

NEW MEXICO PUBLIC DEFENDER COMMISSION  
MINUTES OF JUNE 10, 2022, GENERAL MEETING

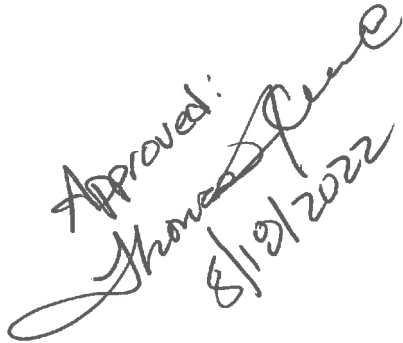
I. Call to Order: The New Mexico Public Defender Commission Meeting was called to order by Chairman Thomas J. Clear, III, on Friday, June 10, 2022, at 10:33 am.

II. Roll Call: Public Defender Commissioners

Thomas Clear, Chairman  
Raymond Sanchez, Vice Chairman  
Daniel Banks,  
Secretary Justice  
Richard Bosson, Ret.  
Jackie  
Flores  
Gina  
Maestas  
Traci Neff (excused)  
Naomi Salazar  
Michael Sanchez (excused)  
Melissa Sawyers (excused)

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, Communications  
Director  
Matthew Bevington, IT Director  
Director of Social Work KC Quirk  
Julie Kitch, Programs  
Administrator Elizabeth Holmes,  
Training Director

Approved:  
  
8/12/2022

1<sup>ST</sup> Judicial District Defender Julie Ball  
2<sup>ND</sup> Judicial District Defender Matthew Chavez  
11<sup>TH</sup> Judicial District Defender Matt Cockman  
9<sup>TH</sup> Judicial District Defender Ibukun Adepoju  
Jonathan Ibarra, Albuquerque Felony Managing Attorney  
Aleksandar Kostich, Taos Managing  
Attorney Shaheen Rassoul, Santa Fe  
Supervising Attorney  
Steve Ochoa, Ruidoso Supervising Attorney  
Jaime Flores  
Charles Agoos  
Chantell Nelson  
Josie Enriquez  
Summer Alston, Social Worker for Contract  
Counsel  
Peter Schoenburg  
Greg Gaudette  
Cherylinn Gunning  
Kate Thompson  
Marie Legrand Miller

IV. Adoption of Agenda. Vice Chairman Raymond Sanchez moved to adopt the Agenda, second by Commissioner Naomi Salazar. Motion passed unanimously. (Agenda attached)

V. Adoption of Minutes of January 10, 2022, Meeting: Secretary Dan Banks moved to approve the minutes of the Commission Meeting on January 10, 2022; second by Vice Chairman Raymond Sanchez. Motion passed unanimously. (Minutes attached)

VI. Swearing in new Commissioner Gina Maestas  
After introduction, Retired Chief Justice Richard Bosson administered the Oath of Office to Commissioner Gina Maestas.

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

A. Work Study Report Impact Update

Chairman Clear recapped the Work Study Report which indicated a current staffing level approximately 300 attorneys, but to properly represent the indigent criminal defendants of New Mexico, an additional 600 attorneys are needed to be hired. Steve Hanlon recommended LOPD continue working with the legislature

and with the courts to make the changes, to get to the point where our predicament is understood and where we do get more funding to get more attorneys to represent our clients, or fewer clients because of fewer criminal charges.

Chairman Clear reported LOPD is making positive impact with the legislators he has spoken with about the stressed conditions of contract counsel and LOPD attorneys.

#### B. Budget Request Legislative Finance Committee Meeting June 16-17

Chairman Clear advised Chief Ben and Deputy Chief Philip will be in Gallup next week for the legislative finance committee meetings.

#### C. Contract Counsel Concerns

Chairman Clear read an email from an LOPD Contractor which expressed concerns over use of Defender Data, case rates and other issues. After introduction, Contract Counsel Greg Gaudette addressed the Commission, stating:

“I have been doing this work long before I was a contract attorney. I was a defense attorney with the United States Air Force. That was my passion. And when they said I couldn't do it anymore, I jumped ship, became a civilian and opened up my own office. I love this work. It would just be nice if the money, at least the reimbursement aspects, could be upped. You can't stay in a decent hotel for \$87, and 40 cents a mile, especially with today's high gas prices, it's hard. And we shouldn't have to be losing money when we go on the road. So, I'm simply asking the commission to consider upping those rates.”

After further comments, Chairman Clear appointed Greg Gaudette to the Contract Counsel Committee.

#### D. Impact of March 24, 2022, the New Mexico Supreme Court entered a Streamlined Procedure Order temporarily eliminating law enforcement witness interviews in the Bernalillo County Metropolitan Court and the Santa Fe Magistrate Court.

Chairman Clear raised a concern over witness interviews. He reminded the Commission that New Mexico Ruled of Criminal Procedure provides that interviews are contemplated and allowed. In our performance standards, which were adopted and implemented, interviews are conducted so that we know the strength of the allegations and the witnesses in cases against the indigent clients. The defense attorneys representing the indigent are able to fully understand the allegations and strength of case and thus provide proper advice for the indigent clients. This significant right to the witness interviews with law enforcement officers to evaluate a case has been eliminated as of March 24, 2022, in the Bernalillo County Metropolitan Court cases and in the Santa Fe County Magistrate Court cases.

Chairman Clear said this is troublesome. The basis for the pilot program is asserted to be a backlog in case resolutions due to the pandemic. Interestingly, the law enforcement interviews were modified during the pandemic from being conducted in

person, which is somewhat time consuming, to be conducted telephonically. Now all the law enforcement officer must do is answer the phone and talk for about 15 minutes, or however long the interview takes. In fact, the amount of extra work this is going to cause our attorneys as well as the DA line attorneys and the judges has not been considered. It's going to create a whole lot more work and certainly is not in the best interest of our clients to not be able to flesh out the issues prior to making a trial decision and preparing pretrial motions. It is a concern that this "Pilot" program may be a canary in a coal mine. If this program determined to be a success, our attorneys may lose the ability to conduct witness interviews for misdemeanor cases statewide as well as on felony cases. The rule has the real potential to be expanded at a serious the detriment for our attorneys and our clients. Clearly it is going to create a real mess.

Commissioner Daniel Banks indicated we had this same discussion when we were talking about Grand Jury versus Preliminary Hearing. Our attorneys have learned through their own experiences that when there is a Preliminary Hearing, the attorney has an opportunity to flesh out the case and both the prosecutor and defense attorney learn of weaknesses that may result in a more expedient and favorable resolution. Good cases can more easily be resolved, and bad cases are more likely to be dismissed quickly. The lack of law enforcement officer interviews creates the same problems as with the Grand Jury system. Our attorneys can't learn the real strength of a case short of taking the case to trial. It is likely that more cases can be resolved because of the witness interview process and not burden the system with more bench and jury trials. With witness interviews, cases can be resolved more quickly with better results. With this Pilot Rule, the efforts to learn the real facts without the need to go to trial are frustrated when law enforcement interviews are not required. In many ways, the argument is the same as between Grand Jury versus Preliminary Hearing. The system can benefit from the shared experiences in the discussion about limiting, or reducing, or removing the ability to conduct law enforcement interviews.

## VIII. Report of LOPD Chief: Chief Ben Baur

### A. Five Year Plan Update

Chief Baur reported to the Commission on the New Mexico Public Defense System Five Year Plan to address representative deficiencies. He said there is a rough draft and it's going to take two or three months for a final product. The point of this five-year plan is to provide a roadmap for the Legislature and the Courts to follow showing how we can get from where we are to a place where we are able to provide effective assistance of counsel to all of our indigent clients.

### B. Statewide Update

Chief Baur reported on the work undertaking by LOPD offices to expand our role in our communities. LOPD believes that we can be more effective as we move into

the communities and not just provide representation inside the courtrooms. The local offices can and are beginning to build and improve upon the bridges with community organizations that represent underserved communities. We're doing this in a couple different ways. In Albuquerque, perhaps in August, and potentially around the same time in a couple other communities, we are contemplating holding office hours about once a month in community organization offices that would be publicized; the publicity would let the people they serve know about the office meetings.

Another proposal to reach out on restorative justice, which is a real different way of looking at solving the community problems that often lead to people getting charged with crimes. LOPD is being aggressive on several different ways of using the message of restorative justice, of respecting people, of finding ways to solve the problems that otherwise lead to charging, policing, and incarceration.

### C. Contract Counsel Update

Chief Baur reported some discussions about LOPD's budget request for Fiscal Year 23-24 related to Contract Counsel issues raised by Contract Counsel Greg Gaudette. LOPD needs to concentrate and look at both the amount of money going into contracts and the structure of paying the contracts. The goal is to incentivize good work, because for too long, the system has been based upon basically asking people to work for extremely low reimbursement. LOPD wants to work on funding and creating both a five-year plan and successive one-year plans moving towards better and more rational funding of our offices and contractors. This means, of course not just more money, but as you all know, there's problems in rural representation. It's not just about criminal defense, frankly, DAs have problems. There's a new office of family representation, which the legislature created. There's a committee headed by Judge Jennifer Delaney from I believe the Deming area that's working on creating this. We've talked to them about how we can coordinate to find a way to put together perhaps contracts in rural areas so that attorneys in private practice can both work for the Public Defender and work for this office of family representation.

### D. Budget Request Legislative Finance Committee Meeting June 16-17

Chief Baur reported LOPD has determined an aggressive strategy. There is still a lot of mostly one-time money that will be available. The legislature seems still to be very reluctant to build a lot into recurring funds. For indigent defense to improve and lessen the gap toward effective and constitutionally guaranteed representation of each indigent on each criminal case, recurring budget allocations will be necessary. LOPD will be seeking both one-time allocations and well as increased recurring allocations. We are looking at ways to build partnerships. Sometimes it's hard to partner with District Attorney Offices, but that cooperation is received favorable by the legislature and LOPD will do whatever is necessary to build our resources. LOPD has a focus on finding ways to bring attorneys to New Mexico, because frankly, the UNM law school

is not graduating nearly enough to serve the needs in New Mexico, especially in rural areas. We're going to be concentrating on ways to help fund recruitment and retention. That means raising salary structures and it means funding more positions. We are focusing also on our social work division and increasing our ability to provide holistic defense. And this year LOPD wants to look at the contractors differently and potentially increase what we've been calling base rates. Chief Baur closed indicating he anticipates a really healthy discussion about how we structure the infusion of money we're going to be asking for contract counsel.

#### IX. Public Comment: There was no Public Comment

X. Executive Session: Commissioner Retired Chief Justice Bosson moved and Commissioner Gina Maestas 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 only those matters described in Agenda Item XI A(i) were discussed in Executive Session. Motion to Rise from Executive Session by Commissioner Maestas, seconded by Commissioner Bosson. Motion passed unanimously. Chairman Clear certified that only items that were discussed during the executive session were pending litigation pursuant to section 10-15-1, subsection H7 of New Mexico statutes annotated, as well as employment for the Chief Public Defender issues, which are also allowed under Executive Session.

Commissioner Naomi Salazar Moved that the Commission authorize Chief Baur to receive an additional 3% and 4% salary increase, which was approved by the legislature and adopted for application to State Employees for fiscal year 2022 and 2023. Commissioner Gina Maestas Seconded the Motion, which passed unanimously.

#### XI. Committee Reports

A. Litigation Committee: Chairman Clear announced there is no Chair for this Committee but he expects to name a Chair soon. For this meeting, there will be no report.

B. Legislative Committee: Vice Chairman Raymond Sanchez asked Deputy Chief Larragoite to make the report to the Commission. Deputy Chief Larragoite indicated the interim committees have been meeting and developing work plans. Now the Legislative Finance Committee is working closely with the standing committees and the interim committees. Whenever they are discussing criminal justice issues, the funders are in the room, as well as the folks that are developing the policy. That's a huge improvement over how things were done in the past.

C. Budget and Finance Committee: Chairman Clear announced there is no Chair for this Committee but he expects to name a Chair soon. For this meeting, there will be no report.

D. Contract Counsel Committee: Commissioner Jackie Flores was previously appointed as the chair of the committee, and Commissioner Gina Maestas, along with Greg Guadette have been appointed. Nothing to report currently.

## XII. Upcoming Events

### A. Announcement of Next Meeting

Chairman Clear announced the next Commission meeting will be one of the first three Fridays in August. The next meeting will also be our annual elections meeting and the meeting to get the budget request to the point that we are able to adopt it and sign off on it.

## XIII. Adjourn

Vice Chairman Raymond Sanchez moved to Adjourn, Second by Commissioner Retired Chief Justice Richard Bosson. Motion passed unanimously. Meeting adjourned at 1:05 PM.