

Minutes of Meeting
Public Defender Conflict Program
February 14, 2020
9:00 a.m.

The Kootenai County Board of Commissioners: Chairman Chris Fillios, Commissioner Leslie Duncan and Commissioner Bill Brooks met to discuss the following agenda items. Also present were BOCC Administrative Supervisor Leighanna Keiser and Deputy Clerk Tina Ginorio. Also present was Public Defender Conflict Attorney Program Administrator Scot Nass.

- A. Call to Order:** Chairman Chris Fillios called the meeting to order at 9:03 a.m.
- B. Changes to the Agenda (Action):** There were no changes to the agenda.
- C. Business:**

Evaluation of Public Defender Conflict Attorneys (Discussion)

Public Defender Conflict Attorney Program Administrator Scot Nass introduced himself and shared the history of his position and the program. He explained that the Public Defender's Office conflicts about 12% of their cases out in most months. He said that an ethical conflict would be determined by the Public Defender's Office and then the case would be referred to his office to be assigned to one of the seventeen attorneys. He added that there were three different categories of cases: A (Felonies), B (Misdemeanors), and C (Child Protective Act), each of which was paid at a different rate.

Mr. Nass stated that, as liaison between the BOCC and the Public Defender's Office, his responsibilities included administrative duties, troubleshooting and auditing monthly bills.

Executive Session pursuant to Idaho Code §74-206(1)(b) to consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent (Closed Session – Discussion)

Decision/Direction (Open Session – Action)

No material requiring an Executive Session was submitted.

Possible FY21 Contract Changes (Action)

Mr. Nass said that when the program was started in 2017, the BOCC had requested meetings twice a year. He stated the meetings were reduced to "as needed" after a couple of years, but his contract stated that he "will perform semi-annual evaluations of each public defender attorney and provide those evaluations to the Board twice a year." He asked if the contract language needed to be amended.

BOCC Administrative Supervisor Leighanna Keiser noted that his contract did not expire until October 1, 2020, so there was time to consider changing the wording.

The Commissioners all expressed general agreement that his contract wording should be changed to require meetings “as needed.”

Mr. Nass stated that his group also had a contract to provide legal services to CASA (Court Appointed Special Advocates for Children). He reported that the CASA contract had changed personnel over the past year and some discrepancy in the rate of pay for their services had been brought up. He explained that CASA’s contract had listed \$65 per hour but County conflict attorneys who did child protective action received \$75 per hour. He proposed that a CASA conflict case should be billed at the normal category “C” rate, for uniformity.

There was general agreement from the Commissioners that this should be included in the contract for this year.

Long Consulting Group Invoice for Approval (Action)

Mr. Nass explained that a complicated billing issue had arisen regarding the case for Justin Booth, a co-defendant in a murder case. He said that Mr. Booth’s case was received by the conflict attorneys, Jed Nixon had been chosen as representative and Mr. Nixon had then hired Will Long of Long Consulting Group to assist him. He reported that District Court Judge Wayman had approved \$7,500 to pay Mr. Long in his role as investigator. In the process of preparing for the trial, it became evident that it would be in Mr. Booth’s best interest to agree to a deal rather than pursue a trial. Mr. Nass stated that a second round of preparation was made that led to a further charge of \$3,100 for Mr. Long’s services. He said that, due to an oversight, the additional fee was not approved by the court, so payment was refused.

Mr. Nass said he had asked Ms. Keiser if there were another fund available from which Mr. Long could be paid.

Ms. Keiser replied that the contract with the County covered situations like this; since the judge did not approve the expense, responsibility would be passed to the Board. She said she had spoken to Finance Director Dena Darrow and Deputy Finance Director Keith Taylor about the situation and was advised to pay the expense from the Court Fund. She added that they gave her a specific GL number to put on the invoice so it could be paid appropriately, if the Board approved it.

Commissioner Leslie Duncan moved that the Board approve payment for the Long Consulting Group Invoice in the amount of \$3,116 from the Court Fund. Commissioner Bill Brooks seconded the motion. There being no further discussion, Deputy Clerk Ginorio called the roll:

Commissioner Brooks: Aye

Commissioner Duncan: Aye

Chairman Fillios: Aye

The motion carried.

Review Number of Conflicted Cases (Discussion)

Mr. Nass reported that statistics on conflicted cases had been tracked since 2012. He said that communication from the Public Defender’s Office had improved a great deal, especially since Anne C. Taylor had taken over the office.

Mr. Nass said total indigent defense numbers continued to increase and the number of cases conflicted out generally were about 10-11% of the total.

Review Year-to-Date Expenses (Discussion)

Mr. Nass stated that budget estimates provided by Ms. Keiser and her staff seemed on target. He noted that they generally received about \$100,000 in grant funding and \$600,000 from the County. He said the contract rates for the conflict attorneys were \$95/hour for A cases, \$85/hour for B cases and \$75/hour for C cases. He noted that his own fee and the administrative costs had remained stable since 2014.

Ms. Keiser pointed out that new software would be provided for the Public Defender’s Office to use in better tracking conflicted cases.

Mr. Nass remarked that the lawsuit challenging the State of Idaho’s Indigent Defense Program had not yet been settled. He said that if the County were challenged, the program and policy currently in place would be a satisfactory defense. He stated it was sensible and complied with constitutional mandates.

D. Public Comment (Discussion): This section is reserved for citizens wishing to address the Board regarding a County-related issue. Idaho Law prohibits Board action on items brought under this section except in an emergency circumstance. Comments related to future public hearings should be held for that public hearing. There was no public comment.

E. Adjournment (Action): Chairman Fillios adjourned the meeting at 9:26 a.m.

Respectfully submitted,

JIM BRANNON, CLERK

CHRIS FILLIOS, CHAIRMAN

BY: _____
Tina Ginorio, Deputy Clerk
