

**INDIANA PUBLIC DEFENDER COMMISSION
MINUTES OF MEETING
MARCH 8, 1995**

The Commission met at 6:15 p.m. at the Westin Hotel, Indianapolis, Indiana. Present were: Chairman Norman Lefstein, Rep. Ralph Foley, Barry Brown, Bettye Lou Jerrel, and Susan Carpenter. Also present were Larry Landis and David Shircliff.

1. The minutes of the meeting on December 2, 1994, were approved as submitted.
2. The Commission discussed the letter of October 17, 1994, from Susan Carpenter regarding the applicability of the non-capital standards to cases where her office is appointed pursuant to IC 33-9-11, and concluded that the requirement of \$60 an hour for assigned counsel compensation would be required in those cases.
3. Rep. Ralph Foley reported on the progress of H.B. 1253, which would increase funding for the public defense fund. He said that he has been informed by the Chairman of the Ways & Means Committee that the annual appropriation for the public defense fund would be increased in the state budget.
4. The Commission approved the following claims for reimbursement in capital cases:

| COUNTY | CASE NAME | AMOUNT OF REIMBURSEMENT |
|--------|---------------------|--------------------------|
| MARION | STATE V. THOMPSON | \$1,408.36 |
| MARION | STATE V. YERDEN | \$6.25 |
| MARION | STATE V. ALLEN | \$25,808.75 ¹ |
| MARION | STATE V. ALCORN | \$4,383.45 |
| MARION | STATE V. TIMBERLAKE | \$23,048.58 |
| MARION | STATE V. TIMBERLAKE | \$26,883.13 |
| PUTNAM | STATE V. STEVENS | \$25,554.69 ² |

¹ Claim was approved subject to verification that Rhonda Long-Sharp was paid for consulting at the rate of \$70 per hour.

² The following items were claimed but were not approved for reimbursement because they were not defense expenses:

| | |
|--|------------|
| Reporting and transcripts billed by ARI to prosecution | \$1,807.00 |
| Costs of mailing jury questionnaires | \$905.41 |
| Prosecutor's transcript at preliminary - Crowley | \$240.40 |
| Reporter at preliminary hearing - John Connor | \$123.21 |

| COUNTY | CASE NAME | AMOUNT OF REIMBURSEMENT |
|----------|----------------------|-------------------------|
| HAMILTON | STATE V. WALLS | \$10,508.05 |
| HAMILTON | STATE V. ADAMS | \$16,188.53 |
| MADISON | STATE V. WEATHERFORD | \$9,733.15 |

5. The Commission reviewed the draft of the 1993-94 Annual Report and requested: (1) the inclusion of a table showing the amount paid to each county per year since reimbursement began; and (2) the inclusion of text indicating that the county reimbursement was a form of property tax relief, that the county reimbursement is the only state funding given to the counties for indigent defense services, and that Indiana is one of only eight states that relies solely on county funding for indigent defense services. The Commission also decided that the Annual Report should be sent to all county auditors.

6. The Commission reviewed and discussed the comprehensive plans submitted by Marion, LaPorte, and Clark counties. The general consensus was that there was a need for the development of a model comprehensive plan that could be supplemented by individual counties. Larry Landis and David Shircliff were requested to develop such a model.

The next meeting of the Commission was set for June 8, 1995, at 6:15 p.m. at the Westin Hotel in Indianapolis. This will be a dinner meeting.

Approved

INDIANA PUBLIC DEFENDER COMMISSION

June 8, 1995

MINUTES

The Commission met at 6:15 p.m. at the Westin Hotel, Caucus Room, Indianapolis, Indiana. Present were Chairman Norman Lefstein, Bettye Lou Jerrel, Lonnie Randolph, Susan Carpenter, Monica Foster, Richard Bray, and Ralph Foley. Also present were Larry Landis, David Shircliff, and Meg Babcock.

1. The Commission approved the Minutes of the March 8, 1995 meeting.

2. Chairman Lefstein reported that Doug Kinser resigned from the Legislature; therefore, another vacancy exists. Also, an appointment by the Chief Justice is still pending. The Commission resolved to ask the Chief Justice to make his appointment, as it would facilitate the Commission's work. The Chairman, in his request to the Chief Justice, will advise him that the Commission would be pleased to suggest names of possible appointees. The Chairman advised the Commission that Chief Justice Shepard once mentioned Judge Mary Beth Bonaventura, Lake Superior Court, Juvenile Division, as a possible appointee.

3. Larry Landis reported on new legislation. HEA 1118 added an annual appropriation of \$350,000.00, and HEA 1646 added \$250,000.00, bringing the annual appropriation to \$1,250,000.00.

4. Larry Landis distributed the Annual Report for FY1993/1994. Larry and David Shircliff will have a draft of the 1994/1995 report for the next meeting.

5. The Commission reviewed the summary of appropriations prepared by the Division of State Court Administration. The Commission asked Meg Babcock to ask Bruce Kotzan for a description of the plans for the \$40,000.00 salary appropriation.

6. The Commission approved the following claims for reimbursement:

Madison County State v. Weatherford \$34,912.35 (Lonnie Randolph dissenting)

Marion County State v. Alcorn \$ 5,024.41

Marion County State v. Wingett \$ 112.50 (Monica Foster abstaining)

Lake County State v. Stotelo \$ 7,389.25

Lake County State v. Roark \$ 854.70

Vanderburgh County State v. Wrinkles \$ 7,623.12

6. The Commission considered Judge Clement's questions about the case load maximum. First, cases that are joined together, whether filed under one cause number or filed separately but treated as one case, are counted as one case. If such cases are formally severed, they then are to be counted separately. Second, attorneys' caseloads must be assessed on the basis of all open cases, including those waiting sentencing, and Rule 24 does not contemplate a "grace period" after an appointment in a death case during which an attorney with a caseload over 20 could then bring the caseload down to comply with the rule.

7. The Commission discussed the meaning of "substantially comparable" in the Standards as it pertains to the Chief Public Defender's salary relative to the compensation of the Prosecuting Attorney. The Commission voted, 4-3, to define "substantially comparable" as not less than 90% of the Prosecutor's compensation. The Commission will allow counties to phase in the salary by paying at least 80% of the Prosecutor's compensation for a first year beginning September 1, 1995, at least 85% by September 1, 1996, and not less than 90% by September 1, 1997 and thereafter. All plans approved will be subject to this contingency, which is prospective from September 1, 1995.

8. The Commission considered the comprehensive plans submitted by LaPorte, Marion, Montgomery, and Clark counties.

Marion County

Fran Hardy, Chief Public Defender for Marion County, appeared before the Commission with the Marion County plan and request for reimbursement. With Monica Foster abstaining, the Commission voted to approve the Marion County plan subject to a modification in the ordinance to conform to the Standards which require full hiring authority to be given to the Chief Public Defender.

The Commission agreed that it will approve claims from the Superior Court on a court-by-court basis as each comes into compliance even while the entire Superior Court may not yet be in compliance. The Chairman indicated a desire for a commitment that full compliance ultimately will be achieved and asked for a timetable for achieving full compliance.

Clark County

The Clark County plan was approved with the understanding that the hourly rate for assigned counsel will be raised to \$60.00 per hour.

Montgomery County

The Commission agreed that this plan was basically in compliance, but will ask the County to respond to the concerns set out in Larry Landis' memorandum of June 6, 1995. After receiving a response, the Commission will consider the plan for approval.

LaPorte County

The LaPorte County plan was approved.

The next meeting will be Thursday, September 7, 1995 at 4:30 at the Westin, followed by dinner.

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

September 7, 1995

Chairman Lefstein called the meeting to order at 4:30 p.m. Other Commission members present were Monica Foster, Susan Carpenter, Richard Bray, Bettye Lou Jerrel, Ralph Foley, and Lonnie Randolph. Also present were Larry Landis, David Shircliffe, and Meg Babcock.

1. The Commission approved the Minutes of the June 8, 1995 meeting.

2. The Commission met with officials from Clark County and with Dawn Elston, the Chief Public Defender in Clark County, about the requirement in the Standards that the Chief Public Defender's salary amount to at least 90% of the salary of the Prosecuting Attorney. Clark County was asking for reconsideration by the Commission of that aspect of the Standards as it applies to them. After deliberations, the Commission voted to respect the pre-existing contract between Clark County and Ms. Elston, assuming her salary will be \$57,375.00. At the end of their contract, the Commission will expect full compliance with the Standards. If, at that time, the Chief Public Defender's salary is not increased to at least 90% of the salary of the Prosecuting Attorney, the Commission's current position is that, at a minimum, the Commission would not reimburse for the Chief Public Defender's salary. The Commission then approved reimbursement to Clark County (see below).

3. The Commission met with Marion County Chief Public Defender David Cook and with Chief Deputy Public Defender Robert Hill and Deputy Public Defender Angela Dow. The Commission approved reimbursement of 25% of the costs of appellate transcripts in non-capital cases after it was established that these costs come out of the budget of the Public Defender.

4. The Commission discussed with the representatives from the Marion County Public Defender Agency the issue of how to count probation revocation cases in maintaining compliance with Criminal Rule 24. This issue was raised also by a letter from attorney Jim Boswell of Vigo County. The Commission decided that a probation revocation case should be counted as 20% of one felony case. Chairman Lefstein will draft a letter to the Chief Justice about the issue of counting probation revocation cases.

5. Comprehensive Plans

Montgomery County - The Commission approved the Montgomery County plan subject to clarification of Section C. 4 and C. 5 to indicate that the determination of indigency is a judicial function and that the Board's position is only a recommendation.

Orange County - The Orange County plan was approved subject to the condition that it include a provision about court-authorized expenditures for non-indigent defendants.

Miami County - The Miami County plan was approved subject to amendment to include provisions about policies and procedures regarding excessive caseloads and about court authorized expenditures for non-indigent persons. Also, the Miami County plan needs a provision about salary comparability.

6. Reimbursements for Non-capital Indigent Expenses

Montgomery County - The Commission approved reimbursement to Montgomery County of \$7,500.00 for the first six months of 1995 for salaries of public defenders. The Commission will request additional explanation and documentation of expenditures of \$15,549.88 listed as "additional services" and of \$1,527.42 listed as "other services".

Miami County - The Miami County request for reimbursement of \$11,174.46 for the first six months of 1995 was denied because one of the members of the Board is a deputy prosecutor in Cass County. IC 33-9-15-3(b) prohibits law enforcement officers from serving on county public defender boards.

LaPorte County - The Commission approved reimbursement to LaPorte County of \$53,144.29 as requested for the first eight months of 1995.

Clark County - The Commission approved reimbursement to Clark County of \$38,384.61 for expenses in non-capital cases for the first six months of 1995. Their claim was reduced by \$150.00, representing 25% of disapproved expenses listed as "depreciation of assets".

Marion County - The Commission approved reimbursement to Marion County for the first six months of 1995 of \$154,153.51.

7. Reimbursement in Capital Cases

The Commission approved the following claims for reimbursement in death penalty cases:

| | | |
|-----------------|------------------------------|-------------|
| Marion County | <u>State v. Burris</u> | \$ 1,067.50 |
| | <u>State v. Howard Allen</u> | 11,438.44 |
| | <u>State v. Eric Holmes</u> | 40,482.54 |
| | <u>State v. Marty Allen</u> | 48,856.73 |
| | (Ms. Foster abstaining) | |
| Hamilton County | <u>State v. Walls</u> | 41,001.93 |
| | <u>State v. Adams</u> | 21,387.38 |
| Putnam County | <u>State v. Stevens</u> | 17,475.58 |

(Several expenditures were disallowed as not representing defense expenses, such as jury costs, sheriff overtime, and the transcript).

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|--------------------|--------------------------|-----------|
| Vanderburgh County | <u>State v. Wrinkles</u> | 23,475.37 |
| Delaware County | <u>State v. Newton</u> | 33,232.22 |

8. Future Meetings

The Commission set the following meeting dates:

Thursday, November 2, 1995 (subsequently changed to Thursday, November 16, 1995).

Thursday, January 11, 1996

Thursday, March 7, 1996

Thursday, May 9, 1996

app'd 1/11/96

**Indiana Public Defender Commission
Meeting Minutes
November 16, 1995**

Chairman Lefstein called the meeting to order at 6:00 p.m., at the Westin Hotel in Indianapolis. Other members present were: Tom Alevizos, Richard Bray, Susan Carpenter, Monica Foster, and Lonnie Randolph. Also, present were Larry Landis and David Shircliff.

1. The Commission approved the minutes of September 7, 1995, as submitted.
2. The Commission reviewed the issue of how to count probation revocation cases for determining compliance with CR24(B)(3)(c)(i), which provides that a salaried or contractual public defender may be appointed as trial counsel in a capital case if their caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court. The Commission decided that the policy adopted at the prior meeting of counting probation revocation cases as 20% of one felony case should be abandoned in favor of not counting probation revocation cases. This policy will be in effect until the Commission has had an opportunity to study the data produced by the case-weighting study currently being conducted by the Spangenberg Group for the Indiana Public Defender Council. Chairman Lefstein will send a letter to Chief Justice Shepard informing him of the Commission's policy and asking if the court has any objection to this policy.
3. The Commission approved the following claims for reimbursement in death penalty cases:

| | |
|---------------------------------------|--------------------|
| Marion County - State v. Mathisen | \$8,553.00 |
| Marion County - State v. Timberlake | \$2,981.00 |
| Madison County - State v. Weatherford | <u>\$29,605.03</u> |
| TOTAL | \$41,139.03 |

4. The Commission approved the claim from Marion County for reimbursement in non-capital cases in the amount of \$131,573.00.
5. The Commission discussed a letter from Steven Laudig of Indianapolis, dated November 15, 1995, regarding caseload standards for non-capital cases. The Commission took no action.
6. The Commission reviewed the draft of the Annual Report and authorized the Chairman to make revisions and approve the final version. It was decided that the Annual Report should be sent to judges and appropriate county officials in Indiana.

The next meeting was set for January 11, 1996 at 5:30 p.m.