

NEW MEXICO PUBLIC DEFENDER COMMISSION MINUTES OF JANUARY 14, 2022 GENERAL MEETING

I. Call to Order: The New Mexico Public Defender Commission Meeting was called to order by Chairman Thomas J. Clear, III, on Friday, January 14, 2022, at 11:20 am.

II. Roll Call: Public Defender Commissioners

Thomas Clear, Chairman

Raymond Sanchez, Vice Chairman

Daniel Banks, Secretary

Justice Richard Bosson, Ret.

Hugh Dangler

Jackie Flores

Traci Neff

Naomi Salazar

Michael Sanchez

Melissa Sawyers

Judge Michael Vigil, Ret.

III. Introduction of Guests:

Chief Public Defender Ben Baur

Deputy Chief Phillip Larragoite

Deputy Chief Cydni Sanchez

Deputy Chief Jennifer Barela

Deputy Chief Randy Chavez

Ronald Herrera Human Resources Director

Adrienne Turner, General Counsel

Christina Keyes, CFO

Maggie Sheppard, Communication Director

Jacqueline Martinez, Budget Director

Matthew Bevington, IT Director

Director of Social Work KC Quirk

Julie Kitch, Programs Administrator

Elizabeth Holmes, Training Director

Appellate Defender Kim Chavez Cook

Todd Farkas, Managing Attorney Major Crimes

2ND Judicial District Defender Matthew Chavez

5TH Judicial District Defender Deirdre Ewing

11TH Judicial District Defender Matt Cockman

12TH Judicial District Defender Jennifer Birmingham

9TH Judicial District Defender Ibukun Adepoju

Jonathan Ibarra, Albuquerque Felony Managing Attorney
Theresa Edwards, Fiscal Director
Aleksandar Kostich, Taos Managing Attorney
Shaheen Rassoul Santa Fe Supervising attorney
Zac Olivas, Deputy Director HR
Christopher Knight, Albuquerque Managing Attorney
Conor Jorgensen, LFC Analyst
Corrine Clarkson, Ricci & Company

IV. Adoption of Agenda. Commissioner Richard Bosson moved to adopt the Agenda, second by Commissioner Michael Vigil. Motion passed unanimously. (Agenda attached)

V. Adoption of Minutes of August 13, 2021, Meeting: Secretary Dan Banks moved to approve the minutes of the Commission Meeting on August 13, 2021; seconded by Commissioner Naomi Salazar. Motion passed unanimously. (Minutes attached)

VI. FY21 Audit Report: Corrine Clarkson from Ricci & Company, presented the audit findings which were excellent. Commissioner Dan Banks moved to adopt the findings, second by Commissioner Melissa Sawyers. Motion passed unanimously.

VII. Report of Commission Chair: Chairman Thomas J. Clear, III

A. Budget Request Legislative Finance Committee Presentation: Chairman Clear advised Commissioners about the New Mexico Project: An analysis of the New Mexico Public Defense System and Attorney Workload Standards. This report will force decision makers to listen to the problems with indigent defense in the state. He said much of the Report will be used to promote funding for LOPD.

B. Transition from COVID limitations: Chairman Clear said he was rejuvenated, it is an exciting time for indigent defense, and he is excited about the future for LOPD. He discussed personnel and staffing changes in LOPD.

C. Legislative Session Preview: Senator Daniel Ivy-Soto, previewed the legislative session. He indicated several legislators who are up for election seem to think that the path to get there is to re-incarcerate everybody who's indigent in the state so we're going to be seeing bills dealing with presumptions for pretrial detention and several new criminal laws being presented.

Senator Ivey-Soto opined that the House of Representatives is planning to address a variety of new penalties and presumptions. Theft of metal, chop shops, kids having access to guns: all these crimes are likely to be an issue.

Senator Ivey-Soto indicated that the Governor and the Secretary of State have announced a voters' rights bill and will deal with the timing of felon re-enfranchisement.

VIII. Report of LOPD Chief: Chief Ben Baur

Chief Baur reported that there is a lot of activity and movement forward. The budget appropriations request, the recommendations being made, and the Workload Study reflect the needs of the department and contractors to provide reasonably effective assistance of counsel. Chief Baur indicated that the bulk of his report will be laid out in the Roll-Out of the Work Study Report later in the meeting.

IX. Public Comment: There was no Public Comment

X. Executive Session: Commissioner Michael Vigil Moved and Commissioner Naomi Salazar seconded to close the meeting and proceed into Executive Session (Motion passed unanimously) for discussion and determination of:

- i. Pending litigation pursuant to Section 10-15-1.1.H(7) NMSA
- ii. Vote to re-open meeting with certification that only those matters described in Agenda Item X A(i) were discussed in Executive Session.

There were no actions taken at Executive Session

XI. Committee Reports

A. Litigation Committee: Commissioner Michael Vigil Commissioner Vigil announced there was no new Litigation.

B. Legislative Committee: Vice-Chair Raymond Sanchez reminded Commissioners that this year's legislative session is a budget session. Most of the things are going to be budget related. The Governor has a three-pronged proposal regarding criminal justice that is truly going to be onerous for Public Defenders, and for other people who are concerned with defending the rights of those charged. He indicated that he will be working with Kim Chavez-Cook, as well as with APD Union President Shaun Willoughby, to see if things can be calmed down a bit.

C. Budget and Finance Committee: Commissioner Michael Vigil and Commissioner Hugh Dangler announced there had been no meetings.

D. Contract Counsel Committee: Commissioner Jackie Flores was announced as the chair of the committee. Nothing to report currently.

XII. Preview of Work Study Report Roll-Out.: Presented by Malia Brink, Counsel for Indigent Defense, American Bar Association Standing Committee on Legal Aid and Indigent Defense, Steve Hanlon, who is one of the foremost experts on indigent defense resources, and Scott Simpson, Jenna McRae, and Emily Hayes from the accounting firm of Moss Adams. Hanlon, Brink, and Simpson provided extensive reporting on the Work Study Project. The bottom-line is the significant deficiency of LOPD FTE attorneys that must be addressed. That deficiency of 602, if you turn it on its head and look at the

current numbers, means that LOPD has 33% of the attorneys needed to handle the current caseload. What does that mean? The deficiency requires attorneys to triage, to choose to prioritize some clients over others, or to just have less time than necessary to serve each client. So, the attorneys with their grossly excessive caseloads are forced to pick and choose the clients and cases to focus at the expense of other clients. Alternatively, every single case receives less attention and time than is necessary to provide an adequate defense and representation.

Hanlon told Commissioners that there is an obligation right now under the model rules, as well as the court rules in New Mexico, to no longer tolerate this situation. If you wanted to file a motion to withdraw in these cases, which is what the ABAs eight guidelines say you should do after exhausting all other alternatives, you could do that in 30 days with these numbers. Hanlon urged patience and encouraged the development of a strategic plan to address the legislature, to address the courts, and to address the public. The Strategic Plan must say that this deficiency in proper representation can no longer be tolerated. As professionals, the Commission and LOPD need to be very strategic about the plan of action. Hanlon indicated that Chief Ben Baur and Deputy Chief Cydni Sanchez are ideally situated to lead the LOPD and Deputy Chief Philip Larragoite knows how to create a strong public narrative.

The New Mexico Project Work Study will be one of at least seventeen (17) work studies from different states that will be part of the new national caseloads standards that are being developed by the RAND Corporation, the ABA, led by Malia Brink, the National Center for State Courts, and with the assistance of Steve Hanlon. There should be progress later this year and it is likely to have slightly different numbers. New Mexico numbers are specific to New Mexico. Right now, LOPD has the leadership to lead on this issue, and the means to walk into a courtroom or a legislative agency and lay out an excellent case. LOPD knows more about what it's doing than any other agency in New Mexico right now. LOPD is the most transparent and the most accountable agency. All you must do is really simple. Everybody must track their time.

XIII. Upcoming Events: Legislative Events will be sent out by e-mail and the next meeting will be determined by the Executive Committee.

XIV. Adjourn. Great thanks and praise were given to the years of service by Commissioner Hugh Dangler and Commissioner Michael Vigil who are retiring after this meeting. The motion to adjourn was made by Vice Chair Raymond Sanchez with a second by Commissioner Michael Vigil. Motion passed unanimously. Meeting adjourned.