

**INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS MEETING
Larry Landis Training Room, Public Defender Commission
Indianapolis, IN**

**September 5, 2018
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 7:10 p.m. EST on September 5, 2018, in the Larry Landis Training Room of the Indiana Public Defender Commission, Indianapolis, IN, by Vice Chair David Shircliff.

Board members present were: David Shircliff (Vice Chair), Mark Nicholson (Secretary), Jennifer Culotta, David Hennessy, Robert Hill, Gojko Kasich (via web-conferencing), Deana Martin, Steve Owens, Christopher Shema, Ashley Spolarich, Jennifer Sturges. Also in attendance were Council Staff: Bernice Corley, Michael Moore, Diane Black, Amy Karozos, Patrick Wilson, Suzan Ristich, and Juli Byrne. Larry Landis was present for the Commission.

Introduction of staff. Introduction of Board members.

II. Review and Approve Agenda

A motion to amend the agenda was made by Jennifer Sturges and seconded by Ashley Spolarich. Motion amended to add the Juvenile Delinquency request to approve the filing of an amicus brief (Amy Karozos) after the Electronic Participation Policy presented by Michael Moore. Unanimously approved to move add the amicus item after action item number three.

Approval of Minutes from Last Meeting

The minutes of the Board meeting on June 7, 2018, were reviewed and Gojko Kasich believes that everything that was in the June minutes were ignored by the Commission. Jennifer Sturges moved to approve minutes as distributed, which was seconded by Ashley Spolarich. The minutes were approved 10 - 1. Mr. Shema opposed the approval of the minutes because the minutes had been produced for review three months after the meeting occurred.

III. Consideration and Adoption of an Electronic Participation Policy

Item presented by Michael Moore for the purpose of allowing Board members to attend any Board meeting (excluding executive sessions) via an electronic means so long as the meeting otherwise is conducted in accordance with Indiana's Open Door law changes made in the

2012 legislation. In order for an electronic participation policy to be adopted, it has to have a favorable vote by the majority of the board.

- Must include all requirements 1-8 subsection II on page one of the Memorandum.

#1 – Each board member must physically attend at least _____ Board of Director meeting(s) annually. Bob Hill made a motion to accept 3 meetings a year (year meaning any 12 consecutive months), Ashley Spolarich seconded; motion passed by a roll call vote of 9 to 1. David Hennessy voted no.

#2 – At least three (3) Board Members must be physically present at the designated meeting site on the date of the scheduled meeting before any member may participate electronically in the meeting. Accepted as written, no vote taken.

#3 - The Board Chair and Council staff are responsible for supervising and coordinating all electronic participation by Council members. A Board member who intends to participate in a Board meeting electronically must notify the Board Chair and the Council support staff person no later than 3 days in advance of the meeting. Motion made by Robert Hill to change wording to state three (3) business days in advance. Mark Nicholson moved to change wording from the word “must” to “should” due to emergencies, Robert Hill accepted the addition to his original motion. Motion seconded by Jennifer Sturges. Motion passed by a roll call vote of 9 to 1. David Hennessy voted no.

#4 - All requests to participate electronically must be submitted via e-mail to the Board Chair with a copy to designated Council staff. All requests must be approved by the Board Chair before the requesting Board member may participate in a meeting electronically. The approval may occur at any time prior to or during a scheduled Board meeting. Motion made to strike #4 totally made by David Hennessy, second by Mark Nicholson. Motion passes by a roll call vote of 10 to 0.

#5 through #8 - Christopher Shema moved to accept items #5 through #8 in their entirety, seconded by Jennifer Sturges. Motion passed by a roll call vote of 10 to 0.

- Jennifer Sturges moved to make this policy effective immediately, seconded by Ashley Spolarich. Motion passes by a roll call vote of 10 to 0.
- David Hennessy asked about placing the electronic meetings policy into the Board’s operation’s manual. Item tabled until Board retreat, item will be posted on website for now.

IV. Amy Karozos presented a request to submit an amicus brief. Juvenile project received a request from Cara Wieneke to submit an amicus brief in the case of A.M. v. State. Amy provided the Board with a summary of the facts of the case.

Amy Karozos requested permission to file an amicus on a petition to transfer on behalf of the Council, which she will author. Robert Hill moved to approve the request, which was seconded by Jennifer Sturges. Motion passed by a vote of 10 to 1. Christopher Shema voted no. Amended as per Retreat on: 10-27-2018 Chris Shema wanted reason for no recorded. His no vote was due to he did not think that a juvenile should be able to force his attorney to demand waiver.

V. Taskforce on Public Defense presented by Larry Landis. Five page summary handed out to all in attendance.

- Identifying counties by size (increasing decreasing population) and whether they have a Chief Public Defender or not.

Mr. Landis and the Board discussed the following:

- Why is applying by Commission standards not a top priority.
 - Unfunded mandate.
 - No enforcement mechanism.
 - Pushback from non-participating counties if they were told that they have to comply and there wasn't a significant increase in state funding.
- The goal is to get all counties to comply however that is pragmatic.
 - Suggested that they try to increase the reimbursement by Misdemeanor
 - Decrease the expenditures by doing a State Appellate Office
 - See if we can knock down the 30 counties that are not in compliance into single digits.
- Years Later
 - How to get counties into compliance when we have pushback from a few counties and not 30.

Every county must eventually comply; however, how do you enforce it? Using the two school districts (Muncie & Gary) that have been taken over by the state as a basic model. We still do not know how that is going to work and the take-over is supposed to be temporary.

- Recommendation for Standards:
 - Every county must comply including the city and town courts
 - Every county must comply with the standards
 - Every county must have at least 1 person in charge of quality (either a Chief Public Defender or a Regional Public Defender).

Larry Landis is concerned about the case load standard for appeals. We need to get the numbers right so that the standards are not set too high. What is being suggested, based on Robert Hill's time studies, is almost 2,500 hours a year to meet the 30 case load standard that is being projected. Robert Hill feels that it is unrealistic and actually increases the case load of appellate lawyers by one-third from what they are getting right now. The case weight study should define the appropriate standard? Robert Hill has offered to show his numbers to help

put it into perspective: i.e.: 2,000 hours a years is working 40 hours a week, 52 weeks a year without a vacation or holidays. Larry would like input from Marion County to help with the projection.

The Commission is proposing legislation that would require counties that have the ability and interest to do their own appeals to contract with the Commission to continue to do their own appeals. Landis explained that there would be a state central office that can do a lot of the appeals for the state. If there is a county that wants to do their own, like Lake and Marion Counties, the Commission would contract with those counties.

Robert Hill has stated concerns about this offer of the state paying for the appeals. He feels that a state-wide office will negatively impact Marion County PD agency. He explained that he was concerned that MCPDA will lose its autonomy. Also, MCPDA appellate division works with trial counsel during the trial stage unlike how a state-wide office would operate. MCPDC's appellate agency is a model for how an appellate office should operate. Gojko Kasich shared the same concerns regarding the Lake County Appellate office. Both Bob Hill and Gojko Kasich stated concerns that they have been told that Lake and Marion Counties would not be impacted by the proposal of a state-wide appellate office and now the plan has changed. If the Commission's plan is successful, then Lake and Marion County will be impacted despite being told differently for some time.

Jennifer Sturges has suggested that, based on someone that works with 3 different rural counties (Franklin, Rush, and Decatur), she should not have to worry about her client who needs immediate representation for appeals. The only way that is going to happen is if there is a state-wide office, even though it is controversial with Lake and Marion Counties. She feels that this has to happen. We need to advocate for its importance or it is never going to happen.

Larry left at: 09:21 p.m.

Board would like to rank these and propose them to the Commission:

1. Reimbursements for Misdemeanors
2. Statewide Appellate Office
3. Multi-County Public Defense System

Motion made by Christopher Shema, seconded by Jennifer Culotta. Passed by roll call 11 to 0

Motion made by David Hennessy to recommend in our motion to the Commission that we address the Task Force and explain to them that we have some concerns attached that the Task Force. The recommendations do not address all the issues raised by the 6th amendment study, specifically, the lack of representation in every critical stage of the proceedings. Our membership reports to us that that is being abused throughout the state. The Commission needs to connect that to reimbursement. Seconded by Christopher Shema. Passed by roll call 11 to 0.

David Hennessy makes motion to adjourn seconded by Ashley Spolarich. Adjourn at 09:48 p.m.