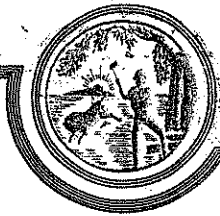


# STATE OF INDIANA



SUPREME COURT  
323 STATE HOUSE

INDIANAPOLIS 46204

DIVISION OF STATE COURT ADMINISTRATION (317) 232-2542

BRUCE A. KOTZAN  
EXECUTIVE DIRECTOR

LILLIAN G. JUDSON  
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QUALIFICATIONS COMMISSION (317) 232-4706

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STAFF ATTORNEY

RECORDS MANAGEMENT SECTION (317) 232-4703

JOHN J. NEWMAN  
DIRECTOR

## PUBLIC DEFENDER COMMISSION MEETING January 29, 1990

The Public Defender Commission met on January 29, 1990, Monday in the Indiana Supreme Court Conference Room, State House Building at 1:00 P.M.

COMMISSION MEMBERS PRESENT: John Barce, Susan Carpenter, Monica Foster, Richard Kammen, Norman Lefstein, Mark Owen and Kenneth Scheibenberger

OTHERS PRESENT: Supreme Court Liason, Justice Roger O. DeBruler, Staff Attorney, Angela Espada, Executive Director, Bruce Kotzan, Director, Lillian Judson, and Public Defender, Larry Landis

DISCUSSION: Item 1. The proposed agenda was reviewed and no items were deleted or added.

Item 2. Selection of Chairperson: The commission decided to postpone the selection of a chairperson until the duties of the position and direction of the commission were more clearly understood. Norman Lefstein agreed to act as interim chairperson of the Commission until a chair was selected at the next meeting.

Item 3. A legislative history was presented by Larry Landis.

Item 4. The Powers and Duties were discussed.

A. Dean Lefstein suggested that it would be beneficial to the Commission to learn what systems for appointment and compensation were currently being utilized through the state.

B. It was also suggested that Robert Spangenberg be contacted to find out how attorneys are being appointed and compensating across the nation in capital punishment cases.

C. There was a call for the American Bar Association's (ABA), Indiana State Bar Association and the National Legal Aid Defense Association's recommended guidelines for attorneys representing clients facing the death penalty to be provided to the Commission members prior to the next meeting.

Item 5. The proposed budget was neither accepted or rejected. However without an approved budget, the commission members could not be paid their per diem for attending the meeting. The budget will be discussed again at the next meeting.

Item 6. The next meeting was scheduled for February 20, 1990, at 1:00 P.M.

1/20/90

members Present - All  
Others, BK, L<sup>2</sup>, AE &

① Countries - what is actually happening - ?

SD -  
is-active

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Update on what's happening where -

Change of focus -  
Recommend Rule for IWS (t) - Then to get it back  
comply w/ CF Rule

N.L. to talk w/ C.D.

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ABA Guidelines

Recommend to IN SCF.

3

PUBLIC DEFENDER COMMISSION

Minutes of 3/14/90 Meeting

The Commission met on March 14, 1990, at 5:00 P.M. in the conference room of the Public Defender. Dean Lefstein chaired the meeting. All members of the Commission, except Mr. Scheibenberger, were present. Also in attendance were Indiana Supreme Court Justice Roger O. DeBruler, Mr. Bruce A. Kotzan, Executive Director of the Division of State Court Administration and Mr. Larry Landis, Executive Director of the Public Defender Council.

The Chairman reported to the members of the Commission on his discussion with Chief Justice Shepard. Generally, it was the Chief Justice's impression that a majority of the Supreme Court was predisposed to adopt rules. There would be some differences of opinion, but a consensus probably could be reached by the members of the court. The Chief Justice was concerned that local officials have not yet been apprised of the funding available through this program. The Chairman reported that there was a present need to inform county officials of the matching state funds available to encourage better representation. It was his view that the Commission should develop a way to structure county funding assistance that was helpful in the delivery of defense services.

5

A general discussion followed as to the manner in which the Commission could address the concerns expressed by the Chief Justice. It was generally agreed that there was a problem with salaried public defenders representing defendants in death penalty cases without additional compensation or an appropriate deduction of other duties to compensate for

the additional responsibilities associated with a death penalty case. This agreement led to the conclusion that the direction of the commission should not be toward the funding of the status quo; to do so would only institutionalize and reward an inadequate mechanism for the delivery of defense services.

The members of the commission next reviewed various options. It was noted that the Commission could adopt payment guidelines without the approval of the Supreme Court. This possibility has to be tempered by the reality that any imposed additional duty consequently would be analyzed on "cost-benefit" considerations. The ultimate result of this approach might be nothing more than payment for the status quo.

It was generally agreed that the purpose of this funding was to assist the counties in the extraordinary expenses associated with death penalty cases. Justice DeBruler noted that one aspect of these cases which appeared deficient at review was the development of defense matters for consideration in the sentencing phase. The members of the commission agreed in his assessment. Following discussion as to the application of this concept, the Commission unanimously agreed to adopt a rule for the payment on non-attorney special defense expenses approved and paid in conjunction with the penalty phase of the case. This would apply to all expenses incurred after July 1, 1989. This would not apply to any expenses associated with the trial phase of the case. There would be no cap as to these expenses. The Chairman agreed to prepare a draft introductory letter to county officials and judges announcing this decision.

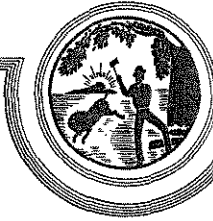
The Chairman informed the members of the commission that at his direction Mr. Landis had prepared a draft of the significant portions of potential guidelines and rules. A focal point of discussion was the issue

of certification and the potential of developing "pre-certification" procedures. Clearly, the members of the commission were opposed to "fact-finding" upon which the Supreme Court would determine issues of certification. Objective criterion were not at issue, the problem area is weighing subjective issues that support certification or not in spite of the objective criterion. No final position was reached concerning this issue; the Chairman indicated that he would explore the procedures in Ohio where the Commission is involved in certification. Justice DeBruler indicated that the Supreme Court would tend to opt for a simple process that did not greatly interfere in the trial court's appointment discretion.

Mr. Landis indicated that he would compare his proposed draft in light of the prior discussions of the commission. Review of additional factors was differed until the next meeting. At that time, the commission would again explore the various issues which are associated with this difficult area of criminal litigation.

The next meeting was tentatively scheduled of April 25, 1990, at 5:00 P.M. in the Public Defender of Indiana Conference room.

# STATE OF INDIANA



INDIANA PUBLIC DEFENDER COMMISSION

CHAIRMAN  
NORMAN LEFSTEIN  
INDIANAPOLIS

JOHN W. BARCE  
KENTLAND

SUSAN CARPENTER  
INDIANAPOLIS

MONICA FOSTER  
INDIANAPOLIS

RICHARD KAMMEN  
INDIANAPOLIS

MARK R. OWEN  
EVANSVILLE

KENNETH R. SCHEIBENBERGER  
FT. WAYNE

803 I. S. T. A. BUILDING  
150 WEST MARKET STREET  
INDIANAPOLIS, INDIANA 46204  
TELEPHONE (317) 233-3017

(4)

To: Commission Members  
From: Angela Espada  
Re: Public Defender Meeting of April 25, 1990  
Date: May 9, 1990

The 4th meeting of the Indiana Defender Commission was held on April 25, 1990 in the 4th floor conference room of the Indiana State Public Defender

Attending Commission Members: Susan Carpenter, Monica Foster, Richard Kammen, and Kenneth Scheibenberger.  
Members John Barce and Mark Owen did not attend.

Others Present: Justice Roger DeBruler; Angela Espada, Commission Staff Attorney; Diane Shea, Staff Attorney and Assistant Director of the Association of Indiana Counties Inc. and Robert (Bob) Spangenberg, President of the Spangenberg Group.

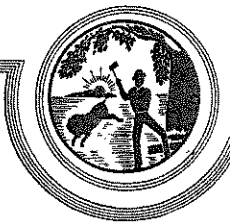
#### Items discussed:

1. The PDC will be the entity that screens for eligibility and determine who is qualified to represent capital punishment cases under the future guidelines. It will not certify.
2. Part-time public defenders in Allen, Lake and Marion counties be excluded from representing capital cases for the following reasons:
  - a. Case load too heavy for additional burden.
  - b. The partisan employment situation may limit the zealously of counsel in asking for necessary funds or continuances.
3. Larry Landis is to get information on smaller or more rural public defender offices to help determine if they

should be excluded form capital punishment cases.

4. A. Questionnaire may be sent to part-time public defenders to determine:
  - a. Who hired the P.D.?
  - b. The number of hours per week that a P.D. averages.
  - c. The number of open felony cases that they have.
  - d. If the P.D practices before the judge that hired them?
5. The guidelines will state that Codefendants in capital punishment cases must have their own separate lead and co-counsel.
6. The letter to the County Commissioners was revised only slightly by adding a brief header explaining the subject matter of the letter.
  - a. This letter is to be sent to all judges throughout the state who handle felony cases, the president of the county councils, presidents of the boards of commissioners, county auditors.
  - b. It was determined that this letter be sent as soon as possible, however the letterhead was not available.
7. The issue of adequate notice from the prosecuting attorney when asking for the death penalty was discussed.
  - a. It was proposed that county prosecutors have a time limit in which to seek the death penalty.
  - b. Bob Spangenberg is to research this issue and advise how other states handle this matter.
8. The next meeting date of May 16, 1990 was selected. This meeting will be held at the I.U Law School, at Indianapolis. 2nd floor conference room 225. 735 W. New York.

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To: Commission Members  
From: Angela Espada  
Re: Public Defender Meeting of April 25, 1990  
Date: May 22, 1990

The 5th meeting of the Indiana Defender Commission was held on May 16, 1990 in the 2nd floor conference room of the Indiana University School of Law-Indianapolis.

All commission members were in attendance.

Others Present: Justice Roger DeBruler; Angela Espada, Commission Staff Attorney; Larry Landis, Executive Director Public Defenders' Council, Robert (Bob) Spangenberg, President of the Spangenberg Group, and Beth Walsh an assistant with the Spangenberg group.

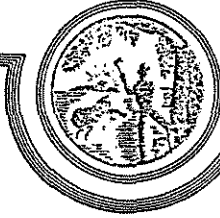
## Items discussed:

- A. Members and guests were introduced.
- B. Minutes of 4/25/90 were approved.
- C. The Commission members received a copy of the memorandum that was sent to felony criminal court judges, county councils and county auditors.
- D. Bob Spangenberg reported his findings concerning when a prosecutor files that the death penalty is being sought. His report showed that states generally do not have a problem with notice because:
  1. There are statutes or policies that govern.



2. Prosecutors do not abuse the current policies.
  3. Many states have never dealt with this issue.
- E. The Commission choose not to recommend a rule that would limit the time in which Indiana Prosecutor's could file a death penalty count because there were not allegations of prosecutorial abuse.
- F. Larry Landis reported that smaller more rural counties seem to have a smaller more managable case load. Counties with more than 38,000 people seem to have begin to experience heavier caseloads.
- G. There was further discussion of the exclusion of part-time public defender's from the rooster of qualified attorneys for death penalty cases.
1. It was proposed that Marion, Allen and Lake counties be excluded either because of attorney caseload or population in the county.
  2. There still exists concern regarding political patronage and how it effects the delivery of services.
- H. The third working draft of guidelines was presented for discussion approval by the commission.
1. It was decided that continuing education in the area of capital punishment was vital.
  2. Guidelines regarding caseloads and the courts were separated within the draft and made more specific.
- I. The commission discussed putting a rule for consideration before the Indiana Supreme Court by August 1990. A commentary will be attached to the rule. The commentary will highlight the thought processes of the commission as it formulated the rule.
- J. The next meeting date of May 16, 1990 was selected. This meeting will be held at the I.U Law School, at Indianapolis. 2nd floor conference room 225. 735 W. New York.

# STATE OF INDIANA



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TELEPHONE (317) 233-3017

To: Commission Members  
From: Angela Espada  
Re: Public Defender Meeting of June 19, 1990  
Date: June 25, 1990

The sixth meeting of the Indiana Public Defender Commission was held on June 19, 1990 in the 2nd floor conference room of the Indiana University School of Law-Indianapolis.

Commission Members present: John Barce, Susan Carpenter, Monica Foster, Norman Lefstein, Mark Owen and Kenneth Scheibenberger.

Others Present: Angela Espada, Commission Staff Attorney; Larry Landis, Executive Director Indiana Public Defender Commission; Diane Shea former Staff Attorney for the Association of Indiana Counties and Howard Smalovitz, Reporter Indianapolis Star and News.

#### Items Discussed:

1. The minutes of the May 16, 1990 meeting were accepted and approved.
2. The letterhead of the commission was revised and accepted.
3. Angela Espada designed and submitted a form for the commission's approval by which counties could request reimbursement. Additional work is needed
  - a. The revised form may contain a certification from the auditor
  - b. The revised form may need specifics of services that were performed.
  - c. Angela Espada and Larry Landis will make the revisions.
4. The 1990-91 fiscal budget was distributed and explained by Bruce Kotzan, Executive Director. The commission approved the budget.
5. The commission accepted Bob Spangenberg's proposal to write the commentary that will accompany the proposed rule to the Indiana Supreme Court.
6. The commission accepted Larry Landis' proposal for drafting services.
7. The 4th working draft was reviewed and finalized
8. The next meeting date of August 21, 1990 was selected with the hope that Spangenberg will be have completed the commentary by that time.

INDIANA PUBLIC DEFENDER COMMISSION

Minutes

August 29, 1990

The Indiana Public Defender Commission met on August 29, 1990 at 5:00 in the Conference Room of the I.U. School of Law - Indianapolis. Present were Commission Chairman Norman Lefstein and Commission members John Barce, Susan Carpenter, Monica Foster, Rick Kammen, and Ken Scheibenberger. Also present were Larry Landis, Executive Director of the Indiana Public Defender Council, and Meg Babcock from the Supreme Court Division of State Court Administration.

1. The proposed Minutes from the June 19, 1990 meeting were unanimously approved after the Commission agreed to the following additions:

a. Bob Spangenberg's proposal to write the commentary to Rule 25 at an expense of \$4000.00, which was accepted at the 6/19/90 meeting, will be referred to in Item 5 and attached to the Minutes.

b. Also attached to the Minutes will be the contract for the services of Larry Landis which was amended after the 6/19/90 meeting to reflect an agreement that he will be reimbursed for time spent up to \$15,000.00 as opposed to the original idea that the Commission would contract with him for \$15,000.00.

2. Larry Landis distributed a draft of the Commission's statutorily required Annual Report. Members were asked to verify the dates of their appointments and their terms. The Report will be discussed further at the next meeting and will include the dates of each Commission meeting this year as well as a summary of action taken by the Commission even after the end of the fiscal year.

3. Bob Spangenberg will have the proposed draft commentary to Rule 25 ready for the Commission's consideration at the September 17 meeting. The Commission discussed the Revised Final Draft of Rule 25 dated 8/29/90 and considered Mr. Spangenberg's comment to the Chairman that the rule was not sufficiently clear that appointments of counsel must be made from the roster. The Commission decided to amend (A) APPOINTMENT OF COUNSEL to read "The trial court in a capital case shall appoint lead and co-counsel for the defendant from the appropriate rosters of attorneys maintained by the Indiana Public Defender Commission".

The Commission discussed (F) WORKLOAD OF ATTORNEYS and agreed with the deletion in the Final Draft of (3), which excluded salaried or contractual public defenders in counties with populations over 400,000 from appointment in capital cases, and agreed with the amendment to (4) to conform with that deletion.

Larry Landis will send Bob Spangenberg a copy of the Final Draft in advance of the September 17 meeting.

4. The Commission discussed Chief Justice Shepard's letter to the Chairman dated August 29, 1990 in which he reiterated his request that the Commission

act promptly to make assistance available to indigent capital defendants. The members discussed the appropriate response to this request in light of the Commission's statutory duty to provide reimbursement to counties only upon a showing of compliance with standards, which the Commission had decided should be ultimately in the form of a mandatory Supreme Court rule. Earlier in the year, the Commission had decided that, during the period before promulgation of Rule 25, it would set the provisional guidelines for penalty-phase only non-attorney expenses, which the Chief Justice felt was too limited. Thus, the Commission voted to expand the interim guidelines and to notify all counties and the bar that it would now reimburse half of all non-attorney defense costs in both phases of capital trials retroactive to July 1, 1989 and that it would reimburse half of a \$75.00 per hour compensation for each of two attorneys in capital cases as of September 1, 1990. The statute calls for reimbursement after a capital case is concluded.

Norman Lefstein will send a response to the Chief Justice and will draft a letter to all county commissioners and auditors and to the judges. The bar will be notified via Res Gestae and the Public Defender newsletter, and the letter will include a request to the judges that they post it in the courthouse.

In light of the decision to begin immediate reimbursement, the Commission will not wait for the State to produce the claim form. Larry Landis will revise the form as necessary.

5. The Commission reviewed the claims and inquiries already submitted. Each will need to be submitted on the form when it is ready and the counties must include itemized receipts. One issue discussed was the policy of reimbursement in cases in which the death penalty request is dropped. This will be covered in the commentary, the consensus being that attorneys fees throughout the case will be reimbursed whereas the Commission will reimburse defense costs incurred only to the point the death penalty request is dismissed.

6. The next meeting will be September 17, 1990 at 5:00 p.m. in Rick Kammen's offices at 235 N. Delaware.

INDIANA PUBLIC DEFENDER COMMISSION

Minutes

September 17, 1990

The Indiana Public Defender Commission met on September 17, 1990 at 5:00 p.m. in the offices of Rick Kammen at 235 N. Delaware, Indianapolis, Indiana. Present were Commission Chairman Norman Lefstein and Commission members John Barce, Susan Carpenter, Monica Foster, Rick Kammen, and Ken Sheibenberger. Also present were Larry Landis, Executive Director of the Indiana Public Defender Council, Bruce Kotzan and Meg Babcock from the Supreme Court's Division of State Court Administration, and Robert Spangenberg.

1. The Commission unanimously approved the proposed Minutes from the August 29, 1990 meeting.

2. The Commission discussed its Annual Report and decided to forward it to the the Governor, legislative counsel, the Speaker of the House, the Senate President Pro Tem, the Finance Committee, the Ways and Means Committee, the Chairmen of both judiciary committees, and the sponsors of the bill creating the Commission. Norman Lefstein will make a few editorial changes before its distribution. The Annual Report will reflect the Commission's decision on August 29 to enhance its reimbursement guidelines, although the decision was made after the end of the fiscal year.

3. The Commission discussed the guidelines dated 10-1-90. After a lengthy discussion about whether to reimburse counties for attorneys fees incurred after the dismissal of the death penalty request, the Commission voted 5-1, Ms. Foster dissenting, to not reimburse 50% of attorneys fees incurred after the dismissal of the death penalty request.

The Commission voted unanimously to indicate in the guidelines that the attorneys fees reimbursement will be prospective from September 1, 1990, and to change the date of the guidelines to September 1, 1990. Non-attorney expenses will be reimbursed retroactively to July 1, 1989.

When the guidelines are revised, the Commission will send them to the counties with the Commission's original memo from May and another memo from the Chairman, a draft of which was distributed at the meeting.

The Commission discussed the form for reimbursement which will be sent to the counties. Norman Lefstein and Larry Landis will finalize the form, which must be submitted to the Commission by the counties with itemized invoices and billing statements and proof of payments.

4. The Commission discussed Bob Spangenberg's Draft Commentary to Rule 25, which was approved with suggestions for minor changes, such as an introductory section describing the nature of the document and the addition of a contents page. Mr. Spangenberg suggested that it ought to include a description of the Commission's activities to date as well as Larry Landis' information on Indiana attorneys who have already received training in capital defense.

The Commission voted unanimously to amend Rule 25 as follows: Under "(A) ROSTER OF ATTORNEYS", paragraph 2 should end with the word "client", and the phrase "pursuant to the requirements in this rule and performance standards established by the Commission" will be deleted.

Page 16 of the Commentary will be amended and will not refer to the trial court judge's inherent authority to appoint outside the roster.

The Commission members expressed their desire to see the draft another time before it is approved. Bob Spangenberg will have it ready sometime during the week of September 24. Meanwhile, Norman Lefstein and Larry Landis will use the Word Perfect disc to incorporate their ideas.

The final draft will be distributed to the Commission members and, when final, the Chairman will send it to the Chief Justice for his distribution to the rest of the Court. Then, a delegation from the Commission, and Bob Spangenberg, will meet with the Court.

5. The next meeting date will be set later.

INDIANA PUBLIC DEFENDER COMMISSION

Minutes

December 18, 1990

The ninth meeting of the Indiana Public Defender Commission was held at 4:00 p.m. on December 18, 1990 in the offices of the Public Defender Council. All members were present except Susan Carpenter and Mark Owen. Also present were Larry Landis and Meg Babcock.

1. The proposed Minutes from the September 17, 1990 meeting were approved.
2. The submission to the Court of Proposed Criminal Rule 25 and its commentary was reviewed as were recent Star and Res Gestae articles. The Commission discussed reiterating to the Chief Justice the Commission's willingness to meet with the Court and discuss Rule 25. It was decided that Chairman Lefstein would contact Judge Shepard.
3. The Commission discussed the reimbursement form which will be ready for distribution soon and briefly reviewed the potential claims for reimbursement already brought to the Commission's attention.
4. The Commission discussed the Commission's statutory mandates beyond reimbursement of defense expenses in capital cases. Larry Landis distributed a memorandum titled "Where To From Here?" and additional materials. The Chairman asked the Commission members to review the materials and asked Larry Landis to prepare a memorandum with his thoughts as to developing indigency standards and procedures and as to how procedures for partial reimbursement by defendants and for use of county supplemental public defender funds might work.
5. The Commission discussed the possibility of an amendment to the statute which could authorized Indiana for federal money, and it was decided the Commission would consider this next year.
6. The Commission tentatively decided on a meeting schedule for 1991 of 4:00 p.m. on the last Wednesday of each month.