

**STATE OF CALIFORNIA
FRAUD ASSESSMENT COMMISSION**

**Summary Meeting Minutes
Sacramento, California
January 25, 2024**

Pursuant to SB-544 approved by Governor Gavin Newsom on September 13, 2023, this meeting was a hybrid meeting with the public's option to attend in person or via Zoom Video Conferencing services with options to participate online and via telephone.

Commissioners in attendance: Jay Bobrowsky, Dan Calamuci, Branden Lopez, and Soraya Wright.

Others present: George Mueller, Deputy Commissioner, Eric Charlick, Division Chief (DC), CDI Enforcement Branch, and Felicia Lieb, Deputy Chief, CDI Enforcement Branch. Attending remotely was Yvonne Hauscarriague, Senior Staff Counsel, CDI Government Law Bureau.

I. Fraud Assessment Commission

a. Opening Remarks

Chairperson Bobrowsky opened the meeting at 10:30 a.m. and welcomed the newest FAC commissioner, Soraya Wright.

Commissioner Wright introduced herself. She leads the Corporate Risk and Claims department at Amazon and previously worked in Risk Management at Clorox.

Chairperson Bobrowsky advised the materials presented can be requested by emailing LAU at LAU@insurance.ca.gov. or picked up from the table by the door. This hybrid meeting is a continuation to the January 10, 2024 meeting. He states although we may have lively discussions today, working together has created a fantastic program that should continue in the future even with any differences in opinion today.

Commissioner Calamuci welcomed Ms. Wright and is glad this second meeting provides the opportunity to make informed decisions.

Commissioner Lopez commented on transparency. Documents are given to the FAC Commissioners at the meeting, and are provided to the public at the same time. He would prefer if documents could be made available earlier. He suggested in the future we make documents available ahead of the meeting to allow time to formulate opinions.

b. Approval of Summary Meeting Minutes

Chairperson Bobrowsky proceeded with the review and approval of the summary minutes from the January 10, 2024 meeting.

While the commissioners were reading the January 10, 2024 meeting minutes, LAU Manager Diana Russell, read the procedure to make public comments and advised public comments are limited to 3 minutes.

Motion

Commissioner Lopez made a motion to accept the minutes. Commissioner Wright seconded the motion.

Action

The summary minutes were unanimously accepted via a roll call vote.

c. Public Comments

No public comments.

II. Enforcement Branch**a. Administrative Update**

Deputy Commissioner George Mueller thanked the FAC for holding this meeting and welcomed the newest FAC Commissioner, Ms. Wright. He said that CDI will get with Legal to see if it's possible to post documents earlier, but we have to be very careful with the Bagley Keene Act.

DC Mueller spent 27 years with the LA County's DA office and has been with CDI for 8 ½ years. Usually, DA office staff don't start with insurance fraud, but they may get transferred into the unit. Typically, DAIs stay for 2-3 years then get transferred out. CDI is completely different. CDI only works insurance fraud so CDI has continuity. If our Detectives get promoted or leave CDI, they create a succession plan and train their replacements. When he first started at CDI there was a disconnect between CDI and the DAs. He has worked hard to build a collaborative environment.

When CDI hires investigators, it is made clear they will be investigating insurance fraud only. CDI also has them take the NAIC course on the foundations of insurance fraud, followed with three months on the job training where insurance fraud is the only fraud investigation learned. CDI also has a Computer Forensic Unit that assists DA offices with investigations; recently they just helped San Francisco County.

Workers' Compensation Insurance Fraud is hard to learn. Institutional knowledge is key. Some counties have a great succession plan. Some of those counties are Santa Clara, San Diego, Ventura, and Amador. Some other counties have lost their top prosecutors and investigators, and lost key institutional knowledge. CDI has been asked to train counties that lost their tenured staff.

Many years ago, the aggregate assessment was split 50/50. Then it went to 60/40 due to the 20% discretionary funds being reallocated to the DAs. At that time the DAs were spending almost all of their funds. However, over the last 3 years the DA offices have not been spending their money. Their unexpended funds doubled this last year and is over \$8 million. However, CDI overspent and had to take funds from other sources to cover the overage, one element was a union negotiation that created an 11% raise for our detectives. Based on all of this information CDI needs extra funding. Insurance Commissioner Lara agreed and sent the letter to the FAC on January 10th requesting the split adjustment.

CDI has vacancies too; however, CDI is spending all their funds. The DAs need to know that if there are counties who are underperforming money will be reallocated. If the DAs start filling positions the assessment split can be changed again.

Commissioner Calamuci asked how many years is the 11% staff raise spread over. DC Mueller clarified all 11% took effect his year. There was a 3% general salary increase, then a 5% special salary increase for Detectives, and other benefits brings it up to 11%.

Commissioner Wright asked why counties have so much unspent funds. DC Mueller replied that it is mainly due to staffing shortages.

Vice-Chair Lopez wanted to clarify Insurance Commissioner Lara's letter as it doesn't say if it's an ongoing change or a single year, FY 2024-25 adjustment. When the vote comes, it should be clarified if this is an ongoing change or a one-year change. DC Mueller stated the intention was an ongoing change.

b. Public Comments

Newly appointed Commissioner Tim Cloney was attending via Zoom. He stated currently 31% of CDI's SFCs are rejected due to lack of funding and resources. He wonders if instead of changing the aggregate split, if anyone thought of changing the regulations so unspent DA funds roll back to CDI instead of the DAs.

III. Insurance Commissioner's Request for Advice and Consent on the Aggregate Assessment Split Adjustment between Fraud Division and District Attorneys

a. District Attorney Group Comments

Bill Lee from San Bernardino came up to the podium, stating this is a significant decision for the future of this program. The goal is to effectively distribute funds to maximize results. Although this is a 7% change in the split, the financial impact is an 11.7% decrease to the DAs and a 17.5% increase to CDI.

Essentially, it's an irreversible change, as the Insurance Commissioner has to request future changes and the FAC cannot change on their own. He questioned the potential consequences, for DA program reductions and if this would increase CDI productivity.

Regarding information given to the FAC at the last meeting, he stated the past three fiscal years does not represent the future. He shared statistics going back further, and prior to the pandemic the unexpended DA funds were significantly less. He expressed his concerns on a long-term change to a short-term problem.

Tamara Martin from San Diego County spoke next. She stated the large unexpended funds from the past few years is an anomaly, and a cut in funding will hurt continuity. She provided examples from her own county on their specific "anomaly". She echoed the concerns of Mr. Lee and requested a delay in a decision.

Jill Nerone from San Mateo County then spoke. She was in Alameda County from 1990 until May of 2023, and believes she is the longest tenured head of a WC insurance program. Several years ago, the commissioners felt rushed when determining the aggregate assessment on the same day as the presentations, which is why there's now two September meetings. The split used to be 50/50, but about 20 years ago it was changed due to the DAs producing more results. Making comparisons between the DAs and CDI is not comfortable. DC George Mueller's leadership has pushed collaboration, and that has been occurring. Ms. Nerone provided some specific examples from her county on both collaboration and expenditures.

CDI provided additional information upon the DA's request, and she pointed out that one county had about \$4 million dollars of unspent funds; if you removed them, then the combined total of unexpended funds would be significantly less and not 17%.

The topic of unfunded contributions was raised. It was noted that despite the unexpended funds, most counties also have unfunded contributions to the program. Additionally, in their state-wide Zoom sessions prior to this meeting, it was noted some small counties don't have funding for a full-time prosecutor. Two of those counties stated if their programs get any smaller, they may not be able to continue in the program.

Victor Ou, Chief of Insurance Fraud Division for San Diego County, spoke next. He gave an analogy on the split. He concluded the DA presentation stating the goal is that everybody in this room is to work together as a team to maximize productivity and results. It's not about who spent more money last year.

Bill Lee asked if there were any questions.

Chairperson Bobrowsky said at the last meeting he heard about staffing issues in the DA offices. Going forward, do they think the staffing issues have changed, and why?

Bill Lee said he can only speak to San Bernardino and gave specifics. Currently it may be taking longer to fill vacant positions, so a few more months of vacancy adds to the unspent funds. They are working on ways to speed up the hiring process. He imagines that's true with everybody, including CDI and the private sector.

Jill Nerone said this past year was a one-off; coming out of the pandemic created staffing issues.

Tamara Martin provided some San Diego specifics, and the bulk of their carryover was due to those vacant positions. Additionally, their staff does assist on other cases outside the grant, and none of that gets billed to their WC program, which creates carryover.

Commissioner Wright commented that there is a downward staffing trend in all sectors due to the pandemic. She asked Tamara to elaborate on their pandemic recovery plan.

Tamara Martin advised after the pandemic, it took almost a full year to be able to get the courts through their backlog. Coming out of the pandemic, they also had a lot of retirements in their division. Their office as a whole has gotten younger. Staff with less seniority cost less money. Those people have since gotten promotions and cost more money now.

Jill Nerone commented on Alameda County's rebound to the pandemic as that's where she was at the time. One thing that came out of the pandemic is people began working together differently. The new virtual platform has been very beneficial as it reaches more allied agencies.

Bill Lee commented that coming out of the pandemic is a difficult challenge for everyone. When overall staffing is reduced it sometimes causes staff to be pulled to assist with cases in other units. Additionally, there was a lot of turnover and some connections were lost, reducing collaboration.

Chairperson Bobrowsky said when he and Commissioner Marshall reviewed applications in June, they had a hard time allocating all the funds based on performance. He also disagrees with the statement that the split will be difficult to change in the future. Additionally, if future performance warrants it, the FAC could increase the assessment

Chairperson Bobrowsky requested a 10-minute break; the meeting resumed at 12:31 pm.

a. Enforcement Branch Comments

CDI Division Chief, Eric Charlick, came to the podium and thanked the FAC for scheduling this meeting and welcomed the new commissioner.

Regarding the topic of why this issue was brought up in January, is because the information was not available in September. The financial audits are due October 31st; regulations allow extensions and twenty-three percent of the county's audits were submitted later, the most recent one received December 31, 2023. After the audits came in, a comprehensive review was done and the Insurance Commissioner was very concerned by the trend of unspent funds, when their expenditures have remained fairly consistent. After a thorough review was done, the Commissioner made the decision to adjust the split. Long ago it was set at 50/50, then the discretionary 20% was decided to be allocated to the DAs.

The Insurance Commissioner proposed a reallocation of \$6,007,302 from the DAs to CDI. It was explained the Total Award is always more than the DA's aggregate split, as it includes additional awards. The numbers were reviewed, and it was reiterated that the combined aggregate assessment, along with the additional unspent funds, would still give the DAs an increase in FY 2024-25 funding over FY 2022-23.

The numbers of the split adjustment if not approved, were also reviewed. DC Charlick repeated that the split change is not permanent. It can be adjusted by CDI requesting it, the FAC asking the Insurance Commissioner to adjust it, or the DAs writing to the Insurance Commissioner to ask for a split change.

Additional information was given on staffing, vacancies, and institutional knowledge. A few of the counties were noted for their retention of staff and institutional knowledge, citing they are the exception and not the norm. Information was also shared on caseload numbers, both CDI and DAs.

DC Charlick concluded by stating the most direct and timely manner to address the funding discrepancy is to adjust the split. CDI highly values the relationship with the DA offices. The split change is not a permanent, and the Insurance Commissioner will consider future adjustments to the split to make the funding equitable.

b. Discussion

Commissioner Wright asked if there is any data on the number of prosecutions resulting from CDI investigations. DC Charlick replied there were 251 cases submitted to the DAs, 127 were filed, and 46 were rejected. Diana Russell advised when the DAs report their prosecutions, they don't identify where the investigations came from.

Commissioner Calamuci asked how much money from the General Fund CDI had tapped into. DC Charlick responded it was over \$4 million this last FY. Commissioner Calamuci asked what would happen if a county no longer participated in the program. DC Charlick explained CDI could still take the cases to general filing, but that wouldn't have a dedicated prosecutor. He stated there's a number of small counties that are performing well, and it is the hope they won't be reduced as it's still a 3.67% increase to the current fiscal year.

Vice-Chair Lopez asked about the 11% detective salary increase. DC Charlick explained there was a 3% general salary increase for everyone in CDI. Then there was a 5% special salary adjustment for detectives along with other adjustments, which amounts to the 11%.

Vice-Chair Lopez clarified that a no vote will not negate the CDI raises. DC Charlick confirmed with the increased salaries and without the split adjustment, less positions could be filled. If CDI funding goes up, more resources can be dedicated.

Chairperson Bobrowsky asked about the 31% of SFCs being closed due to insufficient resources. DC Charlick replied if CDI is given more funding to WC, then more resources can be dedicated to WC, which in turn, by logic, would result in more productivity.

Chairperson Bobrowsky asked how much of a percentage will the SFCs rejected for insufficient resource go down. DC Charlick estimated about 5%. He can't say exactly how much, but it will go down. CDI has been doing significant outreach to insurers to increase the quality of the SFCs. Chairperson Bobrowsky asked what new fraud trends CDI is seeing. DC Charlick replied it's an ever-changing world; there's medical mills, compound creams, sober living facilities, and they keep coming up with new schemes. Most new schemes start out in LA County and then spread.

Chairperson Bobrowsky summarized that Insurance Commissioner Lara's decision is to adjust the split after having everything analyzed, and he is seeking the FACs consent.

Commissioner Wright asked if there was a risk assessment done on the cons of this split change. Statistics on the number of DA convictions and CDI prosecution referrals were handed out. DC Charlick advised it is more of a risk to let the funds sit unspent than to reallocate them to CDI. Additionally, there is a risk if the adjustment to the funds is not made. A future request to the Insurance Commissioner for another change in the split can be made; this is not permanent.

Vice-Chair Lopez said he creates budgets for his employer, who is also understaffed. When he does budgets, he accounts for vacant positions so that the funds are there if they can fill the positions. CDI's budget didn't account for the 11% salary increase and it appears CDI didn't include their vacant positions in the budget.

DC Charlick reiterated if CDI doesn't spend all their funding, it goes to the DAs the next fiscal year, and is not retained for CDI. Had CDI projected enough funding to cover all the vacant positions, CDI would've asked for a 16% increase in the assessment last year, but that wouldn't have been prudent. He noted the detectives' raise was a collective bargaining result not known at the time of the assessment.

Vice-Chair Lopez clarified a consent vote is to make the split change. He asked what if the FAC advised the Insurance Commissioner to make this split change for just one year only. DC Charlick responded the FAC can provide advice to the Insurance Commissioner, and another meeting would need to be scheduled.

Commissioner Wright said it is about weighing the options and making the right decision, while considering risks and consequences. Resiliency is important.

Commissioner Calamuci said this is a lot of information to process. Going back to the recently approved Goals and Objectives, it's quality over quantity. He respects the position both CDI and the DAs have presented. He's intrigued with Vice-Chair Lopez's idea and is leaning towards sending advice to the Insurance Commissioner on making this a single year adjustment.

Vice-Chair Lopez advised one option is to adjust the split. Another option is increasing assessment in September. Another is providing advice to the Insurance Commissioner to make this a one-year change. He commented on the factors presented today, and the possible solution to make this a one-time split.

Chairperson Bobrowsky said the split has not always been the same. He believes this is the time to be bold. He trusts Insurance Commissioner Lara, DC Mueller, and DC Charlick, that if the split should be rebalanced down the road, it will be. If he had known the amount of carryover back in September, he would not have supported an increase the aggregate assessment. He is confident that whatever is decided here, we will move forward from this day.

Commissioner Calamuci asked if we were to entertain doing this for one year, do we really have to come back in 2 weeks? What would that process be?

CDI Legal Counsel Yvonne Hauscarriague advised there is no process in the regulations about this. The FAC must provide proposals to the Insurance Commissioner or consent to the Insurance Commissioner's recommendation. LAU Manager Diana Russell, said that due to Bagley Keene we can't set a meeting in less than 2 weeks.

Commissioner Calamuci asked about the timeline, Chairperson Bobrowsky clarified this was about the DIR collections letter. Ms. Russell advised the DIR collections letter is sent March 1st. However, the amount of the funding needs to be known for the grant funding announcements, which are currently set to be released February 21st.

Vice-Chair Lopez asked if the Insurance Commissioner would need to consent to their advice. Ms. Russell advised the Insurance Commissioner may change his recommendation based on the advice of the FAC, but he still has to have the FAC's consent vote on a revised recommendation.

Chairperson Bobrowsky said there is no perfect solution to this issue. The split used to be 50/50, then 40/40/20, and it is time for change again. He repeated his confidence the Insurance Commissioner would be willing to change the split again down the road. He really believes it is the right decision to make today as it's the best thing for the program.

c. Public Comments

No in person comments.

Online, Commissioner Cloney said he read the letter multiple times and he thinks it reads that the change is just for one year. He thinks the Insurance Commissioner, willingly or not, proposed a one-year change.

Shandra Handley, from Santa Cruz County, said she wanted the Commissioners to recognize that many counties met online ahead of this meeting. Her elected DA said it's tough to fully staff when there's unstable funding, and the split change would create more instability. She would like the Commissioners to consider Vice-Chair Lopez's suggestion to consider this as a one-year change.

d. Vote

Chairperson Bobrowsky suggested to accept the Insurance Commissioner's recommendation of a 6.76% split adjustment. Commissioner Wright made a motion to accept it. Chairperson Bobrowsky seconded it.

A roll-call vote was made. Commissioners Calamuci and Lopez voted no. Commissioners Wright and Bobrowsky voted yes. Motion did not pass.

Vice-Chair Lopez made a motion to give advice to the Insurance Commissioner to make this a one-time split for FY 2024-25 only. Commissioner Calamuci seconded.

A roll-call vote was made. Commissioners Calamuci, Lopez, and Bobrowsky voted yes. Commissioner Wright voted no. Before calling the motion, a call for clarification was made by LAU Manager Diana Russell.

There was further discussion. It was clarified that the FAC agreed the Insurance Commissioner's letter allowed a one-year change. The details of motion wording were then discussed.

The motion was made to adjust the split by 6.76%, which is 47% to CDI and 53% to the DAs for FY 2024-25 only, and the split will revert back to 40.24% to CDI and 59.76% to the DAs for FY 2025-26 and going forward.

Vice-Chair Lopez made a motion to accept. Commissioner Calamuci seconded.

All commissioners voted yes by roll call vote.

IV. Other Business

- a. Insurance Commissioner's Workers' Compensation Review Panel meeting will be June 12, 2024.
- b. Next Scheduled FAC Meetings(s) are June 26th, September 4th, and September 11th, 2024.

c. Public Comments

No public comments on other business

V. Public Comments

No public comments on any agenda items.

VI. Closing Remarks

Vice-Chair Lopez thanked everyone for the discussion today. He believes we accomplished something good today.

Commissioner Calamuci echoed Vice-Chair Lopez's comments and thanked everyone for the passion today. We are all ultimately on the same team and have the same goals. Many thanks to LAU and those taking meeting minutes.

Commissioner Wright thanked everyone for the lively discussion and looks forward to working together.

Chairperson Bobrowsky welcomed Commissioner Wright. He stated it's great to have the discussions today. He reminds everyone to hold their head high and move forward from here.

Vice-Chair Lopez made a motion to adjourn the meeting. Commissioner Wright seconded. All commissioners voted yes via roll-call vote.

The meeting adjourned at 2:38 pm.