

Original

INDIANA PUBLIC DEFENDER COMMISSION

Meeting: February 27, 1992

MINUTES

I. Call to Order

The meeting of the Board of Directors of the Indiana Public Defender Commission was called to order by Chairman, Norman Lefstein, at 4:00 p.m. on February 27, 1992, in the Fourth Floor Conference Room of the Indiana Public Defender Council at 309 West Washington Street, Indianapolis, Indiana. Commission Members present were Susan Carpenter, Monica Foster, and Kenneth Scheibenberger. Also present was Larry Landis, Executive Director of the Indiana Public Defender Council.

II. Approval of Minutes

The minutes were unanimously approved as submitted. In the absence of Meg Babcock, Larry Landis agreed to prepare the minutes of the meeting.

III. County Claims for Reimbursement

The Commission approved the following claims for reimbursement:

Claims by Case Name	Claims by County	Attorneys Fees	Non-Attorney Expenses	Total	50% Reimbursement
State v. Gerald Bivans	Boone County	15,100.94	987.00	16,087.94	8,043.97
State v. Raleigh Taylor	Marion County	3,847.50	152.75	4,000.25	2,000.12
State v. Michael Lambert	Delaware County	49,007.44	9,409.89	58,417.33	29,208.66
State v. Christopher Peterson	Lake County	55,950.00	1,693.00	57,643.90	28,821.95
State v. Eric Holmes	Marion County	18,900.00	7,062.12	25,962.12	12,981.06

State v. Lambert: The Commission did not approve reimbursement for \$1,292.10 for a transcript of a pre-trial hearing. The Commission considered and reaffirmed a prior policy decision that pre-trial hearing transcripts are not a defense expense and, therefore, are not eligible for reimbursement. The Commission decided that it would pay for transcripts that are depositions or daily transcripts during trial, and agreed that if funds in the Public Defense Fund are low, they would reconsider the policy of reimbursement for daily transcripts.

State v. Holmes: The Commission did not approve claims of \$400, \$565, \$375, and \$325 for psychiatric and psychological testing and examinations because these expenses were incurred as part of a competency evaluation by court experts, not defense experts.

IV. Amended Guidelines and Notice to County Officials

The draft of the memorandum from Norman Lefstein to county officials was reviewed and approved. Chairman Lefstein indicated that the memorandum would be sent within the next two weeks and would include a copy of the order amending C.R. 24 and the revised guidelines effective January 1, 1992.

V. Meeting With Chief Justice Shepard

Chairman Lefstein advised the Commission members about the meeting held on January 21 with Chief Justice Shepard that was attended by Bruce Kotzan, Meg Babcock, Larry Landis, and himself. The meeting was held to discuss a grace period for the specialized training requirement of C.R. 24, the applicability of C.R. 24 to appointments prior to January 1, 1992, and the creation of rosters by the Commission.

A. Grace Period

Chief Justice Shepard agreed with the Commission's recommendation for a six-month grace period for the requirement that attorneys complete 12 hours of specialized training prior to the appointment in a capital case. Attached as Exhibit A is a copy of the Supreme Court's Order dated January 24, amending C.R. 24.

B. Retroactivity of C.R. 24

Chairman Lefstein asked Chief Justice Shepard to clarify the court's intention as to the applicability of portions of C.R. 24, e.g., caseload standards, to appointments made prior to January 1, 1992. Chief Justice Shepard indicated that the court had not considered this issue, therefore, it was agreed that the Commission should not adopt guidelines which require compliance with any portion of C.R. 24 for appointments made prior to January 1, 1992.

C. Rosters of Attorneys

Chairman Lefstein also raised the issue of rosters of attorneys during the meeting. Chief Justice Shepard explicitly authorized the Commission to create rosters to assist the trial courts in finding attorneys who qualify for appointment under C.R. 24.

VI. Application Form for Attorney Roster

After reviewing the draft of an application by attorneys for inclusion on the roster, Larry Landis was requested to draft a revised application for lead counsel, co-counsel, and appellate counsel. The draft will be sent to Commission members for comments by March 12.

VII. Indigency Standards

A draft of proposed indigency standards was resubmitted to Commission members. Discussion of the indigency standards was deferred until the next meeting.

VIII. 1993 Legislation

Larry Landis distributed a draft of proposed legislation supported by the Public Defender Council to expand the powers and duties of the Commission regarding standards for all indigent defense services and provide 25 percent State reimbursement. Discussion of the proposed legislation was deferred until the next meeting.

IX. Next Meeting

The next meeting of the Commission was set for April 22, 1992, at 4:00 p.m., in the Fourth Floor Conference Room, at 309 West Washington Street, Indianapolis, Indiana.

Signature: _____
Norman Lefstein

Date: _____

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

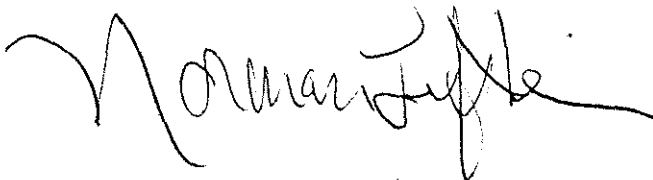
April 22, 1992

1. The minutes of the February 27, 1992 meeting were approved unanimously.
2. The Commission approved claims from Marion County in State v. Smith for \$5,032.30 and State v. Randall for \$23,253.49. The Smith claim included a request for 50% reimbursement of death penalty seminar expenses, which was approved. Larry Landis and Meg Babcock will draft a proposed written policy by which the Commission will determine in the future what seminar costs will be reimbursed.

The Commission approved a claim from Vanderburgh County in State v. Anderson for \$11,017.92, but disallowed reimbursement for the cost of the transcript and the voir dire transcripts which the court had ordered for its own use.

3. The Commission discussed the roster it will maintain of qualified counsel in death penalty cases. The Commission pre-approved death penalty training from the following: Indiana Public Defender Council, Nat'l Legal Aid and Defender Association, Ohio Public Defender Commission, Indiana Continuing Legal Education Forum, Illinois Capital Resource Center, Capital Case Resource Center of Tennessee, California Attorneys for Criminal Justice, and the NAACP Legal Defense Fund.
4. Larry Landis distributed his draft of Standards for Determining Indigency and Eligibility for Defense Services, which the Commission will continue to discuss and review at the next meeting. Prior to issuing a final draft of standards, the Commission will solicit input from outside the Commission. Larry Landis and Norman Lefstein will discuss and propose to the Commission a method for obtaining broad input on the subject of indigency standards.
5. The next meeting is Wednesday, June 17, 1992, at 4:00 p.m. in the fourth floor conference room of the Indiana Public Defender Council at 309 W. Washington Street, Indianapolis.

approved 6/17/92



INDIANA PUBLIC DEFENDER COMMISSION

MINUTES
June 17, 1992

Present were Chairman Lefstein, Monica Foster, John Barce, and Rick Kammen. Also present was Meg Babcock.

1. The Minutes of the April 22, 1992 meeting were approved unanimously.
2. Chairman Lefstein announced he agreed to accept appointment to another term on the Commission.
3. Bruce Kotzan met with the Commission. It was agreed that the Public Defender Commission will be reimbursed by the Division of State Court Administration for the salary and fringe benefits for the full-time employee paid from the PDC account to the extent that employee does not perform services for the PDC.
4. Meg Babcock will bring the roster to the next meeting. Meanwhile, she will send a notice to the trial judges about the roster.
5. The Commission decided it will reimburse 50% of the counties' expenses for specialized training of attorneys in the defense of capital cases when claimed in connection with death penalty cases.
6. The Commission discussed the need for a dialogue between the Board of the Public Defender Council and the Commission about enhanced standards for delivery of defense services in non-capital cases. A possibility is the enactment of legislation which would give the Commission the power to set standards and reimburse a percentage of defense expenses.
7. The Commission members will read carefully in preparation for the next meeting the 3rd edition of the ABA Standards on Defense Services pertaining to indigency.
8. The next meeting date and dates for the rest of the year will be determined and a calendar distributed in the near future.*

Date Approved

9/14/92


Norman Lefstein, Chairman

* Thursday, August 27, 1992, 6:00 in the conference room of Larry Landis' office. 7:00 p.m. at the Westin Hotel to meet with the Board of the Public Defender Council.

Tuesday, October 20, 1992, 4:00 at the Law School Conference Room, Room 225.

Tuesday, December 8, 1992, 4:00 at the Law School.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

September 14, 1992

The Commission met at 4:00 p.m. in the conference room of the office of the Public Defender Council. Present were Chairman Lefstein, Richard Kammen, Monica Foster, and John Barce. Also present were Larry Landis, Paula Sites, and Meg Babcock.

1. The Commission approved the Minutes of the June 17, 1992 meeting.
2. The Commission asked Chairman Lefstein, recently appointed to a second term on the Commission, to continue as Chairman.
3. The Chairman asked Larry Landis about obtaining information on the caseloads of Marion County Public Defenders.
4. The Commission approved reimbursement for defense services in 23 claims. They are:

Porter County <u>State v. Peterson</u>	64D02-9102-CF-022	\$24,367.53
Posey County <u>State v. Paul</u>	65C02-9103-CF-00005	\$ 7,429.31
Posey County <u>State v. Harrison</u>	65C01-9104-CF-00008	\$ 4,703.04
Washington County <u>State v. Collier</u>	88C01-9103-CF-138	\$ 3,877.66
Boone County <u>State v. Bivens</u>	06D01-9104-CF-24	\$18,517.12
Miami County <u>State v. Burke</u>	52C01-9011-CF-83	\$17,918.79
Steuben County <u>State v. Powell</u>	76C01-9107-CF-045	\$19,086.94
Steuben County <u>State v. Sullivan</u>	76C01-9107-CF046	\$28,619.19
Steuben County <u>State v. Sullivan et al</u>		\$ 7,317.65
Steuben County <u>State v. Dearth</u>	76C01-9107-CF-048	\$22,485.14
Delaware County <u>State v. Lambert</u>	18D01-9101-CF-02	\$33,165.71
Marion County <u>State v. Burris</u>	CR80-53A-CR800053A	\$ 1,230.25
Marion County <u>State v. Taylor</u>	49G049005-CF057923	\$ 4,006.25
Marion County <u>State v. Smith</u>	49G069106-CF-072291	\$ 3,433.15
Marion County <u>State v. Holmes</u>	49G058911-CF-131401	\$ 3,493.75
Marion County <u>State v. Vance</u>	49G058911-CF-131414	\$ 5,224.67
Marion County <u>State v. Robertson</u>	49G038912CF-145931	\$ 648.00
Marion County <u>State v. Coleman</u>	CF-82-128D	\$ 6,895.38
Marion County <u>State v. Yerden</u>	49G039102CF-124953	\$ 2,660.00
Marion County <u>State v. Wingett</u>	49G059103-CF-31632	\$ 1,424.37
Tippecanoe County <u>State v. Brown</u>	79C01-8904-CF-04	\$11,086.31
Tippecanoe County <u>State v. Trueblood</u>	79C01-8904-CF-12	\$10,066.17
Clark County <u>State v. Helfenbein</u>	10C01-9104-CF054	\$ 1,745.51

\$239,401.89

In the Harrison case from Posey County, Judge Redwine will be asked to explain his specific reasons for disallowing \$4000.00 of attorney Swain's bill. Meanwhile, the Commission's concern is that the effect of his decision to not pay that portion of the bill was to pay a lower hourly rate than the Guidelines allowed.

In the Helpfenbein case from Clark County, the Commission voted to not reimburse the attorneys fees because Judge Donahue cut the attorneys' bills to compensate for their reduced caseload as contract public defenders rather than cut their salaries as public defenders, as required by Rule 24. Meg Babcock will advise him that the Commission will reimburse fifty percent of the attorneys fees if he revises his Order and reimburses the attorneys at the rate of \$70.00 per hour for their work on the Helpfenbein case.

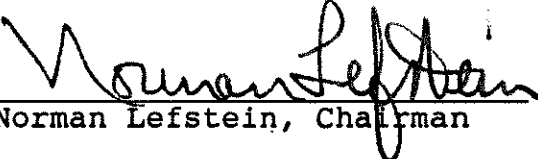
Various other claims were not subject to reimbursement because they were not related to defense expenses.

5. In response to a question from Terry Harper of the office of the State Public Defender, the Commission will reimburse fifty percent of all appellate attorneys fees in the Bivens case. The court intends to appoint both trial counsel, who are not yet qualified as appellate counsel, and one qualified appellate counsel.

6. Chairman Lefstein reported on his and Monica Foster's meeting with the Board of the Public Defender Council. The Board is considering pursuing legislation involving standards and reimbursement in non-capital cases and would like to know the Commission's position on such legislation. Chairman Lefstein and Larry Landis will communicate to the Board that, while the Commission does not necessarily seek additional statutory authority, it appreciates the need for and purposes of legislation to improve defense services in Indiana, and will accept additional statutory roles in that regard.

7. The next meeting is scheduled for 4:00 p.m. on Tuesday, October 20, 1992, in the conference room of the Law School, 735 West New York Street, Indianapolis.

Date Approved Oct. 20, 1992


Norman Lefstein, Chairman

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

October 20, 1992

Present at the meeting were Commission members Chairman Lefstein, John Barce, Susan Carpenter, Rick Kammen, and Monica Foster. Also present were Larry Landis, Meg Babcock, and Paula Stites.

1. The Commission approved the Minutes of the September 14, 1992 meeting.

2. The Commission considered the following claims:

Porter County, State v. Peterson

Approved: \$1162.50

Madison County, State v. Bradley

Approved: \$10,687.11

Not approved were requests for reimbursement for evidentiary transcripts or of pre-trial motions.

Posey County, State v. Harrison

This claim had been considered at the September 14 meeting, and the Commission members decided to ask Judge Redwine to explain the basis on which he refused to pay the attorneys their fees incurred in filing and arguing a writ before the Supreme Court. Judge Redwine submitted his materials, which the Commission members want to fully review before reconsidering the claim.

Clark County, State v. Helfenbein

The Commission disallowed this claim at the September meeting because Judge Donahue had cut the attorneys' bills for their work on the death case to compensate for their limited time spent on other public defender work. CR24 requires the judge to adjust the public defender salaries, if needed, not the bills for the death case. Judge Donahue asked the Commission to reconsider in light of problems with his County Council and the necessity of a mandate if the claim is disallowed. The Commission voted to approve the claim, but to send a memo to all trial courts reminding them of the requirement in CR24.

Approved: \$17,698.50

3. The draft of the Annual Report prepared by Larry Landis was approved. Chairman Lefstein requested members to contact him within the week if they had any suggested changes.

4. Chairman Lefstein reported on the status of the proposal to create a Federal Habeas Corpus Resource Center in Indiana.

- Don Buttrey agreed to serve as chairman of the board.
- Chairman Lefstein planned to go to Washington in early November to meet with the staff of the Defender Division of the Administrative Office fo the United States Courts.
- The current draft of the proposal does not contain an appointment to the board by the Public Defender Commission.

The Commission reviewed and revised the draft of proposed indigency standards and decided that the standards should be drafted following the model of the ABA Standards for Criminal Justice which uses minimal black letter standards with more detailed commentary.

The meeting adjourned at 5:45 p.m.