presumption of release. They took on that our bail schedules were really unconstitutional. They really called Indiana's bail structure out. But, we do need to have preventative detention as a tool. This is a topic that we need to develop our position on where we are on it. Ashley Spolarich stated that she would like to have put in the e-mail to the board items that are coming up.

### **III. Assistant Executive Director report**

Training Highlights - we are doing a case review training on May 17 which will we will train people on how to assist and conduct case reviews. Diane Black and a few of our folks participated in a training with DCS it was sort of a bridge building / training DCS attorneys, train family attorneys in all representing parents in CHINS matters and children as well and family case managers. This was a multi-disciplinary training held in Lafayette April 16-18. Resiliency training has been very well received.

Distance Learning - There is a service called Moodle which is a way to deliver on line content and training at a distance. There are a lot of colleges and state department of education use it to train people at a distance and it is free, so we are utilizing it to record some of our 1 hour deep content training and make them available on what is called Moodle, which is just a platform. We are hoping to have it running full steam late or early fall maybe. It will be an opportunity for attorneys to learn at a distance to receive CLE credits. It can also be a just in time issue for a first time issue that you really don't know much about the topic you can use Moodle to get the training for free or a very low fee. Or if an attorney needs to be Commission certified. This type of training cannot substitute for in person training.

Attorneys can only get up to 18 hours training using Moodle. We feel that the larger users will be the people that need it toward the end of the year, or they need just in time training on a very specialized topic. David Hennessy inquired about the likelihood of a prosecutor using Moodle. Michael Moore stated that you have to be a member that we know about to use it. Michael Wilson stated that the reason that we chose Moodle is because we are currently switching over to salesforce for our membership database and Moodle and salesforce will have the ability to talk to each other therefore cutting down on the ability for non-members to be able to access the training. If someone is no longer a member in salesforce they will automatically be pulled from the Moodle system. David Hennessy is wanting to get away from self-reporting. Michael Moore added that he wanted to put in some kind of a disclaimer as well.

Michael Moore discussed the new publications that have been released and are due to be released in the near future.

Michael Moore informed the board that the council has applied for and received two grants. One of them is the (Title 2) Juvenile Justice and Delinquency Prevention Act and the Edward Byrne Memorial Justice Assistance Grant Program (JAG). We are using those funds on social workers in identified counties to provide pre and post-trial screenings for clients experiencing mental health issues, addictions, homeless and other factors that contribute to recidivism.

Eye witness Identification Rule - Staff met further and determined that the better course may be to propose a new rule to the Indiana Rules of Criminal Procedure rather than a new evidentiary rule. See attached hand out. David Hennessy wanted to know if we were abandoning the idea of pattern instructions. Michael Moore stated that every case would be so unique that it would be difficult to create a true pattern and it might be better for the attorneys to have the flexibility to create a pattern on the fly based on the criminal rule. David Hennessy wanted to know if Michael Moore thought about having this in the Indiana Rules of Evidence and is this criminal rule going to have a remedy? David Hennessy requested that Michael Moore add to his instructions by putting the remedy in the Rules of Evidence which would be shorter by referencing rule 27. Christopher Shema made a motion that the board give Michael Moore permission to move forward with the work that he has done to have the eye witness identification adopted as a criminal procedure, seconded by Mark Nicholson. Motion passed with David Hennessy as a no and Gojko Kasich abstained. David Hennessy stated concern because he has not seen a draft and feels that we are just giving Michael Moore permission to do this free handed. He also stated that he is not ready to approve a specific version since he has not seen it.

Updates on technology - getting rid of old Microsoft Access programs and moving to a cloud based database. Gives examples of what we are wanting. It would just move us to a more advanced system.

Board policy manual is currently being worked on and should have it to the board for approval before the board's next retreat.

David Hennessy asked Ruth Johnson (who was available via phone) how long it will take to get the Eye Witness rule. She felt that it could be pushed to the rules committee and that it was in good shape to go forward. David Hennessy has some real concerns and would like to have the opportunity to point those out. He stated that he will give them to Michael Moore before he leaves at the end of the meeting.

Jennifer Sturgess questioned about the case reviews presented to the board. She stated that she knows of two that were not listed because they were her reviews. She stated that there are at least 3 that were not on there because David Shircliff stated that his office did one as well. Diane Black stated that she wants those given to her to add to the list.

#### **IV. New Business**

Gideon Award recipients. Robert Hills wanted to know if we did this in camera? David Shircliff stated yes. He stated that it then goes to an executive board meeting when we discuss the recipients. Gojko Kasich stated that he didn't think this was official business. Robert Hill made a motion to go to executive session to discuss the Gideon and Gault awards, seconded by Mark Nicholson. Gojko Kasich stated that we have an open door law which makes the executive discussion wrong because it wasn't posted.

##### Committee reports

1. Training (Deana Martin) has created a mission statement and talked about the board meetings should be the day before a CLE of general interest. The Eye Witness CLE in December will be recorded and available on Moodle. The MCPDA is doing IRAS training in May, Diane Black is going to come and if Deana Martin's expert is okay with it the training will be recorded. Christopher Shema would like training on bond reviews.
2. Publications (Christopher Shema) the committee is going to circulate a mission statement. Had a general discussion about having quick hits / applications where people can download to cell phones for bond hearings, here is your statute, here is the Supreme Court case. Maybe have a copy of rule 26. Something that is concise and immediately available to the touch. Also discussed updating the trial pamphlet from 2016, with the trial objections, he feels that a lot of our members don't know that that is around and he finds it valuable.
3. Executive Director Evaluation Committee (Stephen Owens) discussed the framework of what we were going to do going forward. What areas and topics that they will address. There are a couple of jobs that need to be completed next week and once that is done they will be moving forward.
4. Strategic Planning Committee (Jennifer Sturges) will be reviewing the mission statement of the organization. Also, discussed how we will carry out the mission statement and will be reviewing what our priorities are. The council vs commission rules, the balance between ethicacy vs. advocacy, and what we can do under the enabling statutes.

Streaming and recording Board Meetings – Michael Moore discussed the technology that we have including the owl gives us the ability to outreach to people around the state to take an interest in what the board does. At some point streaming the meetings so people can watch. We didn't want to do that before talking to the board and receiving permission. That would be a situation where we would know who was watching. Please be aware that it is a public meeting. This also includes the recordings of the meetings placed on our website for people that cannot watch it live can watch it at a later date. David Shircliff asked the members if we want to address this or table it. It was tabled until the board retreat.

Christopher Shema wanted to know if we were going to have a board meeting before the annual update. Robert Hill wanted to know what would be on the agenda. Christopher wanted to know if there was any business that we need to get geared up for with legislatures to be able to talk to them over the summer. Bernice Corley stated that we can put something together for June. David Shircliff determined that there will be a brief board meeting to discuss the potential strategies for legislation coming up or at least starting the seeding for what we want to happen in the legislature. Christopher Shema inquired of we will have anything from the CJ about the Juvenile Project, Bernice Corley stated that would be oh her timetable so she is unable to say for sure. Christopher Shema made a motion to have a board meeting the night before the annual update (06-06), seconded by Ashley Spolarich, motion passed. Mark Nicholson and Robert Hill opposed. Mark Nicholson wanted to know if we are going to have a meeting before and after the annual. David Shircliff stated that we will have one before to discuss stuff and a brief one afterwards pending on who gets elected.

Gideon Award. Jennifer Sturges submitted a nomination and would like to abstain from voting. Christopher Shema stated and Robert Hill confirmed that board members are not allowed to nominate anyone for an award. Robert Hill also elaborated on the rule that someone that does work for the council is not eligible for an award. Joel Weineke is the only nominee for the Gault Award works for the council which is a problem that needs to be addressed to be consistent with our history and what we have done in the past. David Hennessy stated that contractors were not direct employees therefore are not disqualified, gave an example. Ashley Spolarich made a motion to award Kathleen Cleary the Gideon award, seconded by Robert Hill. Motion passed, Gojko Kasich opposed and Stephen Owens abstained.

Gault Award. David Shircliff wanted to know if we can give Joel Weineke the Gault award or not. David Hennessy stated that we needed rules for this since these problems keep occurring. Bernice Corley stated that she has looked for the rules for this and there is nothing that prevents him from winning. David Shircliff asked if we need to pass a rule that we can elect a contract person. Robert Hill stated that we need to assess however that is the way that it has been since he has been on the board (that contractors are not eligible). Jennifer Culotta makes a motion to give Joel Weineke the Gault award, seconded by Robert Hill, motion passed. Christopher Shema and Gojko Kasich abstained and Jennifer Sturges opposed. Robert Hill stated that he would like to bring this up at the board retreat. David Hennessy would like to develop rules across the board in regards to the awards. Award winners were by acclamation.

Jennifer Sturges stated for clarification since we were nominating one of the team members I would have preferred we nominated the entire team, which is why she objected.

Mark Nicholson makes a motion to adjourn, seconded by Ashely Spolarich, motion passed unanimously.