

Minutes of Meeting
Public Defender Conflict Attorney Program
March 21, 2023
11:15 a.m.

The Kootenai County Board of Commissioners: Chair Leslie Duncan, Commissioner Bruce Mattare and Commissioner Bill Brooks met to discuss the following agenda item. Also present were Prosecutor Stanley Mortensen, Civil Deputy Prosecuting Attorney R. David Ferguson, Conflict Attorney Administrator Scot Nass and Deputy Clerk Sierra Hansen.

- A. Call to Order:** Chair Leslie Duncan called the meeting to order at 11:15 a.m.
- B. Changes to the Agenda (Action):** There were no changes to the agenda.
- C. Business:**

Review Current and Projected Program Costs with Conflict Attorney Administrator Scot Nass (Action)

Chair Duncan stated that if an Executive Session were needed, she thought it should be a (1)(d) because this was related to Indigent Defense and might include information which would not be disclosable, such as defendant names. However, she said that Civil Deputy Prosecuting Attorney R. David Ferguson had indicated that this situation might lead to the County facing litigation, which could mean a (1)(f) was more appropriate.

Mr. Ferguson explained that an Executive Session (1)(f) would deal with current or imminent threats of litigation, which he thought this might be the case here. He said that, in a (1)(d), the Board would deal more with specifics or individuals. He suggested that some explanation of the choice should be included on the record and remarked that discussions of more general topics, such as budget or funding concerns, should be fully on the record.

Chair Duncan said they could begin the general discussion on the record and, if more sensitive items needed to be addressed, they could move into the appropriate Executive Session.

Chair Duncan stated that the City of Coeur d'Alene was prosecuting a number of individuals for a misdemeanor crime and the cost of the prosecution could go as high as \$3 million. She pointed out that, while the Commissioners and the Prosecuting Attorney's Office had no authority over the City of Coeur d'Alene misdemeanor charges, she thought this merited discussion because the County did not have \$3 million more to put into the Conflict Attorney Program.

Prosecutor Stanley Mortensen remarked that the Public Defender's Office was understaffed and the County had fewer Conflict Attorney contracted than would be needed. He said this placed the County and its indigent clients in a position where there was just not enough counsel to go around. He warned that there had been instances in

other states in which cases had been dismissed due to lack of representation because it had caused violations in the requirements for speedy preliminary hearings or speedy trials. He warned that cases could be dismissed in Kootenai County for these reasons. He added that defendants could also sue for violation of their constitutional rights

Chair Duncan asked those present for input on the options the BOCC had, based on the facts that they had no actual jurisdiction and a limited number of conflict attorneys available. She said that right now, still in the pre-trial stage, there had been \$32,000 billed in relation to these cases.

There followed substantial discussion about the availability of attorneys to take on defense of the people involved.

Conflict Attorney Administrator Scot Nass commented that the City of Coeur d'Alene's Chief Criminal Deputy Prosecutor Wes Somerton had indicated that he planned to demand the accused people either plead guilty or go to trial. He suggested that perhaps the County could open discussions with the officials involved, to let them know the burden this was going to place on County taxpayers and seek a compromise. He described the efforts that the Public Defender Anne C. Taylor had been making to increase her staff and said that the County had also actively been seeking more conflict attorneys. He stated that a conflict attorney was supposed to be called in when the Public Defender's Office experienced an ethical conflict as defined under the rules of professional responsibility and could not represent someone. He said that conflict attorneys were being called on in many cases now simply because the Public Defender did not have enough staff to cover all the cases.

Chair Duncan said that, in this particular instance, there was an actual conflict which required this action.

Mr. Nass confirmed that there were a total of 31 defendants and the Public Defender's Office could only represent one. He underlined the fact that they did not have 30 contracted conflict attorneys to cover those other people. He added that Judge Meyer had needed to persuade a number of uncontracted private attorneys to take on the other cases, with the expenses to be paid by the court.

Commissioner Bruce Mattare stated that they had to ensure that the constitutional rights of citizens were protected. He suggested approaching City of Coeur d'Alene officials and explaining that the proposed course of action would cost the County taxpayers millions of dollars. He said the officials should be told that either the City could pay for it or they should rethink their strategies. He stated that they should be made aware that the County's only other recourse would be to make this situation as public as possible, so that residents would see what was being spent because the City representatives were insisting on uncompromisingly following their principles.

Mr. Nass suggested that the BOCC keep track of how much money, in general, that the County spent on defending cases brought through the cities. He pointed out, though, that the County could not compel the cities to reimburse the costs, if they refused.

Commissioner Mattare commented that this was an election year and voters should be informed.

Chair Duncan suggested that she and Mr. Nass approach the City representatives and let them know the difficulty this was creating. She said they might not even know the projected cost.

There followed substantial discussion of the steps which Chair Duncan and Mr. Nass would take. There was also discussion of the implications of current bills being discussed at the State level which would shift the responsibility of indigent defense to the State.

Mr. Ferguson commented that cities reimbursed counties when people who were arrested for violating city ordinances were placed in county jails. However, he remarked that these 31 cases were classified as State Misdemeanors.

Mr. Nass confirmed that the charges were “conspiracy to riot,” which was considered a Title 18 State Misdemeanor.

It was generally agreed that Chair Duncan and Mr. Nass would approach City officials, as discussed.

Executive Session pursuant to Idaho Code §74-206(1)(d) to consider records that are exempt from disclosure as provided in Chapter 1, Title 74, Idaho Code. – BOCC Division (Closed Session – Discussion)

Decisions/Direction (Open Meeting – Action)

No information requiring an Executive Session was submitted.

- D. Public Comment:** 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 were no public comments.
- E. Adjournment (Action):** Chair Duncan adjourned the meeting at 11:47 a.m.

Respectfully submitted,

JENNIFER LOCKE, CLERK

BOCC SIGNATURE

BY: _____
Tina Ginorio, Deputy Clerk