

Minutes of the
INDIANA PUBLIC DEFENDER COUNCIL
BOARD OF DIRECTORS
Marion County Public Defender
11895 N. Meridian St.
Carmel, IN

December 12, 2019

7:00 pm

Minutes

I. Call to Order – David Nicholson

A meeting of the Board of Directors of the Indiana Public Defender Council was called to order at 7:08 pm EST on December 12, 2019 in the Conference Center at the Residence Inn in Carmel, Indiana. The meeting was chaired by Mark Nicholson.

Board members present were: Mark Nicholson (Chair), Deana Martin (Secretary), Gojko Kasich, Ashley Spolarich, Christopher Shema, Jennifer Sturges, David Shircliff, and David Hennessy (Vice-Chair) via phone. IPDC Employees present were: Bernice Corley (Executive Director), Michael Moore (Asst. Executive Director), Suzan Ristich (Controller), Juli Byrne (Office Coordinator); employees present via phone were: Diane Black (Training Director), Ruth Johnson (Staff Attorney), and Kelsie Hugg (Social Worker).

II. Approval of Minutes from Retreat and October Meeting – Mark Nicholson

David Shircliff made a motion to accept the minutes from the Retreat and the October meeting, seconded by Deana Martin. Passed unanimously for the Retreat minutes. The minutes from the October meeting passed with David Hennessy voting no. He wants the Board minutes to reflect that the vote should be separated and therefore the vote for the two meetings should have also been separate votes.

III. Executive Director Report – Bernice Corley

Financial Report, the General Fund Expenses are up to date to the month of October. Gojko Kasich inquired about the expense report wanting to know if the actual expenses are in black does that mean that the ones in red are income. Suzan Ristich responded that the items in red are actually expenses that should have been in the training fund instead of the general fund.

David Hennessy wants some items changed in the financials. David Hennessy stated that Parnell was on there and that it needed updated. He wanted to know what the \$6 was for under line: Travel Agent. He also wanted to know what the taxes entry was about, under operating expenses there is a Criminal Rule 26 Summit that costs a lot of money. He then

commented that the reports show that we are making a lot of money in training. He inquired about the rent agreement we have with the 5th floor, and he wanted to know what happened to the rent that we were supposed to be receiving from the Juvenile grant. Bernice Corley informed David Hennessy that the rent can be found on lines 85 & 86 in the General Fund Expense report, there is it noted how much the rent is and the breakdown for the 5th floor Commission and 5th floor grant. She also explained that the Juvenile is currently coming out of the 140k that we received from the court. Bernice Stated that nothing has changed in regards to the rent, the Council pays the rent and the Commission pays us their part of the rent. Suzan Ristich stated that she will change the report to show two lines making it easier for David Hennessy to see what we pay to Clauben and what the Commission pays us. Currently the amounts are put together showing a total amount. Gojko Kasich wants to know if the amounts in the rent line 86 are different due to the utilities, to which Suzan Ristich explained that we had a rate increase that started in January 2019, but they didn't bill us with the rate increase until later in the year. He stated that the rent amounts should be the same. Gojko Kasich asked what the rent amount is right now, Suzan Ristich informed him that the rate will be around \$9,000 not including what the Commission gives us. Gojko Kasich wants an amended General Expense report sent to the board members.

Christopher Shema made a motion to amend the finance report on line 86 to show payments in and out, Jennifer Sturges seconded motion. Gojko made a motion to have accounting done back for the last 4 months and be sure that David Hennessy gets a copy, seconded by Christopher Shema. David Shircliff and David Hennessy does not feel that it needs board action. Motion passed voted no by David Shircliff and David Hennessy.

Suzan Ristich explained that the \$6 to the travel agent is due to using the state CTM (Central Travel Management). This is a program used to book airfare and there is a \$6.00 fee each time that program is used. Suzan Ristich also explained that occasionally the state has to pay taxes to another state for their hotel travel fees/taxes.

Publications fund - Michael Moore explained that LexisNexis will no longer allow us to sell their subscription for both public and private use at a higher rate starting January 1, 2020. They are only going to allow us to sell the standard for Public Defense research, they are also offering a reduced access to public defenders to use who also want it for their private research as well but that has to be purchased directly through LexisNexis. He stated that we should expect to see a decline a little bit due to this change in LexisNexis revenue, and these changes actually only affect around 33 members so we are expecting to lose the revenue from them. We do not know what that is going to shake out but by February or March we should have a totals then. LexisNexis is now requiring that each of our users (subscribers through IPDC) sign a form stating that they will only use their LexisNexis subscription for Public Defense only, however full time public defenders do not have to sign the form.

Mark Nicholson inquired about the expense of Google Play, Mike Moore explained that was a one-time payment for our app that was created by Michael Wilson.

Training Fund – Bernice Corley who stated that not all the numbers are in at this time however currently we are showing a \$48,751 profit. Suzan Ristich explained that we don't have any of the December totals in yet. David Hennessy brought up some concern about the \$300 estimated amount in the Seminar Profit and Loss Statement under CR 26 Summit. Bernice Corley explained that we were asked by the Supreme Court to contribute to one of the state agencies that participated so we contributed \$1,000 toward the CR 26 Summit. Gojko Kasich wanted to know who all went to the Summit all 92 counties were asked to send a team which will include 1 Public Defender, 1 Prosecutor, Judges/Pretrial staff, etc.

David Hennessy stated that now that we are finally making money off of the seminars we need to know where the money is going and what do we want to do with it. He thinks that it is remarkable to finally show that we are making money. Deana Martin stated that the profit in training was on the agenda for the training committee to discuss however we ran out of time and was unable to discuss it. She stated that she wants to discuss the profit with the board and is aware that there might be some different opinions and she personally wants to encourage people to attend trainings and try to wipe out impediments so where we can give free or significantly reduced places for the training see if there is some way that we can switch and do some free training as is. She would also like some full day training so if you are driving a great distance it is worth your drive and you can get a full day's worth of free CLEs and all you are out is gas and possibly a night in a hotel if you do not want to drive back. David Hennessy wants our training fund separate and distinct in case we have an income we won't have to revert it back to the state. Bernice informed David Hennessy that it definitely will not have to revert back to the state. Anytime there is an overage in our General Fund we revert it to our Training Fund to protect it.

Mike Moore told David Hennessy that it will still look a bit different the next time you see it because we know we have several expenses like for Pozner and a couple of other things that are coming in and we are pretty sure that we are going to still be in the black. Christopher Shema inquired about TPI and showing a profit, he wanted to know if all the expenses are in for TPI and is this an anomaly because we had it downtown. Bernice Corley commented that there will still be a loss next year because of the location of TPI in 2020. Christopher Shema wants some of the profit money to go back to providing lunch for TPI attendees, due to the impact it has on the attorneys to dine together. David Hennessy agreed with Christopher Shema on the importance of having lunch together while away from the classroom. Mark Nicholson stated that with it being downtown it gave the attendees the opportunity to eat together without IPDC having to pay for it. David Hennessy wants to table this discussion for later since TPI location for 2020 has already been determined.

In closing on the financial reports Bernice Corley stated that the reports are for the board and we will make adjustments anyway that the board see fit. She also reiterated that there are no accounting issues at IPDC if there were the State Board of Accounts (SBOA) would tell us that. If they are not clear we will change them up.

Legislative Update – Bernice Corley. The good news is that we have someone committed for all of our priorities. At the Retreat David Shircliff raised some concern about how prosecutors were using the charges Synthetic ID deception, False Identity, and False Informing, the board voted to try to address that. She wanted to bring back to the board is that she thinks that there is a fix that has already solved that problem, even though that isn't what they set out to do. Senator Mike Young you is the head of the Criminal Committee in the Legislature he has a deception bill that is actually going to repeal the Synthetic ID deception, that will not exist anymore, and due to who it is she is confident that it is going to pass. It has gone through all the hurdles and she doesn't see it changing much. What will happen is there is going to be one deception that will be for absolutely everything, however deception will be a felony. She would like to approach it as an amendment and that it needs to be something that should be monitored through the deception fraud bill.

Received commitment from the Senate Dems will file:

- Lenity
- Initial Hearing
- ALEC Resolution which will include study of public defense

Senator Steuerwald has committed to file our boat collision bill (Woods v. State) which is a really good sign, this bill passed the Senate 50 – 0 but did not get a hearing at all in the House so for it to start in the House with Steuerwald it is a very good thing and he will get it through and then Senator Merritt on the Senate side is ready for it.

Heard back from Senator Young and he too is going to file our items: Watercraft, Escape/Home Detention, initial hearing. He will not do the Maintaining Common Nuisance. As Bernice Corley receives language on all the items listed she will send them to the board.

Christopher Shema brought up something that is beginning to be a hot topic with Prosecutors charging kids with vape pens as felonies rather than possession of marijuana. Is there any legislation to address that? Ashley Spolarich stated that she is seeing Level 2 felonies being charged on vape pens, they are filing it as dealing in a controlled substance and they are using weights. Ashley will get Mike Moore multiple filings in Tippecanoe County.

David Hennessy inquired if we have a list of priorities of what we are going for or are we just doing amendments to criminal statutes, system change goals, have we worked with the Commission, what is the Commission's legislative agenda, do we have a legislative agenda? Do we have identifiable goals and who will sponsor it? Bernice Corley reminded David Hennessy that we do have a legislative agenda that the board voted on during the retreat and that is what we are currently using. She reiterated the commitments that she received from the Authors for all of the things (as stated above). The only exception is the Synthetic ID Deception one will be impacted by legislation that Bernice Corley knows is being filed so she suggested that we just monitor that. David Hennessy requested that Bernice Corley send each of the board members an e-mail on what you (Bernice Corley) understands the board's legislative agenda to be. He

feels that here is a disconnect and he would like some enlightening on what the Commission is doing.

Liaison Report – Bernice Corley reminded board that DOC has a pending rule on Community Corrections credit time deprivation, a link was provided in handouts. Bernice Corley also has the exact language as well as a link to go to share a public comment. Next thing to be aware of is the exoneration program, this is what Mark Nicholson inquired about earlier, this program is a program that pays a person \$50,000 a year for each year of incarceration for a person that was wrongfully convicted and therefore exonerated. There is an emergency rule in place, there are applications being submitted right now and it will go before the Board of Trustees for the Criminal Justice Institute. This program is only for two years and expires in 2021, no more applications will be accepted after November 2021. Hopefully in the next budget cycle they will extend the exoneration program.

The quality indicators that we are working on with the Commission under the grant that they have. The Commission has held a second working meeting and basically they are moving along. David Shircliff attended the first and second month, the next meeting is February 28, 2020. Where the Commission is currently at with this is in her report.

Criminal Rule 26 pretrial – Bernice Corley. Gojko Kasich was wondering what we can expect from counties as this is rolled out. Court Services are really counting on counties to choose to do this and step up and say yes, I want to be a Criminal Rule 26 county, court Services will provide support, grants. They will also audit them to see how they are performing. Gojko Kasich wanted to know if they were going to audit them like they were doing a pretrial release program. Bernice Corley replied the pilot programs are collecting data and the data is prescribed by court services. IU have completed the audit for Monroe and Hamilton counties, Bernice Corley will forward the findings to Gojko Kasich.

Bernice Corley made the board aware that the Jail overcrowding taskforce report is out along with the bail study, links were provided at the bottom of the attachment page 022. The Commission Legislatively filed to allow them to reimburse misdemeanors effective next budget cycle. One other item that PDComm is looking to file is: every time there is a DCS case or a TPR case that there is a charge for being filed. Literally the state is being charge and that charge will be deposited into the Public Defense fund. Bernice Corley stated that she is unaware if PDComm got anyone to file this but she is aware that this is something they are pursuing.

IV. Assistant Executive Director's Report – Michael Moore 1:51:53

Mike Moore provided a list of training year to date in attachments. The report shows that we have trained 2,122 individuals (this number does include counting the same person more than once). Mike Moore is hopeful that the new system will give us better numbers. IPDC provided 177 hours of no cost training and there were 563 attorneys and professions trained at no cost charged to the individual. On pages 23 – 25 is a list of topics discussed in our trainings; on pages 25 – 26 is a list of our Traditional trainings, larger trainings. For Outreach totals those are

found on pages 26 – 27 and on pages 27 – 28 in a list of our Case Reviews including county, defender, case, and result. Also provided on pages 28 – 29 is a list of our updated manuals and manuals in progress of being updated.

The new program is allowing us to log and categorize the requests for assistance and research calls. It is giving us the ability to have a better idea of who called, types of calls received. We are just now able to run reports in this system and Mike Moore ran a report from the last board meeting to this meeting we logged in 246 research calls/e-mails. We are now categorizing them so when someone calls we can categorize the type of call along with sub-categories. This information will give us an idea of what areas we need to be able to tailor training, and training needs. The majority of calls are Adult Criminal Matter (199), we also had 28 appellate calls/e-mails, 6 CHINS/TPR, 11 Delinquency, and 1 PCR. Mike Moore handed out a graph and he plans on providing a more detailed graph as we go forward. A lot of these reports are new as we continue to be able to create reports in our new program.

Christopher Shema inquired about several of our updated Manuals:

- Appellate Manual – Inquired if this manual will be out by the first of the year. Mike Moore stated that it is done and should be published on our website either this week or next week.
- Expungement Guide – Did get published
- Evidence Manual – is a work in progress and still anticipated in February
- CHINS/TPR Manual – is to be completed within a few days
- Defense of Child Molest Cases – did get published last month (November)
- Traffic Law Manual – still a work in progress. Mike Moore stated that we are reaching out to some of our people for the practice pointers. Mark Carnell is no longer part of this project, Michael Wilson is working on it and the beef of the manual is done, we do not have a publication date yet, according to Mike Moore. He is pushing for February or maybe even a little sooner.

Christopher Shem reminded Mike Moore that in the case reviews provided the review for 12/2 Jake Miller, this is not a Vigo Co. case, this one is a Sullivan Co. murder case.

Gojko Kasich inquired about going on our website searching for materials we can reference by topic, he wanted to know if there was any way that we can reference them by year? Mike Moore is not aware if we can do that, he stated that he will check and reach out to Gojko Kasich again about this question. Christopher Shema made a suggestion on Case Review, it is nice to have a name on the case however it would be more meaningful if the charge was listed as well. Maybe broken down by how many murders, child molest, etc. He wants to get a sense of where these people are asking for help and what kind of help they need.

Grants – Mike Moore reminded the board that we have two grants. One is a Title II which provides support to attorneys in juvenile matters and the JAG grant which provides social work support for attorneys in adult matters. We did receive early notice that we received a grant

again to provide social work support to attorneys for first appearance. Our goal is to have a social worker working with attorneys in identified counties that said that they would work with a social worker to help go in and do a needs assessment, initial interview, and to be able to help provide information for the attorney to help to better advocate for a person's release.

Member Survey – Mike Moore. The board requested some systemic questions be made like a statewide appellate office, state level public defender. Mike Moore stated that he is struggling to write questions that don't get into a long explanation of what those things are, if the attorney is not plugged in they may not understand what the questions mean. He wants ideas from the board about specifics that the board would like asked to the members. The bulk of the survey is completed. Deans Martin wants a due date to have the systemic questions to Mike Moore. She stated to Mike Moore to send out to the board what he currently has along with a due date of when he needs the systemic questions back. Mike Moore stated that the date should be January 15, 2020. Mark Nicholson stated that the date need to be at the top of the e-mail so that everyone case see the due date when the e-mail is received.

Salesforce – Mike Moore. One of the reason that we moved to Salesforce is because it gives u the ability to learn a lot about our members, where they come from, their age, level of experience, areas of practice? They also provide a mass mailing service giving us the ability to cancel with the other mass mailing that we are currently using for our defender/surveys. The old program is cumbersome whereas this new program will be much easier to navigate. Mike Moore reminded the board that the defender will look different but it will still continue to contain the same information that it always had.

Bernice Corley explained the difference between the surveys concerned that there may be some confusion between surveys. She explained that the survey for the rule 26 she wanted out as soon as possible and that one has gone out and the answers are coming back. She inquired if that is the survey that David Hennessy inquired about. She explained that the survey that Mike Moore was talking about is the one to the members about trainings. Bernice Corley reiterated to David Hennessy that there are actually two questionnaires.

V. Committee Reports

Training questionnaire – Deana Martin. Diane Black is going to make a couple of changes. Diane Black has some planned training and Deana Martin explained that Diane Black may add some training on Driver's License Reinstatements. This will possible be a free training that has been recorded, there will be some statewide training on using social workers and how the social workers can be utilized going forward.

Mark Nicholson brought up committee assignments. He stated that if there are any committees that someone wants on to send him an e-mail and he can redo the assignments. Deana Martin stated that there was some talk about combining a couple of the committees like Policy and strategic, Mark Nicholson stated that he was ok with that.

David Hennessy wanted an update on the interviews of the State Public Defender. Mike Moore stated that the interviews went well and that there were thirteen candidates. He stated that he was tasked with asking questions about innovation and passion for public defense. The AG's office and IPAC were mostly focused on leadership style, experience with projects, and HR. There were good candidates, and they have narrowed it down to the top three.

David Hennessy wanted to know about the executive director committee since Steve Owens was the chair of that committee. Mark Nicholson stated that he will address that when the new state PD has been chosen. He stated that the new state PD will replace Steve Owens since he is not here tonight.

Mark Nicholson made a motion to adjourn, seconded by Deana Martin. Adjourned at 9:31 pm