

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

January 14, 1993

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

1. The Commission approved the Minutes of the October 20, 1992 meeting.

2. The Commission considered the following claims:

Lake County, State v. Peterson
Approved: \$ 9,806.50

Lake County, State v. Roark
Approved: \$ 7,242.50

Marion County, State v. Steven Smith
Approved: \$ 6,483.84

Marion County, State v. Alcorn
Approved: \$ 1,100.22

Marion County, State v. Burris
Approved: \$ 1,791.00

Greene County, State v. Cliver
Approved: \$ 8,114.62

3. The Commission discussed the pending claim for reimbursement to Posey County, which had been tentatively denied because Judge Redwine had refused to reimburse the attorneys for their time taking a Writ to the Supreme Court. Rule 24 states that the trial courts will pay \$70.00 per hour after determining the services were reasonable and necessary. Commission Guidelines call for reimbursement if Rule 24 is followed. Some Commission members believe the Commission has the inherent discretion to disallow claims upon a finding that the court's determination was not reasonable or made in good faith. Others suggested the Rule and the Guidelines compel reimbursement in this situation and that the choices are to amend the Guidelines or amend the Rule. The Chairman will talk to the Chief Justice about this. A request that Susan Carpenter draft a memorandum on the evidentiary issues to help the Chairman discuss the particular

case with the Chief Justice was withdrawn after the meeting after it was recognized that the case was pending before the Court.

4. Chairman Lefstein reported that Don Buttrey agreed to chair the effort to have the Federal Habeas Corpus proposal approved nationally by June. They are seeking the state Attorney General's endorsement and request the same of the Public Defender Commission. A motion was made and seconded, and the Commission unanimously approved the proposal. Chairman Lefstein will notify Mr. Buttrey of the endorsement.

5. The Commission discussed the Supreme Court's Order about the Marion County public defender system. Larry Landis reported that he spoke with the Chief Justice who said that the Court wants to address the needs of Marion County and Lake County, and to generally take a state-wide proactive approach to elevate the criminal justice system, but in a way that will be justifiable to the trial judges. The Board of the Public Defender Council has developed a suggested rule and wants to propose a rule for non-capital cases modelled after Rule 24. The Commission discussed the need to develop a consensus with Larry's Board. Larry will draft a document on the state of indigent defense services in Indiana, using the ABA's 3rd Edition as a measuring point. Extra meetings will be scheduled and will be held after Larry's Board meets, which they plan to do in late January and the second week of February.

6. Larry Landis distributed a draft of CR26, and it was agreed that Alternative A, describing the composition of Public Defender Boards, needs to be more precise.

7. The issue about how to address the problem of judges who adjust the hourly rate in death cases for their salaried public defenders to compensate for their reduced case loads, rather than adjusting their contractual salaries as Rule 24 technically requires, is still pending. Chairman Lefstein will discuss it with the Chief Justice.

8. Our scheduled meeting for March 4 is cancelled, and the Commission will meet February 18, March 3, and March 24 at 4:00 at Monica Foster's office.

FINAL

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

March 3, 1993

The Indiana Public Defender Commission met at 4:00 p.m. at 501 Indiana Avenue, Suite 200, Indianapolis, Indiana. Commission members present were Chairman Lefstein, Rick Kammen, and Monica Foster. Also present were Larry Landis and Meg Babcock.

1. The Commission unanimously approved the Minutes of the January 14, 1993 meeting.
2. The Commission approved the following claims for reimbursement:

Steuben County, <u>State v. Bradley</u>	\$19,002.20
<u>State v. Gray</u>	21,424.80

After considerable discussion about the pending claim from Posey County which the Commission has been considering in light of Judge Redwine's refusal to compensate counsel for their work on a Writ of Mandamus, the Commission voted to approve the claim because Rule 24 gives the court discretion to find that defense expenses are not reasonable and because the Commission's Guidelines provide for reimbursement if Rule 24 is followed. Nonetheless, Mr. Kammen and Ms. Foster felt the trial court's action was arbitrary. The Chairman agreed to discuss this problem with Chief Justice Shepard.

Posey County, <u>State v. Harrison</u>	\$34,785.99
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3. Larry Landis reported on Senate Bill 600, which would expand the Commission's jurisdiction to adopt standards in non-capital cases and to reimburse some defense expenses. He requested the Commission's input on the bill and as to any changes in the Commission's membership which might occur. The general consensus was that the Commission opposed any dilution of the \$650,000.00 each year which is available for reimbursement in death cases. The Commission agreed that an appropriate appointment plan would include a maximum of two judges on the Commission. The appointment plan would include four appointments by the Chief Justice, one of which would be a Supreme Court Justice, three gubernatorial appointments, and two appointments by the Chief Judge of the Court of Appeals, one of which would be a trial court judge.

4. The Commission discussed its response to the Court's Order about the public defender system. Larry Landis will prepare a draft of a letter to the Chief Justice which will be considered at the March 24 meeting.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

March 24, 1993

The Indiana Public Defender Commission met at 4:00 p.m. at 500 Place, 501 Indiana Avenue, Indianapolis. Present were Chairman Lefstein, Monica Foster, Richard Kammen. Also present were Larry Landis and Meg Babcock. Richard Waples of the Indiana Civil Liberties Union also met with the Commission.

1. The Commission considered the proposed Minutes of the March 3, 1993 meeting. After agreement to two amendments in paragraph 3, the Minutes were approved.

2. The Commission considered the three claims for reimbursement. The Porter County claim in State v. Harmon will be considered later after clarification on the attorneys' hourly payment. The following claims were approved:

Marion County State v. Holmes \$44,304.59

A portion of the Holmes claim was for reimbursement of transcribing expenses which did not appear to be defense expenses and were disallowed.

Allen County State v. Carrion \$12,745.58

3. The Chairman reported on his and Larry Landis' meeting with the Chief Justice about judges "cutting" attorneys' vouchers. The Chief Justice does not feel the Public Defender Commission has the authority to disallow reimbursement in those cases given the language of Rule 24. The Chief Justice would be receptive to an amendment to the Rule, possibly to the effect that the attorneys are to be paid without reduction up to a maximum number of hours. Attorneys could petition for payment beyond the maximum. The Chairman needs to know how many hours are involved in a typical case and staff will provide him with the hours claimed in the Holmes case.

4. The Commission discussed the violation in Marion County of the public defender workload maximums. Monica Foster will prepare a rough draft of a letter to the Marion County judges stating that the Commission's information is that the workload requirements are not always complied with.

5. The Commission discussed with Richard Waples the response to the Court's invitation for input about the public defender system. Larry Landis reported that the IPDC Board approved proposed Rule 26. Richard Waples stated that LSO and the ICLU were submitting a brief and affidavits critical of the existing system and asking for a rule to limit caseloads, to provide for sufficient litigation support services, and to provide for independence of the public defender from the trial court. The Commission discussed whether a proposed rule should include caseload standards or whether it should be proposed that the Commission set guidelines. It was decided that paragraph L of proposed Rule 26 would state that public defenders shall not be appointed if the appointment would exceed the caseload standards adopted "by the Court or by a body designated by the Court". The Commission's submission to the Court will focus on general principles based upon the ABA model. Chairman Lefstein will draft a proposed submission and distribute it to the other members.

Minutes
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9/22/93

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

June 14, 1993

The Commission met at 4:00 p.m. at 501 Indiana Avenue, Suite 200, Indianapolis, Indiana. Present were Chairman Norman Lefstein and members Susan Carpenter and Monica Foster. Also present was Meg Babcock.

1. The Commission approved the Minutes of the March 24, 1993 meeting.

2. In light of the moratorium on appointing public defenders to death penalty cases in Marion County, it was decided that a letter to the judges about compliance with the workload requirements in CR 24 was no longer necessary.

3. The Commission approved the following claims:

Marion County	<u>State v. Burris</u>	\$ 3,567.96
<i>Revised</i> Marion County	<u>State v. Bradley</u>	34,526.08
Porter County	<u>State v. Harmon</u>	10,655.10

The expenses of an interlocutory appeal in this case were not approved for reimbursement because the attorney was not paid \$70.00 per hour.

Marion County claims on Raleigh Taylor, Steven Holmes, Wingett (two claims), Hurt, and Yerden were held over until the next meeting for verification and/or discussion about attorney workload issues.

4. The Commission discussed the details of SEA 600. Chairman Lefstein reported that he met with the Chief Justice about his new appointments.

5. The Commission will try to meet towards the end of August.

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INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

September 22, 1993

The Indiana Public Defender Commission met at 4:00 p.m. on September 22, 1993 at 501 Indiana Avenue, Indianapolis. Present were Chairman Norman Lefstein, Richard Kammen, Menica Foster, Mary Kay Budak, Doug Kinser, and Lonnie Randall. - Also present were Larry Landis and Meg Babcock.

- 1. Chairman Lefstein introduced and welcomed new members Mary Kay Budak, Doug Kinser, and Lonnie Randall, and distributed a roster of current Commission members.
- 2. The Commission decided to order new letterhead without a list of members.
- 3. Larry Landis distributed materials and gave an overview of legislative and other developments in the area of indigent defense services.
- 4. The Commission unanimously approved the Minutes of the June 14, 1993 meeting.
- 5. The Commission voted unanimously to amend its form for reimbursement to require the attorneys appointed in capital cases after January 1, 1992 and who are salaried or contractual public defenders to sign and certify that they were in compliance with Rule 24, specifically the workload requirements.
- 6. The Commission considered the following claims:

Jefferson County, State v. Loveless

With Ms. Foster abstaining, the Commission approved this claim for \$41,274.05.

Jefferson County, State v. Tackett

The Commission approved this claim contingent upon receiving a certification from attorney O'Connor that she was in compliance with the Rule 24 workload requirements. If approved, the amount of reimbursement will be \$45,780.26, which amount excludes attorneys fees incurred prior to the filing of the death penalty information.

Porter County, State v. Peterson

The Commission approved this claim for \$2,296.25.

The following claims were tabled pending receipt of certifications from counsel that they were in compliance with the Rule 24 workload requirements.

Marion County, <u>State v. Taylor</u>	\$ 8,115.93
	31,017.30
<u>State v. Holmes</u>	9,703.73
<u>State v. Wingett</u>	8,129.90
	29,219.39
<u>State v. Hurt</u>	3,039.75
<u>State v. Yerden</u>	1,225.00
<u>State v. Alcorn</u>	2,652.71
<u>State v. Smith</u>	4,192.31

Meg Babcock will prepare a draft of a letter to counsel in the Tackett case and in the Marion County cases listed above, and will forward it to Chairman Lefstein and Larry Landis for review. The letter will indicate that the Commission has decided to amend its form for reimbursement and that, until the form is reprinted, the Commission is asking all counsel to either inform the Commission that they are not salaried or contractual public defenders or were appointed prior to January 1, 1992 or to sign a certification that they were in compliance with the Rule 24 workload requirements.

7. The Commission decided against sending a letter to the counties about the status of reimbursement in non-capital cases.

8. The Commission voted unanimously to go on record as endorsing legislation for additional funding to the Public Defense Fund.

9. The Commission discussed the development of standards and guidelines for delivery of indigent defense services, which is the Commission's current task. Larry Landis distributed proposed Rule 26, which was submitted by the Council to the Supreme Court and which the Commission will use as a point of departure as it prepares its guidelines. Also, the Commission will use the 3rd Edition of the ABA Standards, which the Chairman distributed. Also distributed was the 1988 ABA "Criminal Justice in Crisis" book.

10. The Commission decided to meet monthly as it prepares the new standards and guidelines. The proposed dates for the rest of the year are Monday, October 25, Wednesday, November 17, and Wednesday, December 15. Meg will send notices to the other members.

INDIANA PUBLIC DEFENDER COMMISSION

Minutes
December 15, 1993

Members present:

The following Commission members were present: Norman Lefstein, Bettye Lou Jerrell, Mary Kay Budak, Richard Bray, Susan Carpenter, Monica Foster, Lonnie Randolph, and Rick Kammen. Also present was Larry Landis.

Minutes:

The minutes of the meeting on November 17, 1993, were approved with an amendment to include the following vouchers that were approved:

Jeff - State v. Tackett - \$45,780
Mason State v. Steven Smith - \$4,192.31
Lake State v. Peterson - \$2,861.25
Borne State v. Bivens - \$552.21

Wingett 8,129.90 } Mason
29,219.35 }
Hart 3,039.75 Mason

Reimbursement Request:

The following requests for reimbursement were approved:

12/15/93
State v. Alcorn - \$2,652.71 (Monica Foster abstained from voting)
State v. Saylor - \$41,938.09

also, two claims
62,103.46
33,123.74
all denied

The request for reimbursement from Marion County in *State v. Taylor* for \$8,115.93 was denied, with Monica Foster abstaining from voting, based upon the information received from Eric Koselke that he had more than 20 open felony cases while assigned to Taylor and received new appointments within 30 days of the trial.

Standards in Non-Capital Cases:

The Commission reviewed Draft Two of the Standards for Indigent Defense Services in Non-Capital Cases and made the following changes on pages 1-4:

- Page 1, Sec. B: strike the sentence in brackets.
- Page 2: strike the paragraph at the top of the page with the subheading "Alternatives for Proceeding to Sentences".
- Page 4, Sec. E.3.: Change "and" to "or" in subsection A, and change "1" to "3" in subsection B.

Caseload Data:

Chairman Norman Lefstein requested Larry Landis to provide the Commission with current caseload data at the next meeting so the Commission could assess the impact of the proposed caseload standards.

Norman Lefstein
Norman Lefstein, Chairman

1/31/1994
Date