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Indiana Public Defender Commission

Meeting Minutes

February 19, 1997

The meeting was called to order at 4:45 p.m. Members present at the meeting were: Chairman Norman Lefstein, Susan Carpenter, Rep. Ralph Foley, Sen. Richard Bray, Rep. Tom Alevizos, Sen. Lonnie Randolph, Judge Daniel Donahue and Betty Lou Jerrel. Also present was Larry Landis.

1. The Commission approved the minutes of the December 4, 1996, meeting
2. The Commission approved the seminar on February 20-22, 1997, sponsored by the Associations of Criminal Defense Lawyers of Alabama, Georgia, Tennessee, Louisiana, and Greater Birmingham as an approved course of training under Criminal Rule 24.
3. The Commission reviewed and approved the following claims for reimbursement in capital cases:

COUNTY	CASE	AMOUNT
Elkhart	State v. Bryan Peoples	\$10,896.66
Marion	State v. Howard Allen	\$3,175.00
Marion	State v. Charles Barker	\$19,117.29
Marion	State v. Daniel Boyd	\$2,637.00
Marion	State v. Walter Dye	\$2,811.13
Marion	State v. Lowrimore	\$19,431.51
Marion	State v. Herbert Underwood	\$31,989.51
Marion	State v. Harvil Webber	\$13,099.73
Total		\$103,157.83

4. Clark County Public Defender Ordinance

An explanation of the amended Clark County Public Defender Ordinance 7-1996 was presented by Daniel Moore, Clark County Attorney. Mr. Moore explained that amendment of the public defender ordinance was the result of organizational, administrative, and political issues that made it difficult for the office to effectively function with the support of the public and the elected county officials. Mr. Moore expressed his opinion that the amended ordinance was in compliance with the provision in IC 33-9-15 because those provisions must be read with IC 36-2-2-13, which provides:

(a) The executive may employ a person:

- (1) to perform a duty required of a county officer by statute; or
- (2) on a commission or percentage basis;

only if the employment is expressly authorized by statute or it is found by the executive to be necessary to the public interest.

Rep. Alevizos responded by stating there is no conflict between IC 33-3-9-15 and IC 36-2-6 because the later is a general statute and IC 33-9-15 is a more specific statute and where there is a conflict the more specific statute takes precedence. There was no further discussion on this point.

After a lengthy discussion there was a general consensus of Commission members that the amended ordinance was inconsistent with IC 33-19-15-6 (a) which provides that the board shall appoint the county public defender, and inconsistent with IC 33-9-15-7 which provides that the county public defender shall "hire and supervise staff."

Mr. Moore asked the Commission to grant Clark County a one year period to make the necessary changes in the county public defender office and to amend the ordinance to comply with IC 33-9-15 and the standards of the Commission. The consensus of the Commission was that the Commission could not ignore the statutes and the standards. After additional discussion, the Commission adopted by acclamation the following resolution on this issue.

The Commission will not approve a request for reimbursement for indigent defense expenditures paid after the effect date of the ordinance, January 1, 1997, unless the ordinance is amended to be consistent with IC 33-9-15 and the standards adopted by the Commission prior to the submission of the request for reimbursement.

- 5. The Commission reviewed and approved the following claims for reimbursement in non-capital cases:

COUNTY	AMOUNT
Parke	\$2,625.99
Montgomery	\$14,163.33
Clark	\$46,354.25
Total	\$63,143.57

- 6. The Commission approved the Comprehensive Plan submitted by Floyd County. Floyd County's eligibility for reimbursement in non-capital cases will begin on February 20, 1997.
- 7. The Commission discussed the proposed amendment to CR 24 authorizing the appointment of

full-time public defenders to represent accused persons in death penalty cases. Chairman Lefstein and Larry Landis reviewed their discussion with Chief Justice Shepard at a meeting on February 10, regarding the court's concerns about the disparity of defense costs in death penalty cases and the proposed compensation of the full-time public defenders. After a discussion of the costs of capital cases and the options for costs containment, the Commission requested that Larry Landis develop a database of expenditures and reimbursements in capital cases to provide the Commission and the court with detailed, accurate, and current information and expenditures in capital cases. The Commission also discussed changing the compensation of a full-time public defender to language consistent with the provision in Standard G of the Standards for Indigent Defense Services in Non-capital Cases, which provides:

. . . the salaries and compensation of salaried and contractual public defenders shall be substantially comparable to similar positions in the office of the Prosecuting Attorney.

The Commission authorized the Chairman to write the Chief Justice with this recommendation.

Prepared by Larry A. Landis

Approved:

Norman Lefstein
Chairman

Date

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

May 14, 1997

app'd

Present were Chairman Norman Lefstein, Bettye Lou Jerrel, Sen. Richard Bray, Barry Brown, Susan Carpenter, Monica Foster, Representative Tom Alevizos, and Representative Ralph Foley. Also present were Larry Landis and Don Murphy from the Public Defender Council, and Meg Babcock.

1. The Commission approved the Minutes of the February 19, 1997 meeting.
2. Larry Landis discussed HEA 1677, which increased reimbursement in non-capital cases from 25% to 40%, and increases the appropriation to \$2,400,000.00 annually. The legislation excludes reimbursement in non-capital cases for indigent defense expenditures in misdemeanors cases. Therefore, the Commission's unanimous decision was to eliminate misdemeanors from its compliance standards for counties seeking 40% reimbursement. Larry Landis will draft new standards excluding misdemeanors.
3. The Commission discussed the hiring of a full-time staff attorney. The Division of State Court Administration will submit a job description to State Personnel and will advertise for the position. The Commission members reiterated their interest in participating in the hiring decision, suggesting that the finalists appear before the full Commission. Chairman Lefstein will discuss the Commission's participation with the acting State Court Administrator, Lilia Judson.
4. The Commission approved the following claims for 50% reimbursement:

Delaware County, <u>State v. Lambert</u>	\$ 4,403.90
Lake County, <u>State v. Williams</u>	4,736.60
Marion County, <u>State v. Miller</u>	7,919.02
Marion County, <u>State v. Ronald Mathisen</u>	8,269.71
Marion County, <u>State v. Thomas Mathisen</u>	13,470.63

5. The Commission approved the following 25% claims for expenses in non-capital cases:

LaPorte County \$ 82,897.74

Marion County \$ 235,478.82

The Commission urged Marion County Chief Public Defender, David Cook, to bring his appellate section into compliance with the standards, as planned initially.

Orange County \$ 5,642.60

Parke County \$ 7,075.95

Warren County \$ 3,267.15

This amount excluded the claim for reimbursement of expenses for post-conviction proceeding transcripts, the reimbursement from the Public Defense Fund covers only criminal trials and appeals, and not expenses related to post-conviction proceedings.

6. The Chairman distributed a draft of his letter to Chief Justice Shepard which expresses the Commission's majority view that the salary standards for full-time public defenders should be amended to a requirement that the salaries "be substantially comparable to similar positions in the office of the prosecuting attorney". The letter also reiterated the Commission's recommendation that caseload limits for full-time public defenders in death penalty cases be included in CR 24. Finally, the letter addressed the Court's concerns about the high cost of defense representation in some death penalty cases, and indicated that a database is being developed to help the Commission members analyze the expenditures. After it is developed and the Commission has an opportunity to make recommendations, the Chairman will communicate again with the Chief Justice.

7. Larry Landis distributed a draft of the 1996-1997 Annual Report. The 1995-1996 report is ready for distribution. Larry Landis will draft a cover letter for the Chairman's signature, and the Division of State Court Administration will handle the mailing.

8. The Commission will meet on Wednesday, August 27, 1997 at 4:30 in the Supreme Court Room, and on Tuesday, November 18, 1997, in Room 319, State House.

Approved:

Norman Lefstein
Chairman

Date

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

August 17, 1997

The Commission met in Salon E, Hyatt Regency Hotel, Indianapolis, Indiana at 4:30 p.m. Present were Chairman Norman Lefstein, Representative Thomas Alevizos, Judge Daniel Donahue, Representative Ralph Foley, Bettye Lou Jerrel, Senator Richard Bray, Barry Brown, Senator Lonnie Randolph. Also present were Larry Landis and Don Murphy from the Public Defender Council, and Meg Babcock.

1. The Commission approved the Minutes of the May 14, 1997 meeting.

2. The Commission approved the following claims for reimbursement of 50% in capital cases:

Delaware County, State v. Lambert \$ 11,765.05

Morgan County, State v. Stephen Sherwood 110,173.66
Senator Bray abstained from participation on this claim.

Putnam County, State v. Christopher Stevens 34,957.57

Warrick County, State v. John Stephenson 278,516.38
The Commission disallowed reimbursement for claims relating to attorneys fees in two original actions which were collateral to the death penalty case and in which the defendant was not the petitioner.

3. The Chairman reported that the 1995-1996 Annual Report has been distributed pursuant to the statutory mandate, and that the 1996-1997 draft Report had previously been distributed to the members

4. The position for staff attorney has been advertised in the Indiana Lawyer and Res Gestae. The Division will keep the application process open until approximately the end of September. The Division will provide the Commission with a group of candidates, and a subcommittee of the Commission will interview them. Representative Alevizos expressed his willingness to participate, as did Larry Landis. NOTE: Staff spoke with Susan Carpenter after the meeting, and she indicated she would participate.

5. The Commission approved the following 25% claims for expenses in non-capital cases:

Clark County, 1/1/97 - 6/30/97 \$ 35,284.65

The Commission did not approve reimbursement of a percentage of the Chief Public Defender's salary because the salary is not in compliance with the guidelines. Judge Donahue abstained.

Orange County, 4/1/97 - 6/30/97 \$ 3,850.79
 9/1/96 - 12/31/96 5,218.22

Parke County, 4/1/97 - 6/30/97 \$ 6/189.73

6. Comprehensive Plans:

The Commission approved the comprehensive plan submitted by Vermillion County.

7. The Commission discussed whether the Commission should reimburse counties for expenses relating to mental health cases, CHINS, and contempt cases. The members decided to delay the discussion until the Commission has the benefit of reports from the counties with caseload and expenditure breakdowns showing the extent and costs of these types of cases. Larry Landis will send a letter to the counties with comprehensive plans requesting this information.

8. The Commission discussed the Chairman's May, 1997 letter to the Chief Justice about proposed amendments for Rule 24 relating to salaries of Chief Public Defenders and to cost containment in capital cases. The Chairman has not received a response about the proposed amendment. On the issue of cost containment, the Chairman will contact Doug Cressler or the Chief Justice. Larry Landis has hired a programmer who is in the process of developing a database into which the information on claims will be entered, providing a basis for evaluating the costs in capital case defense.

9. The Commission discussed its policy relating to Floyd County, where the Chief Public Defender is not paid in compliance with the standards. The Commission determined that, consistent with its position in the Clark County situation, it would not reimburse for any portion of the Chief Public Defender's salary, but would not reject the county's entire claim on that basis.

10. The Commission discussed the request for Marion County that it set standards for misdemeanor appeals, which the Commission

declined to do in light of the limiting language in the statute.

11. The Commission discussed the request from Marion, Monroe, and Clark Counties about how to allocate the percentage of fixed overhead from misdemeanor cases. The Commission decided that the overhead for misdemeanors should be calculated on the same basis as salaries and litigation expenses related to misdemeanors.
12. The next meeting is November 18, 1997 at 4:30 at the Hyatt Regency. Staff will announce later to which room the Commission is assigned.

Approved:



Norman Lefstein
Chairman

9/8/1997

Date

INDIANA PUBLIC DEFENDER COMMISSION

MINUTES

November 18, 1997

Chairman Lefstein called the meeting to order at 4:40 p.m. in the conference room at the National City Center, 115 W. Washington Street, Suite 1072, Indianapolis, Indiana 46204. Also present were Commission members Rep. Thomas Alevizos, Sen. Richard Bray, Bettye Lou Jerrel, Susan Carpenter, and Monica Foster. Also present were Larry Landis, Paula Sites and Don Murray of the Public Defender Council, and Meg Babcock. Present for a portion of the meeting were David Cook and Dee Dennis from the Marion County Public Defender Agency.

1. The Commission approved the Minutes of the August 27, 1997 meeting.
2. The Commission approved 50% reimbursement in the following death penalty cases:

Lake County,	<u>State v. Spiller</u>	\$ 18,842.75
Marion County,	<u>State v. Howard Allen</u>	651.00
	<u>State v. Daniel Boyd</u>	11,843.97
	<u>State v. Walter Dye</u>	7,003.81
	<u>State v. Richard Huffman</u>	15,818.75
	(Monica Foster abstaining)	
	<u>State v. Lowrimore</u>	17,958.94
	<u>State v. Tony Martin</u>	1,382.38
	<u>State v. Ronald Mathisen</u>	2,327.50
	<u>State v. Corey Mosley</u>	17,976.25
	<u>State v. Jerry Thompson</u>	16,018.42

3. The Commission approved reimbursement to the following counties for non-capital expenditures:

<u>County</u>	<u>Percentage</u>	<u>Period</u>	<u>Amount</u>
Floyd County	25%	02/19/97 - 06/30/97	\$ 7,052.51
Floyd County	40%	07/01/97 - 10/31/97	19,939.28

(The Commission did not approve reimbursement for the \$4, 500.00 expended for appellate attorneys because the compensation was not made in compliance with the standards requiring \$60.00 per hour. Rather, the claim was based on the county's practice of paying a flat fee of \$1,500.00 per appeal.)

Marion County	25%	04/01/97 - 06/30/97	117,967.38
Marion County	40%	07/01/97 - 09/30/97	230,204.69
Montgomery County	25%	01/01/96 - 06/30/96	1,544.18
		01/01/97 - 06/30/97	12,080.00
		01/01/97 - 06/30/97	6,622.58
Orange County	25%	04/01/97 - 06/30/97	3,850.79
Orange County	40%	07/01/97 - 09/30/97	7,391.12
Parke County	25%	04/01/97 - 06/30/97	6,189.73
Parke County	40%	07/01/97 - 09/30/97	6,368.47
Warren County	25%	04/01/97 - 06/30/97	3,130.83

4. Fulton County ordinance - approved ordinance.

5. Chairman Lefstein, Bettye Lou Jerrel, Susan Carpenter, Rep. Alevizos and Larry Landis had interviewed the three finalists for the staff attorney position prior to the Public Defender Commission meeting. Chairman Lefstein will write to the Chief Justice with the Commission's recommendation.


6. The Commission discussed the issue of cost containment in death penalty cases which has been of concern to the Chief Justice. Chairman Lefstein wrote to the Chief Justice in May indicating that a database was being prepared which will help in an analysis of the actual costs of defending death cases in Indiana. Larry Landis and Paula Sites reported that the database has been prepared indicating an average expense of approximately \$95,000.00 for cases which proceed through trial. Excluding from that average four cases with extremely high costs, the average drops to approximately \$61,000.00. Paula will gather information about the four most expensive cases from the lawyers and judges. Chairman Lefstein will write again to the Chief Justice summarizing the information from the database and indicating what further inquiries the Commission intends to make.

7. The Commission set the next two meetings for Wednesday, February 11, 1998, at 4:30 p.m. in the National City Center, Hyatt Regency, 115 West Washington Street, Suite 1080-A, Indianapolis, Indiana, and for Tuesday, May 19, 1998, at 4:30 p.m. in the National City Center, Hyatt Regency, 115 West Washington Street, Suite 1072, Indianapolis, Indiana.

Approved:



 Norman Lefstein, Chairman



 Date