

*See attached
for claims
approved*

Proposed

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

February 27, 1991

Chairman Lefstein called the meeting to order at 4:15 p.m. Other Commission members present were Ken Sheibenberger, Monica Foster, Susan Carpenter, and John Barce. Also present were Bruce Kotzan and Meg Babcock from the Division of State Court Administration, and Larry Landis, consultant to the Commission.

1. The Commission approved the proposed Minutes of the December 18, 1990 meeting.

2. Bruce Kotzan reported that the Court has asked judges and prosecutors with experience in capital cases for their comments on proposed Criminal Rule 25. Mr. Kotzan relayed some of the input his office has received, and the Chairman reiterated the Commission's willingness to meet with the Court to discuss the rule.

3. The Commission considered and approved claims for reimbursement from Henry County, Lake County, Hancock County, and Daviess County. Among the items which the Commission decided it could not approve were claims for court experts, transcripts, jury expenses, court security, and counsel's secretary. Among the defense expenses the Commission will reimburse are the costs of counsels' paralegals and law clerks.

4. The Commission decided it will accept interim filings of claims for reimbursement, but no more frequently than quarterly. Also, the Auditor's signature on the form will suffice as proof the claims were paid.

5. Meg Babcock will prepare a rough draft of a letter from the Chairman to the judges and auditors advising them that the first group of claims has been approved, reminding them of the guidelines, and notifying them that the Commission will accept interim filings.

6. Larry Landis distributed materials on Indigency and Recoupement and copies of House Bills 1963 and 1802. For the next meeting, he will draft materials pursuant to his recommendations under item 6, particular paragraphs "a" (model forms), "b" (indigency guidelines), and possibly "c" (recoupement forms and guidelines).

7. The Commission will meet on the last Wednesday of each month at 4:00 p.m. Meg Babcock will send the members a calendar of future

meetings and will confirm the members' attendance before each meeting.
The next meeting will be Wednesday, March 27, 1991 at 4:00 p.m.

*Approved
6-26-91*

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

April 24, 1991

Chairman Lefstein called the meeting to order at 4:10 p.m. Other Commission members present were Ken Sheibenberger, Monica Foster, Susan Carpenter, and John Barce. Also present were Meg Babcock from the Division of State Court Administration, and Larry Landis, consultant to the Commission.

1. The Commission approved the proposed Minutes of the February 27, 1991 meeting.
2. The Chairman reported on the meeting of April 15, 1991 with the Chief Justice, Chairman Lefstein, Larry Landis, and Meg Babcock. The Commission decided to ask the Supreme Court Administrator, Karl Mulvaney, to notify the Commission when he receives notice under CR24 of the filing of a death penalty request. We also will ask Mr. Mulvaney for information on all currently pending death penalty cases. With this information, the Commission staff will contact Judges and Auditors as soon as it is learned that they have death cases and will encourage them to refer to the guidelines and to file claims for reimbursement. Chairman Lefstein will inform the Chief Justice of this approach after it is in place.
3. The Commission considered the interim claim filed by Shelby County in the Dobkins case. Monica Foster abstained from participating in the discussion. The total amount approved for reimbursement was \$17,754.62. All claims were approved except for the claims pertaining to transcript costs.
4. The Commission discussed the question whether the guidelines permit a judge to appoint counsel at \$75.00/hr. but to set a cap of \$10,000.00. The Commission decided to leave this issue pending for the time being, particularly in anticipation of the Supreme Court's rule.
5. The Commission discussed Larry Landis' draft of Standards for Determining Indigency and Eligibility for Defense Services and the statutory provision for automatic forfeiture of bond.
6. The next meeting will be June 26, 1991 at 4:00 p.m.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

June 26, 1991

Chairman Lefstein called the meeting to order at 4:10 p.m. Also present were Commission members John Barce, Susan Carpenter, Monica Foster, and Rick Kammen. Larry Landis, Meg Babcock, Bruce Kotzan, and Star Reporter Howard Smulevitz also attended the meeting.

1. The Commission unanimously approved the Minutes of the April 24, 1991 meeting.

2. The Commission approved the following claims for reimbursement:

Randolph County -	<u>State v. McCord</u>	\$ 87.50
"	<u>State v. Buie</u>	\$ 4,180.43
"	<u>State v. Sheets</u>	\$ 2,631.00
Shelby County	<u>State v. Dobkins</u>	\$22,592.97 (Ms. Foster abstaining)

3. The Commission discussed the Supreme Court's draft of Rule 24 and the limited issues the Commission would address in a letter to the Court. Larry Landis had prepared a document outlining all the modifications of the Commission's Proposed Rule 25, and that document is attached to these minutes and incorporated by reference. The Commission decided it would maintain a non-binding roster of attorneys for appointment in capital cases as a service to the trial courts. Chairman Lefstein will draft the portion of the letter informing the Court of the Commission's desire to maintain the roster. The Commission discussed the fact that the roster would be based only on objective standards of "death qualification" and that the Commission would make it clear to the courts that the list is not exclusive and that the Commission is not warranting the qualifications of the attorneys other than on the objective bases, one of which will be satisfaction of the CLE requirements.

The other issue which the Commission will address in its response to the Court is the imposition of the cap of 500 hours for trial work and 250 hours for appellate work. The Commission members agreed they needed to present the Court with data demonstrating that the average time spent in capital cases exceeds the cap. Monica Foster, Susan Carpenter, and Meg Babcock will compile information on hours spent in specific capital cases in Indiana and Rick Kammen, Monica Foster, and Susan Carpenter will draft a response to the Court, then circulate it to the Commission for discussion at the next meeting. Larry Landis will contact Bob Spangenberg and ask whether he has additional information on average hours spent in death cases.

4. The next meeting date has been changed from July 24 to July 17, 1991, at 4:00 p.m. in Larry Landis' office.

COMPARISON OF PROPOSED CR 25 AND DRAFT OF CR 24

CR 25

CR 24

1. Trial ct. must appoint counsel from rosters prepared by Commission.

1. No rosters

2. Lead Trial Counsel Qualifications

- a) 5 yrs criminal litigation experience
- b) lead defense counsel in 9 felony jury trials
- c) lead defense counsel in 2 murder cases
- d) lead defense counsel or co-counsel in one case in which death penalty was sought

- a) same
- b) 5 felony jury trials
- c) none
- d) same

3. Trial Co-Counsel

- a) 3 yrs. criminal litigation experience
- b) lead defense or co-counsel in 3 felony jury trials, at least 2 of which were murder or Class A felonies

- a) same
- b) any 3 felony jury trials

Appeal Lead Counsel

- a) 3 yrs criminal defense experience
- b) prior death penalty appeal within 3 yrs
- c) 3 felony appeals in state or federal ct. within last 3 years

- a) 3 yrs criminal litigation experience
- b) none
- c) 3 within last 5 yrs.

5. Training

- a) 12 hrs CLE in defense of capital cases within 1 yr of application for inclusion on a roster

- a) 12 hrs CLE approved by Commission, within 2 yrs prior to appointment

6. Number of Attorneys

- a) Trial - 2
- b) Appeal - 2

- a) 2
- b) only 1 required

7. Workload of Trial Counsel

Salaried or contractual public defenders may be appointed, if:

- a) no more than 20 open felony files
- b) no new cases assigned within 60 days of capital trial

- a) same
- b) 30 days

c) no other trial settings within
60 days of capital trial

c) 15 days

8. Workload of Appellate Counsel

a) none

a) a contract attorney
may not be appointed
any new cases for appeal
until appellate's brief
is filed

9. Compensation for Trial Counsel

a) \$75/hr

a) \$70/hr; trial ct may
request st. ct. adm.
to authorize payment
at a different hourly rate

b) no maximum

b) 500 hrs for both attys
unless trial court
determines more time
is reasonable and
necessary

c) reimbursement for reasonable
incidental expenses

c) if approved by court
of appointment

d) periodic billing and payment

d) not specifically
authorized or prohibited

10. Compensation for Appellate Counsel

a) \$75/hr

a) \$70/hr

b) no maximum

b) 250 hrs unless trial
court determines
more time is reasonable
and necessary

c) no comparable provision

c) same rate for attys
employed by appellate
counsel for consultation

d) no comparable provision

d) contract adjustment should
be made to reflect
caseload adjustment

11. Support

a) adequate funds for investigative,
expert, and other services

a) same

SUGGESTED SUBJECTS FOR DISCUSSION

1. Rosters - Should the Commission seek the blessing of the Supreme Court to prepare non-binding rosters of attorneys as a service to the trial courts?
2. (B)(1) - Should the 5 felony jury trials in (b) exclude Class D felony cases? Should the 5 felony trials in (b) be required to have been done as a defense attorney as recommended by the Commission?
3. (B)(2) - Should the 3 felony jury trials required for trial co-counsel exclude Class D felony cases?
4. (B)(3) - Workloads: Are the time restrictions in (c)(ii) and (iii) adequate for the appointment of new cases and trial settings in other cases?
5. (C)(1) - Should the discretion vested in the Executive Director of State Court Administration to authorize payment of an hourly rate different than \$70/hr. be limited by a range, such as those provided under the federal CJA?
6. (C)(2) - Is the cap of 500 hours for both attorneys too low? What is the average number of hours billed in capital cases by attorneys in Indiana in the past two years?
7. (C)(4) - Will the reduction in public defender's contracts to reflect the adjustment in caseload cause an economic hardship because of the change in cash flow? Does there need to be specific authorization for periodic billing in CR 24 to compensate for the reduction in income?
8. (J) - CR 24 does not require the appointment of two attorneys for appeal, but does require the appointment of trial counsel as sole or co-counsel for appeal, if he or she qualifies. Is it necessary to have two attorneys on the appeal? Is it good policy to require the trial courts to appoint trial counsel as appeal counsel? Is trial counsel required to accept the appointment for appeal?
9. (J)(1) - How important is it for lead appellate counsel to have done a prior death penalty appeal and have prior criminal defense experience?
10. (J)(2) - Will the prohibition against the assignment of new appeals to contract public defenders until the appellant's brief is filed cause any delays in the filing of non-capital briefs?
11. (K) - (see 5-7 above regarding compensation of trial counsel).

MINUTES

INDIANA PUBLIC DEFENDER COMMISSION

August 29, 1991

The Commission met at 4:00 p.m. in the fourth floor conference room at 309 W. Washington Street. Present were Chairman Norman Lefstein and other Commission members Susan Carpenter, Monica Foster, Ken Sheibenberger, Richard Kammen, and John Barce. Also present were Larry Landis, Meg Babcock, and Howard Smulevitz from the Indianapolis Star.

1. The Minutes of the June 26, 1991 meeting were approved unanimously.
2. The following claims were discussed:

Sullivan County State v. Ricky Wall

This claim was approved for reimbursement of \$31,980.43. Disapproved was the claim for reimbursement of the cost of sequestering the jury. In addition to attorneys fees, among the approved items were the cost of daily transcription from two days of testimony (this type of claim may be disallowed in the future if it becomes tantamount to a request for costs of the entire transcript), attorneys' miscellaneous expenses, investigator fees, and the cost of the attorneys' motel rooms during trial.

Sullivan County State v. Fred Wall

This claim was approved for reimbursement of \$37,454.17. The same types of claims as in Ricky Wall were approved and disapproved.

Randolph County State v. Buie

This claim was approved for reimbursement of \$8,366.66. In addition to attorneys fees, the claim included miscellaneous attorney expenses such as photocopying, telephone, postage, and mileage.

Randolph County State v. McCord

This claim was approved for reimbursement of \$10,042.97. In addition to attorneys fees, the claim included miscellaneous attorney expenses like those in Buie above.

Porter County State v. Perry Miller

This claim was approved for reimbursement of \$6,109.63. Attorneys fees

*John P. ...
Sheets?
2631.00*

were not reimbursable because only one of the attorneys was compensated at \$75.00 per hour. Among the approved expenses were for a psychologist, for depositions, and for other witness fees. A request for reimbursement for the cost of an airplane trip for the defense attorney and the prosecutor was disallowed but the county was invited to re-file if the expense could be established as a defense expense.

Marion County State v. Coleman

This claim was approved for reimbursement of \$856.88, one-half of the fee for an investigator, which was the only claim.

Marion County State v. Raleigh Taylor

This claim was approved for reimbursement of \$656.25. This case will go to trial later this year, and the county plans to file on an interim basis. This claim was for one-half of attorneys fees to date.

Marion County State v. Charles Evans

This claim was disapproved because counsel was not compensated according to the guidelines.

Posey County State v. Paul

This claim was approved for reimbursement of \$11,018.99. In addition to attorneys fees, other expenses included depositions, mileage, paralegal, certified mailings, phone calls, photocopies, transcription of witnesses' statements, FAX expenses, affidavit preparation, newspaper archive bills, and t.v. station videotape bills.

Posey County State v. Harrison

This claim was approved for reimbursement of \$3,975.31. In addition to attorneys fees, items approved included costs of transcription of statements, mileage, photocopies, and paralegal.

Also from Posey County, a claim for reimbursement of one-half of the expenses incurred in training the court reporter in computer aided transcription and in purchasing software was disallowed as a court expense and not a defense expense.

2. The Commission discussed the inquiry about reimbursement in the event co-counsel works pro bono and is not an Indiana lawyer. It was decided that more information from the parties was needed.
3. The Commission discussed the draft of the Supreme Court's proposed CR 24. The Commission decided to maintain its position that there should be no fee cap for attorney compensation, but if the court sets a cap it should be at 2000 hours for trial and 1000 hours for appeal. A letter will go to the Court expressing that opinion.
4. Chairman Lefstein asked Larry Landis to prepare a draft of an annual report for review at the next meeting.

5. The next meeting was set for October 16, 1991, at 4:00 p.m. in the fourth floor conference room at 309 W. Washington Street. Following the meeting, the Commission will meet for dinner.

Signed: _____

Date: _____

INDIANA PUBLIC DEFENDER COMMISSION

October 16, 1991

Minutes

The meeting was called to order at 4:35. Present were all Commission members except Mark Owen and Rick Kammen. Also present were Larry Landis and Meg Babcock.

1. The Commission unanimously approved the Minutes of the August 29, 1991 meeting.

2. The Commission approved the following claims:

Marion County State v. Vance
\$9,699.00

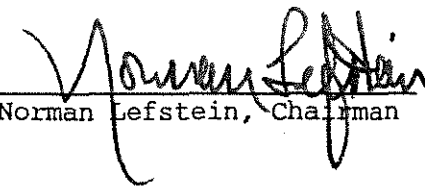
Vanderburgh County State v. Anderson
\$6,362.00

Sullivan County State v. Ricky Walls
\$1,141.00

3. The Commission discussed the Annual Report, which is being prepared by Larry Landis. Meg Babcock will draft a paragraph describing the Commission's efforts at publicizing its work and encouraging claims and will send the draft to Mr. Landis.

4. The next meeting will be December 5, 1991 at 4:00 p.m. in the conference room at Larry Landis' office.

Approved


Norman Lefstein, Chairman

DATE

Dec. 5, 1991

Approved as Submitted

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

December 5, 1991

Chairman Lefstein called the meeting to order at 4:35 p.m. Also present were all other Commission members except Mark Owen. Present also were Larry Landis and Meg Babcock.

1. The Commission approved the Minutes of the October 16, 1991 meeting
2. The Commission approved the following claims:

State v. Peterson

*Porter Co
Marion Co
Lake*

The Commission approved the non-attorney expenses for a total of \$3,731.24. Staff will notify the court that if it pays counsel according to the Guidelines and resubmits a claim, the Commission will reimburse 50% of the attorneys fees.

State v. Patton

Marion Co

The Commission approved the claim for non-attorney expenses for a total of \$3,239.50.

State v. Burris

Marion

The Commission approved the claim for attorneys fees for a total of \$12,075.00, and the non-attorney expenses for a total of \$436.05.

\$12,511.05

State v. Robertson

Marion

The Commission approved the claims for attorneys fees for a total of \$13,841.10, and the non-attorney expenses for a total of \$5,459.26.

19300.36

3. The Commission considered new Guidelines in light of amended Criminal Rule. The Guidelines as adopted are attached and incorporated to these Minutes.
4. The Commission decided to amend the form for reimbursement and include the provision that the judge's signature certifies that defense services were provided in compliance with Rule 24, including the attorney workload requirements.
5. The Commission will send a new mailing to Circuit and Superior Court Judges, County Auditors, Presidents of County Councils, and Presidents of Boards of Commissioners informing them of the new Guidelines in light of Rule 24.

6. Larry Landis will put into final form the Annual Report, with a cover letter and binder, and it will be distributed in January.

7. Larry Landis' bill for \$4,294.00 was unanimously approved.

8. The next meeting is February 27, 1992 at 4:00 p.m. in Larry Landis' conference room.