

Indiana Public Defender Commission Meeting Minutes

April 6, 2006

Chairman Norman Lefstein called the meeting to order at 3:17 p.m. Commission members attending were: Mr. Les Duvall, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrell, Sen. Timothy Lanane, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary.

Robert Rittman, Grant County Managing Public Defender, H. Joseph Certain, Grant County Public Defender Board President and Judge Gary Thompson, Grant County Public Defender Board member also attended. Members not attending were: Ms. Susan Carpenter, Hon. Daniel Donahue and Rep. Bob Kuzman.

- 1) **Introduction of new staff members:** Chairman Lefstein began the meeting by introducing Deborah Neal, Assistant Staff Counsel for the Commission. Amber Holland was also introduced as the new Administrative Assistant to the Commission.
- 2) **Approval of Commission Minutes from the December 15, 2005 meeting:** Rep. Ralph Foley made the motion for approval of the minutes. Sen. Timothy Lanane seconded the motion, and the motion carried.
- 3) **Mr. Robert Rittman, Grant County Managing Public Defender:** Mr. Rittman and his colleagues attended the meeting to ask the Commission to reconsider Grant County's denied reimbursement from the 3rd quarter 2005. Mr. Rittman explained that he was aware of the new standardized forms the Commission began using beginning with the 3rd quarter of 2005, however, he did not have the software required to access these forms. Therefore, he used forms that had previously been approved by former Staff Counsel Bob Borgmann. The Grant County Public Defender Board did not realize the use of these forms would be problematic until they received a copy of the suggested reimbursement indicating that the reimbursement would be reduced. The reason given for the denial was "no spreadsheet." The Grant County Public Defender Board hired someone with the correct program to help produce the new forms, however, by the time they resubmitted the forms the deadline had passed.

Mr. Rittman explained that Grant County has never been late in filing a request. Mr. Rittman stressed that he understands the need for a standardized system, but the punishment Grant County received is excessive and could cause harm to the Grant County Public Defender program. Mr. Rittman again asked the Commission to reconsider their request for denied reimbursement.

Hon. Thompson thanked the Commission for addressing the problem with Grant County, but also asked the Commission to consider establishing a method for "ironing out these administrative or technical glitches." He stated that this problem had upset the Grant County Council, and they had considered rescinding the Public Defender Ordinance. Chairman Lefstein thanked Mr. Rittman, Hon. Thompson and Mr. Certain for coming to the meeting and stated that the Commission would consider the suggestions they had offered. Mr. Lefstein explained that the Commission is currently in a transition period and that they are aware of problems, but the situation is improving.

Ms. Monica Foster moved to reconsider and pay Grant County in full. Sen. Lanane seconded the motion, and the motion carried.

4) Requests for Reconsideration of Denied Reimbursements in the Third Quarter:

Chairman Lefstein explained that a number of counties had been denied or penalized in the third quarter. Monica Foster expressed her concern that the decisions seemed to base on “form over substance”, and that the Commission should be doing more to help counties provide more effective counsel. Counsel Murphy reminded the Commission of comments from early meeting minutes that the “direction of the Commission should not be toward funding of the status quo.” Chairman Lefstein commented that the form is relevant to the caseload issue since the Commission has been “flying blind for years.” The Commission has made a decision to require counties to report on the forms, with time restrictions and penalties for not complying. Since the Commission has clearly spelled out what the expectations are, and that there will be penalties, compliance is at a level it has never been before. Furthermore, the counties have been given adequate notice regarding the reporting requirements. Since the standards are developed on caseloads, it is important to find out the truth. Ms. Jerrel asked about the cost of the Excel program, explaining that it is a reasonable expectation for counties to use the required program to receive funds, and if they don’t, or if they are late, the Commission will manage to the degree it can. Counsel Murphy reported that several of these cases have been primarily resolved prior to the meeting requiring only Commission approval. The summary is as follows:

- a. Greene – Has been resolved. They are being paid the money.
- b. Lake – Has been resolved.
- c. LaPorte – Has been resolved and removed their request for reconsideration because they understood their mistake.
- d. Montgomery – Has been resolved. There was not a first page on the report. There was also no total on the form, so there was no way to understand what it was.
- e. Noble – Has been resolved. They were under the impression that they had been deducted for misdemeanors, but should have stated “others” category. Larry Landis offered this situation as an example of the frustration level felt by more than one Chief Public Defender. Without an explanation as to the nature of a reduction, the Chief cannot explain the reduction to the County board. Counsel Murphy indicated the misrepresentation had been explained in a phone call, and that as a result of Mr. Landis’s feedback, greater care would be taken to insure satisfactory explanations of Commission decisions would occur in similar situations. Ms. Jerrel asked about the variety of cases reported as “Others.” Counsel Neal described the informal phone survey conducted to determine the nature of the cases included in this category. A chart was provided to indicate the diversity of the types of cases that the counties include. Counsel was asked to provide a guideline to direct counties on the appropriate cases to include in the other category, and how to deal with violations of probation cases.

Rep. Foley made a motion to approve resolutions for Greene, Lake, LaPorte, Montgomery and Noble Counties, and Monica Foster seconded the motion. The motion carried.

- f. Steuben – Steuben County fired their Public Defender Board Chair, but a new one is in. They were struggling with whether they were going to remain in the program. However, they are going to continue. They also submitted the wrong forms.

After a discussion, in which Ms. Foster indicated the Commission should be doing everything it can to keep counties in the program, Sen. Lanane made a motion to approve the resolution for Steuben County. Monica Foster seconded the motion, and the motion carried.

- g. Washington - Auditor was overloaded by office manager's absence due to a medical issue.

Again, after a discussion, Sen. Lanane made a motion to approve the resolution for Washington County. Monica Foster seconded the motion, and the motion carried.

- h. Decatur – Decatur County claims they did not receive the letter regarding the use of the new standardized forms. Counsel Murphy explained that he has used the same mailing list and all of the Public Defender Board Members were on the list, and they have received the letter indicating denial of reimbursement.

Sen. Lanane moved to approve Decatur County's request for reconsideration and that the vote be in accordance with Ms. Foster's resolution that it pass by the narrowest of margins. Ms. Foster seconded the motion and the motion carried by a narrow margin. The approval comes with a strong admonition that the county needs to comply with the Public Defender Commission guidelines.

- i. Miami – As a result of Commission action, Miami County was sent a letter dated October 3, 2005, explaining that the monies they received from the 2nd quarter would be the last they would receive until they fixed their non-compliance with the Comprehensive Plan concerning a Chief Public Defender. The County had two non-legal staff personnel interviewing clients, assigning cases and handling files. A chief public defender was not appointed until January. Mr. Landis cited IC 33-47-11, which requires notice of 90 days which was not given, and that the county has had a long struggle to get into compliance. According to Mr. Landis, to now punish them would be sending the message that the Commission does not care about what they did, or what they were supposed to do. Ms. Foster stated that the Commission needs to send the 90-day notice when a county is not in compliance as quickly as possible. Sen. Lanane made a motion to approve Miami County's request. Monica Foster seconded the motion, and the motion carried.
- j. Whitley – The County claims that the Public Defender Commission did not inform them of the reporting deadline for the last seven quarters. Whitley County would like the Commission to consider reimbursement for the last quarter or all of 2005. However, the Commission has no way of knowing if the county has been in compliance because they have not submitted the forms. If a county does not report on a regular basis then the Commission can lose control over caseload monitoring. It was decided that a staff member would visit Whitley County and advise them on how to resume submission. It was also a consensus that the belated claims would be considered once the staff had reported on the visit with Whitley County.
- k. Marion – It was decided at the last meeting that the Commission would approve the reimbursement for Marion County subject to their submitting a report on caseloads. They did complete a spreadsheet, but final payment has not been made. Furthermore, there are still questions about caseload compliance. Chairman Lefstein explained that before a decision is

made regarding the 3rd quarter reimbursement (and, therefore, the 4th quarter reimbursement) Marion County Chief Public Defender, David Cook, should have the opportunity to come and speak with the Commission regarding these issues.

- 5) **Discussion of "Others" Category:** Debby explained that she had conducted a study to find out how counties use the "others" category. She prepared a spreadsheet of her findings, which was included in the meeting packet. Chairman Lefstein stated that if a county has a deduction in reimbursement due to "others," it is essential to know exactly what kind of cases they are including in that category. Chairman Lefstein recommended that Mike and Debby draw up instructions for the counties on how to use the "others" category, specifically for probation violations. It was also suggested that a further breakdown of the "others" category may be needed.
- 6) **Change of Next Meeting Date and Discussion of a Tentative May Meeting:** Chairman Lefstein indicated that he would be unable to attend the scheduled July 6th meeting, therefore, the meeting was rescheduled for July 13th. Furthermore, an additional meeting was tentatively set for May 4th at 2:00 p.m.
- 7) **Claims for 50% Reimbursement in Capital Cases:**

INDIANA PUBLIC DEFENDER COMMISSION

Recommendations for Reimbursements in Capital Cases			
April 6, 2006			
COUNTY	DEFENDANT		TOTAL
Floyd	Wilson	*	\$842.87
Lake	Aki-Khuam (Williams)		\$14,735.08
	Britt		\$14,107.33
	Jeter		\$9,625.44
	Maust		\$14,198.12
	Roche		\$7,600.43
Madison	Baer		\$16,439.00
Marion	Allen		\$18,983.10
	Barker		\$9,025.43
	Holland		\$942.80
	Voss	*	\$4,535.65
Spencer	Ward		\$3,054.93
Tippecanoe	Gauvin	*	\$7,721.40
TOTAL			\$121,811.58

* Wilson

Only \$1,685.74 [1/2 = \$842.87] timely filed w/n 120 d, org. rqst. \$4,734.09

* Voss

Only \$9,271.50 [1/2 = \$4535.65] timely filed w/n 120 d, org. rqst. \$15,295.24

Gauvin

\$506 incorrectly billed; rmbmsmnt should be \$7,721.40, org. rqst. \$7,974.40

Rep. Foley made a motion to approve all Capital claims with the adjustments indicated; Ms. Jerrell seconded the motion, and the motion carried. Monica Foster abstained from voting.

8) Claims for 40% Reimbursement in Non-Capital Cases:

INDIANA PUBLIC DEFENDER COMMISSION

Recommendations for Reimbursements in Non-Capital Cases

4/6/2006

County	Penalty Factor	Period Covered	Total Expenditure	Adjustment	Eligible Expenditure	Non-Compliant Attorneys/Total Attorneys and Quarters Reported	Reimbursement
ADAMS	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
ALLEN	0.00	10/1/05-12/31/05	\$620,113.25	\$14,500.00	\$605,613.25	5/33/yr	\$242,245.30
BENTON	0.00	10/1/05-12/31/05	\$9,133.45	\$408.96	\$8,724.49	1/3/1q	\$3,489.80
BLACKFORD	0.00	10/1/05-12/31/05	\$13,709.99	\$0.00	\$13,709.99	1/5/1q	\$5,484.00
CARROLL	0.00	10/1/05-12/31/05	\$23,807.83	\$6,327.54	\$17,480.29	1/2/1q	\$6,992.12
CLARK	0.00	10/1/05-12/31/05	\$99,598.84	\$34,731.01	\$64,867.83	1/12/2q	\$25,947.13
CLATSOP	0.10	10/1/05-12/31/05	\$29,398.00	\$10,868.35	\$18,529.65	0	\$6,670.67
CAYETTE	0.00	10/1/05-12/31/05	\$63,009.25	\$20,301.41	\$42,707.84	0	\$17,083.14
FLOYD	0.00	10/1/05-12/31/05	\$174,669.52	\$8,771.40	\$165,898.12	1/7/yr	\$66,359.25
FOUNTAIN	0.00	10/1/05-12/31/05	\$21,649.02	\$3,592.65	\$18,056.37	3/3/1q	\$7,222.55
FULTON	0.00	10/1/05-12/31/05	\$53,703.67	\$15,234.67	\$38,469.00	2/14/yr	\$15,387.60
GRANT	0.00	10/1/05-12/31/05	\$217,411.00	\$30,444.29	\$186,966.71	8/13/2q	\$74,786.68
GREENE	0.00	10/1/05-12/31/05	\$56,078.37	\$2,195.44	\$53,882.93	0	\$21,553.17
HANCOCK	0.00	10/1/05-12/31/05	\$115,781.26	\$0.00	\$115,781.26	0	\$46,312.50
HENRY	0.00	10/1/05-12/31/05	\$92,240.83	\$38,956.21	\$53,284.62	4/5/2q	\$21,313.85
HUNTER	1.00	10/1/05-12/31/05	\$43,770.80	\$0.00	\$43,770.80	2/4/1q	\$0.00
JAY	0.00	10/1/05-12/31/05	\$43,044.89	\$9,933.44	\$33,111.45	2/6/yr	\$13,244.58
JENNINGS	0.00	10/1/05-12/31/05	\$36,785.62	\$12,529.96	\$24,255.66	0	\$9,702.26
KNOX	0.00	10/1/05-12/31/05	\$53,047.83	\$24,666.10	\$28,381.73	1/16/1q	\$11,352.69
KOSCIUSKO	0.00	10/1/05-12/31/05	\$74,682.94	\$3,002.15	\$71,680.79	1/15/2q	\$28,672.32
LAKE	0.00	10/1/05-12/31/05	\$943,680.11	\$0.00	\$943,680.11	0	\$377,472.04
LAPORTE	0.00	10/1/05-12/31/05	\$123,348.45	\$22,121.57	\$101,226.88	2/8/2q	\$40,490.75
MADISON	0.00	10/1/05-12/31/05	\$378,870.30	\$133,752.20	\$245,118.10	6/24/3q	\$98,047.24
MARION	0.00	10/1/05-12/31/05	\$2,133,036.93	\$919,051.97	\$1,213,984.96	86/177/1q	\$485,593.98
MARTIN	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
MAY	1.00	10/1/05-12/31/05	\$67,874.67	\$0.00	\$67,874.67	4/5/yr	\$0.00
MONROE	0.00	10/1/05-12/31/05	\$252,142.96	\$69,451.25	\$182,691.71	7/10/yr	\$73,076.68
MONTGOMERY	0.10	10/1/05-12/31/05	\$85,088.18	\$32,614.29	\$52,473.89	0	\$18,890.60
MURKIN	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00

NOBLE	0.00	10/1/05-12/31/05	\$58,276.07	\$5,641.10	\$52,634.97	3/4/yr	\$21,053.99
OHIO	0.00	10/1/05-12/31/05	\$10,761.00	\$4,304.40	\$6,456.60	1/4/2q	\$2,582.64
ORANGE	1.00	10/1/05-12/31/05	\$40,920.91	\$18,240.91	\$22,680.00	0	\$0.00
PARKE	0.00	10/1/05-12/31/05	\$15,360.42	\$0.00	\$15,360.42	0	\$6,144.17
	1.00	10/1/05-12/31/05	\$20,716.08	\$0.00	\$20,716.08	0	\$0.00
	1.00	10/1/05-12/31/05	\$45,253.85	\$0.00	\$45,253.85	0	\$0.00
PULASKI	0.00	10/1/05-12/31/05	\$45,272.93	\$3,892.24	\$41,380.69	2/13/2q	\$16,552.28
RUSH	0.00	10/1/05-12/31/05	\$36,508.07	\$11,330.09	\$25,177.98	1/6/1q	\$10,071.19
SCOTT	0.00	10/1/05-12/31/05	\$62,911.71	\$18,373.87	\$44,537.84	0	\$17,815.14
SHELBY	0.00	10/1/05-12/31/05	\$64,236.00	\$3,663.82	\$60,572.18	2/722q	\$24,228.87
SPENCER	0.00	10/1/05-12/31/05	\$17,792.30	\$3,894.75	\$13,897.55	1/5/2q	\$5,559.02
STEBEN	0.10	10/1/05-12/31/05	\$63,170.65	\$17,892.18	\$45,278.47	0	\$16,300.25
SULLIVAN	0.00	10/1/05-12/31/05	\$17,921.04	\$8,680.54	\$9,240.50	0	\$3,696.20
SWITZERLAND	0.00	10/1/05-12/31/05	\$20,419.58	\$7,170.06	\$13,249.52	3/9/1q	\$5,299.81
TIPPECANOE	0.00	10/1/05-12/31/05	\$308,660.16	\$97,724.67	\$210,935.49	11/18/1q	\$84,374.20
	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
VANDERBURGH	0.00	10/1/05-12/31/05	\$400,160.43	\$0.00	\$400,160.43	13/41/yr	\$160,064.17
VERMILION	0.10	10/1/05-12/31/05	\$25,350.00	\$5,796.40	\$19,553.60	0	\$7,039.30
VIGO	0.00	10/1/05-12/31/05	\$242,064.99	\$75,172.40	\$166,892.59	0	\$66,757.04
WARREN	0.00	10/1/05-12/31/05	\$4,846.85	\$1,745.54	\$3,101.31	0	\$1,240.52
WASHINGTON	0.00	10/1/05-12/31/05	\$66,127.22	\$24,217.00	\$41,910.22	4/4/2q	\$16,764.09
WELLS	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
WHITE	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
WYOMING	0.00	10/1/05-12/31/05	\$0.00	\$0.00	\$0.00		\$0.00
TOTAL			\$7,392,408.22	\$1,721,194.83	\$5,671,213.39	179/29 counties	\$2,182,933.77

ADJUSTMENTS as of 03/07/06

- Adams - No Claim
- Allen - non-reimbursable Legal Representation for PD Attorneys
- Benton - misdemeanors
- Carroll - misdemeanors and non-reimbursable others
- Clark - non-reimbursable others
- Decatur - 10% LATE - misdemeanors
- Fayette - misdemeanors and non-reimbursable others
- Floyd - misdemeanors and non-reimbursable others
- Fountain - misdemeanors and non-reimbursable others
- Fulton - misdemeanors and non-reimbursable others
- Grant - misdemeanors and non-reimbursable others
- Greene - misdemeanors and non-reimbursable others
- Hancock - misdemeanors
- Henry - misdemeanors and non-reimbursable others
- Jasper - -100% - no Request for Reimbursement, Attorney Information or Verifications
- Jennings - misdemeanors and non-reimbursable others
- Sciuko - non-reimbursable others

Laporte - misdemeanors and non-reimbursable others
Madison - misdemeanors and non-reimbursable others
Marion - misdemeanors and non-reimbursable others
Miami - 100% - continued non-compliance- No Chief PD.
Martin - No Claim
Monroe - misdemeanors and non-reimbursable others
Montgomery - 10% LATE - misdemeanors and non-reimbursable others
Newton - No Claim
Noble - misdemeanors and non-reimbursable others
Ohio - misdemeanors and non-reimbursable others
Orange - 100% - No Attorney Information; Caseloads list law firms and attorneys
Perry - 100% - incomplete Attorney Information; Caseloads list law firms and individuals
Pike - 100% - No Attorney Information
Pulaski - misdemeanors
Rush - misdemeanors
Scott - misdemeanors and non-reimbursable others
Shelby - non-reimbursable others
Spencer - misdemeanors and non-reimbursable others
Steuben - 100% - blank Attorney Information - misdemeanors and non-reimbursable others
Sullivan - misdemeanors
Switzerland - misdemeanors and non-reimbursable others
Tippecanoe - misdemeanors and non-reimbursable others
Vanderburgh - misdemeanors and non-reimbursable others
Vermillion - 10% LATE - misdemeanors and non-reimbursable others
Vigo - misdemeanors and non-reimbursable others
Warren - misdemeanors and non-reimbursable others
Washington - misdemeanors and non-reimbursable others
Wells - No Claim
White - No Claim
Whitley - No Claim

Several issues arose as a result of the recommendations for denying reimbursement for counties out of caseload compliance. Chairman Lefstein pointed out that the data indicated many of the counties had not provided caseloads for an entire year. Furthermore, only counties supplying numbers for an entire year can be analyzed for compliance with the standard. In addition, a debate developed regarding the part time contract attorney who also accepts cases as assigned counsel. After recalling that the caseload standards include contract as well as assigned counsel, Chairman Lefstein turned the discussion back to the topic of reimbursements. The Commission made a decision to hold off discussion of eight counties until the tentative May 4th meeting. This will give the Staff time to notify those counties and get a response regarding their caseload situations. Monica Foster made the motion to approve all Non-Capital claims (excluding the above mentioned eight counties), and Les Duvall seconded. The motion carried.

Regarding counties supplying less than four quarters, individual claims with penalty assessments were discussed. Chairman Lefstein indicated that those counties with individual problems needed individual letters. Ms. Jerrel mentioned that unless counties receive a letter describing what they have done wrong,

they will not understand the process. The Chairman suggested perhaps a form letter with a paragraph specific to that county. Mr. Landis voiced the IPD Council opinion that the Commission has always been seen as friends to help them get into compliance, not to punish them for failing, that the staff ought to be trying to figure out how to help counties succeed.

9) **Meeting of County Chief Public Defenders:** Chairman Lefstein expressed his interest in having a meeting of all Chief Public Defenders. Larry Landis advised that a meeting is most likely already scheduled, and he would inform the Commission of the date.

10) **The Next Regular Meeting is rescheduled for July 13th, 2005, at 3:00 p.m.**

11) **Meeting Adjournment:** The meeting adjourned at 6:00 p.m.

Norman Lefstein, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

May 4th, 2006

Chairman Norman Lefstein called the meeting to order at 2:04 p.m. Commission members attending were: Mr. Les Duvall, Ms. Susan Carpenter, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrell, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary.

David Cook, Chief Public Defender of the Marion County Public Defender Agency, and Victoria Ursulskis, Executive Deputy of the Marion County Public Defender Agency also attended. Members not in attendance were: Hon. Daniel Donahue, Sen. Timothy Lanane, and ~~Sen.~~ Robert Kuzman.

- 1) **Discussion of Commission Minutes from the April 6, 2006 meeting:** ^{Rep.} Ms. Jerrel noted that much of the discussion from the April meeting was not adequately captured in the proposed minutes, and that the minutes should be more representative of the discussions that take place. Chairman Lefstein agreed and stated that although the conclusions are generally complete, with website posting, more complete reflection of the discussions would add value. On that basis, Ms. Foster moved to table the minutes until the next meeting, to see minutes that more accurately reflect what in totality happened at that meeting. Ms. Jerrel seconded the motion and the motion passed.
- 2) **Discussion of the April 6, 2006 Recommendations for Reimbursements in Noncapital Cases:** Chairman Lefstein discussed the misunderstanding that occurred with Counsel Murphy regarding the 8 counties with caseload compliance issues that were to be dealt with at this special meeting. These counties were sent letters by counsel indicating they were being paid in full. The Chairman indicated that it was the intention to withhold payment of those claims pending more information, but that he was reluctant to reverse the action taken. Ms. Carpenter inquired about a tape of the meeting, and was informed it was unclear. Ms. Jerrel asked if the Commission will be insisting that the standards be followed in the future, to which the Chairman indicated the Commission intention, even though there is ambiguity regarding caseload standards. Ms. Carpenter inquired about the Lake and Madison County issues that do not appear on the meeting agenda. The Chairman responded that these issues are not yet resolved, but due to a full agenda, would not be resolved today.
- 3) **Discussion of Proposed Task Force on Indigent Defense Improvements in Indiana:** The Chairman proposed that he would approach the Chief Justice to determine whether or not the Chief Justice would be interested in appointing a state-wide study or task force or if the Commission should proceed on its own, with the understanding and acceptance of the Chief Justice. Ms. Foster inquired as to the cost of such a study and was informed that \$125,000 to \$170,000 was a reasonable expectation, and that the American Bar Association may be responsive to an inquiry, but that the task force itself would be responsible for funding. Ms. Carpenter made a motion to initiate discussion of a statewide study on indigent defense delivery in Indiana. Ms. Foster seconded and the motion passed.
- 4) **Discussion of Marion County 3rd and 4th Quarter Reimbursements:** Chairman Lefstein explained that Marion County had been using higher caseload numbers than other counties. Mr. Landis further explained that since originally there were county courts, combined categories were in use, but these are

no longer necessary due to spreadsheet technology. Since the Commission staff had never before caught the county's use of higher numbers they appeared to now be out of compliance. The Chairman indicated he was satisfied that the Commission had led the county to the situation they were in now, suggesting no penalty for the third and fourth quarters, but that there is an issue going forward.

Respecting Marion County's position, Mr. Cook cited the belief that the county had been operating in compliance with the standards. Counsel Murphy inquired about the mixed caseloads of Marion County's attorneys in the D Felony Division, asking if misdemeanors had been included in those D Felony numbers. Mr. Cook indicated that they count a case for a case for a case, and that it was a possibility that non-reimbursable misdemeanors were included in those cases.

Returning to the issue of reimbursement, the Chairman proposed reimbursement for the 3rd and 4th quarters since the numbers indicate compliance. To determine what the actual reimbursement is going to be, the shortage of funds needs to be considered. After discussion of the various alternatives, the Commission determined, along with the agreement of Mr. Cook, that the entire shortage would be absorbed by Marion County. Motion was made by Ms. Foster, seconded by Rep. Foley and passed.

The Chairman then asked Mr. Cook how the elimination of the combination categories would impact Marion County. Mr. Cook requested that the Commission think about the removal of the two combination categories, since for Marion County, he stated that it would effectively mean the end of mixed caseload assignments, due to the undue administrative burden it would place on the county. Ms. Jerrel indicated that the process of reimbursement needed to be fair for both large and small counties.

- 5) **Discussion of Caseload Compliance and 12 month Period:** Chairman Lefstein explained that his perception of a 12-month period was never a calendar year, and that the language of the Standard never uses the words "calendar year." Furthermore, there is no logic in doing it on a calendar year. Ms. Carpenter agreed that it couldn't be done on a calendar year. Ms. Foster thought it was a calendar year. Rep. Foley assumed it was. Mr. Landis presented a hypothetical fixed 12-month period, and explained that the "rolling year" represents a change over what he has been telling counties over the years. After further discussion, Rep. Foley offered a motion that substantial compliance will be based on a rolling year. Ms. Carpenter seconded the motion, and it passed. Ms. Foster did not vote.
- 6) **Revision of "Standard J" Caseload Reporting:** Chairman Lefstein inquired about the timing, which resulted in the spreadsheet revision occurring before the revision of Standard J. Counsel Murphy informed the Commission that he had been authorized to make administrative changes as a result of a discussion with the Chair prior to March 3, 2006. Ms. Foster asked if the Commission voted on the spreadsheet and Ms. Carpenter noted that the Standards are inconsistent with each other. Representative Foley indicated that he would favor some type of phase-in, with accommodations to Marion County as well. Several alternative suggestions for implementing the new spreadsheet-reporting format were raised.

Ms. Foster indicated concern with compliance as it related to reporting on the "old" spreadsheet. She stated that her approval of money must be accompanied by the knowledge that the county is meeting the standard reported on the old form, but that the county should report on the new form as well until the

standard is amended by the Commission. Ms. Carpenter indicated her opinion that the new form does not amend the standard. Ms. Jerrel indicated care must be taken since this is the first time the Commission has really looked at how this system is working and that fairness to the counties is important. Chairman Lefstein suggested that comparative spreadsheets be developed for those counties that seem problematic, and allow time for feedback. Ms. Foster reiterated the concern of authorizing the release of state funds when it is not possible to be certain some standard is met. The Chairman then summarized the discussion in four points:

1. Continue to use the latest revision of the Spreadsheet that is on the website.
2. Counties out of compliance due to the change in spreadsheet, staff will supply the information in both the old and new forms to compare.
3. Staff will develop a proposal for amending caseload standards and proposal to receive feedback from counties affected with a potential effective date.
4. Commission will utilize considerable discretion in interpreting standards for those counties affected that might not be in compliance given the use of the new spreadsheet, which eliminates the two combination categories.

- 7) **Contract Attorneys Supplementing with Assigned Caseloads:** Chairman Lefstein explained the troubling language that exists in the Commission approved contract, Section C paragraph 2, which allows for a contract attorney, upon reaching a prescribed limit of cases, shall not be required to take on more cases, but may do so as assigned counsel. After considerable discussion of the issues surrounding the inability to monitor private caseloads for public defenders, the Chairman inquired about the full time public defender with private practice advertised in the Yellow Pages. Mr. Cook responded by stating his Board of Directors allows it because salaries were so low, they let the attorneys have private practices, but that his office doesn't monitor the extent of the private practice, only the repeatedly absent situations are addressed.

Given the absence of any hard data, the Chairman decided no proposal for action was appropriate.

- 8) **Next Meeting Date:** July 13, 2006 at 2:00 p.m.
- 9) **Meeting Adjournment:** The meeting adjourned at 5:00

Norman Lefstein, Chairman

Date

Amended
Indiana Public Defender Commission Meeting Minutes

May 4th, 2006

Chairman Norman Lefstein called the meeting to order at 2:04 p.m. Commission members attending were: Mr. Les Duvall, Ms. Susan Carpenter, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrell, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary.

David Cook, Chief Public Defender of the Marion County Public Defender Agency, and Victoria Ursulskis, Executive Deputy of the Marion County Public Defender Agency also attended. Members not in attendance were: Hon. Daniel Donahue, Sen. Timothy Lanane, and Sen. Robert Kuzman.

- 1) **Discussion of Commission Minutes from the April 6, 2006 meeting:** Ms. Jerrel noted that much of the discussion from the April meeting was not adequately captured in the proposed minutes, and that the minutes should be more representative of the discussions that take place. Chairman Lefstein agreed and stated that although the conclusions are generally complete, with website posting, more complete reflection of the discussions would add value. On that basis, Ms. Foster moved to table the minutes until the next meeting, to see minutes that more accurately reflect what in totality happened at that meeting. Ms. Jerrel seconded the motion and the motion passed.
- 2) **Discussion of the April 6, 2006 Recommendations for Reimbursements in Noncapital Cases:** Chairman Lefstein discussed the misunderstanding that occurred with Counsel Murphy regarding the 8 counties with caseload compliance issues that were to be dealt with at this special meeting. These counties were sent letters by counsel indicating they were being paid in full. The Chairman indicated that it was the intention to withhold payment of those claims pending more information, but that he was reluctant to reverse the action taken. Ms. Carpenter inquired about a tape of the meeting, and was informed it was unclear. Ms. Jerrel asked if the Commission will be insisting that the standards be followed in the future, to which the Chairman indicated the Commission intention, even though there is ambiguity regarding caseload standards. Ms. Carpenter inquired about the Lake and Madison County issue of **full-time salaried defenders doing capital cases** that do not appear on the meeting agenda. The Chairman responded that these issues are not yet resolved, but due to a full agenda, would not be resolved today.
- 3) **Discussion of Proposed Task Force on Indigent Defense Improvements in Indiana:** The Chairman proposed that he would approach the Chief Justice to determine whether or not the Chief Justice would be interested in appointing a state-wide study or task force **on indigent defense improvements in Indiana**, or if the Commission should proceed on its own, with the understanding and acceptance of the Chief Justice. Ms. Foster inquired as to the cost of such a study and was informed that \$125,000 to \$170,000 was a reasonable expectation, and that the American Bar Association may be responsive to an inquiry, but that the task force itself would be responsible for funding. Ms. Carpenter made a motion to initiate discussion of a statewide study on indigent defense delivery in Indiana. Ms. Foster seconded and the motion passed

- 4) **Discussion of Marion County 3rd and 4th Quarter Reimbursements:** Chairman Lefstein explained that Marion County had been using higher caseload numbers than other counties. Mr. Landis further explained that since originally there were county courts, combined categories were in use, but these are no longer necessary due to spreadsheet technology. Since the Commission staff had never before caught the county's use of higher numbers they appeared to now be out of compliance. The Chairman indicated he was satisfied that the Commission had led the county to the situation they were in now, suggesting no penalty for the third and fourth quarters, but that there is an issue going forward.

Respecting Marion County's position, Mr. Cook cited the belief that the county had been operating in compliance with the standards. Counsel Murphy inquired about the mixed caseloads of Marion County's attorneys in the D Felony Division, asking if misdemeanors had been included in those D Felony numbers. Mr. Cook indicated that they count a case for a case for a case, and that it was a possibility that non-reimbursable misdemeanors were included in those cases.

Returning to the issue of reimbursement, the Chairman proposed reimbursement for the 3rd and 4th quarters since the numbers indicate compliance. To determine what the actual reimbursement is going to be, the shortage of funds needs to be considered. After discussion of the various alternatives, the Commission determined, along with the agreement of Mr. Cook, that the entire shortage would be absorbed by Marion County. Motion was made by Ms. Foster, seconded by Rep. Foley and passed.

The Chairman then asked Mr. Cook how the elimination of the combination categories would impact Marion County. Mr. Cook requested that the Commission think about the removal of the two combination categories, since for Marion County, he stated that it would effectively mean the end of mixed caseload assignments, due to the undue administrative burden it would place on the county. Ms. Jerrel indicated that the process of reimbursement needed to be fair for both large and small counties.

- 5) **Discussion of Caseload Compliance and 12 month Period:** Chairman Lefstein explained that his perception of a 12-month period was never a calendar year, and that the language of the Standard never uses the words "calendar year." Furthermore, there is no logic in doing it on a calendar year. Ms. Carpenter agreed that it couldn't be done on a calendar year. Ms. Foster thought it was a calendar year. Rep. Foley assumed it was. Mr. Landis presented a hypothetical fixed 12-month period, and explained that the "rolling year" represents a change over what he has been telling counties over the years. After further discussion, Rep. Foley offered a motion that substantial compliance will be based on a rolling year. Ms. Carpenter seconded the motion, and it passed. Ms. Foster did not vote.
- 6) **Revision of "Standard J" Caseload Reporting:** Chairman Lefstein inquired about the timing, which resulted in the spreadsheet revision occurring before the revision of Standard J. Counsel Murphy informed the Commission that he had been authorized to make administrative changes as a result of a discussion with the Chair prior to March 3, 2006. Ms. Foster asked if the Commission voted on the spreadsheet and Ms. Carpenter noted that the Standards are inconsistent with each other. Representative Foley indicated that he would favor some type of phase-in, with accommodations to Marion County as well. Several alternative suggestions for implementing the new spreadsheet-reporting format were raised.

Ms. Foster indicated concern with compliance as it related to reporting on the "old" spreadsheet. She stated that her approval of money must be accompanied by the knowledge that the county is meeting the standard reported on the old form, but that the county should report on the new form as well until the standard is amended by the Commission. Ms. Carpenter indicated her opinion that the new form does not amend the standard. Ms. Jerrel indicated care must be taken since this is the first time the Commission has really looked at how this system is working and that fairness to the counties is important. Chairman Lefstein suggested that comparative spreadsheets be developed for those counties that seem problematic, and allow time for feedback. Ms. Foster reiterated the concern of authorizing the release of state funds when it is not possible to be certain some standard is met. The Chairman then summarized the discussion in four points:

1. Continue to use the latest revision of the Spreadsheet that is on the website.
2. Counties out of compliance due to the change in spreadsheet, staff will supply the information in both the old and new forms to compare.
3. Staff will develop a proposal for amending caseload standards and proposal to receive feedback from counties affected with a potential effective date.
4. Commission will utilize considerable discretion in interpreting standards for those counties affected that might not be in compliance given the use of the new spreadsheet, which eliminates the two combination categories.

- 7) **Contract Attorneys Supplementing with Assigned Caseloads:** Chairman Lefstein explained the troubling language that exists in the Commission approved contract, Section C paragraph 2, which allows for a contract attorney, upon reaching a prescribed limit of cases, shall not be required to take on more cases, but may do so as assigned counsel. After considerable discussion of the issues surrounding the inability to monitor private caseloads for public defenders, the Chairman inquired about the full time public defender with private practice advertised in the Yellow Pages. Mr. Cook responded by stating his Board of Directors allows it because salaries were so low, they let the attorneys have private practices, but that his office doesn't monitor the extent of the private practice, only the repeatedly absent situations are addressed.

Given the absence of any hard data, the Chairman decided no proposal for action was appropriate.

- 8) **Next Meeting Date:** July 13, 2006 at 2:00 p.m.
- 9) **Meeting Adjournment:** The meeting adjourned at 5:00

Norman Lefstein, Chairman

Date

**HIGHLIGHTS OF
INDIANA PUBLIC DEFENDER COMMISSION
MEETING July 13, 2006**

- 1) Revised Minutes from the April 6, 2006 meeting of the Commission.
 - Approved [see Website under "About the Public Defender Commission"]
- 2) Minutes from May 4, 2006 Special Meeting of the Commission.
 - Approved [see Website under "About the Public Defender Commission"]
- 3) Letter to Chief Justice Shepard regarding Task Force
 - See Website under "Publications"
- 4) Summary of Requests for 50% Reimbursement in Capital Cases
 - Approved [see Website under Finances]
- 5) Analysis of Requests for 40% Reimbursement in Non-capital Case
 - Approved [see Website under Finances]
- 6) Requests for Reconsideration of Denied Reimbursement in Non-capital Requests
 - Adams County * Approved
 - Jasper County * Approved
 - Pike County * Approved
- 7) New Comprehensive Plan Review
 - Tabled
- 8) Financial Status and Biennial Recommendations
 - Approved budget request of \$16 million for FY 07-08; and \$17 million for FY 08-09
- 9) Revision of "Standard J"
 - Approved [see Website under "Publications" (Standards and Guidelines)]
- 10) Form Revisions to Request for Reimbursement in Non-capital Cases
 - See Website under "Forms"
- 11) Criminal Rule 24
 - Tabled
- 12) Proposal for Counting Probation Violations
 - Approved [see Website under "Publications" (Standards and Guidelines)]
- 13) Staff Report
 - Distributed at meeting
- 14) Full-time Public Defenders with Private Practices
 - Tabled
- 15) Next Meetings
 - Thursday, October 5, 2006, 2:00 P.M.
 - Thursday, December 14 2006, 2:00 P.M

Additional Item

Proposal to Eliminate method for Determining the Amount of Non-Reimbursable County Expenditures for Indigent Defense.

Approved [see Website under "Publications" (Standards and Guidelines)]

Indiana Public Defender Commission Meeting Minutes

July 13, 2006

Chairman Norman Lefstein called the meeting to order at 2:17 p.m. Commission members attending were: Hon. Daniel Donahue, Mr. Les Duvall, Rep. Ralph Foley, Ms. Monica Foster, Ms. Bettye Lou Jerrel, Sen. Timothy Lanane, and Sen. Joseph Zakas. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary. Members not attending were Susan Carpenter and Rep. Bob Kuzman.

Public Defender Chiefs in attendance were Brian Michaud, Miami County, David Cook, Marion County, Mark Stamper, Henry County, and Stephen Owens, Vanderburgh County. Miami Circuit Court Judge, Rosemary Higgins Burke and Victoria Ursulskis, Executive Deputy, Marion County, were also present.

- 1) **Meeting Minutes:** Chairman Lefstein presented the revised April 5, 2006 Public Defender Commission minutes for approval. Bettye Lou Jerrel moved for approval, Ralph Foley seconded, and the April 5, 2006 minutes passed unanimously. Chairman Lefstein presented the minutes of the special meeting of May 4, 2006, pointing out changes to paragraphs 2 and 3, and suggesting the addition of the word "unanimously" to the last line of paragraph 3. Upon request for objections to the minute changes, no objections were voiced. Les Duvall moved to approve the May 4, 2006 Public Defender Commission minutes as amended, and Bettye Lou Jerrel seconded the motion. The vote was unanimous to accept the May 4, 2006 amended minutes.
- 2) **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein reported meeting with Chief Justice Randall Shepard and discussing the establishment of a commission to examine in depth how indigent defense services are being delivered in the state. The meeting was held at the end of June, and present were Chief Justice Shepard, Chairman Norman Lefstein, Commissioner Les Duvall, and Larry Landis of the Indiana Public Defender Council. The purpose of the meeting was to determine if the Chief Justice would be interested in appointing a state-wide study or task force, or if the Public Defender Commission should proceed on its own, with the understanding and acceptance of the Chief Justice. Chairman Lefstein reports he is hopeful that the Commission will have a response from the Chief Justice by its meeting in October.
- 3) **Claims for 50% Reimbursement in Capital Cases:** The Commission addressed claims for 50% reimbursement in capital cases as follows:

Reimbursement Requests in Capital Cases			
July 13, 2006			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$8,365.56
Lake	Aki-Khuam (Williams)		\$17,297.75
	Britt		\$11,574.36
	Jeter		\$30,540.91

Madison	Baer		\$15,649.43
Marion	Adams	*	\$1,802.31
	Adams 2		\$542.01
	Allen	*	\$7,977.83
	Allen 2		\$9,656.05
	Barker		\$1,730.66
	Holland		\$2,809.95
	Voss		\$8,005.35
	Voss		\$4,535.11
	Voss	*	\$10,659.49
Parke	Cottrell		\$13,701.69
Spencer	Ward		\$6,346.87
Tippecanoe	Gauvin		\$7,979.71
TOTAL			\$159,175.04

* Adams past 120-day deadline - Reconsideration request from auditor attached

* Allen past 120-day deadline - Reconsideration request from auditor attached

* Voss - reimbursement denied 4/6/06 due to late filing-now submitted for reconsideration

The Commission discussed the three claims from Marion County for death penalty cases that were not timely filed with the Commission in April 2006. The Marion County Auditor submitted a letter asking for reconsideration from the Commission for payment of the Voss, Adams and Allen claims, which were presented after the 120-day deadline for filing. Staff counsel, Deborah Neal, explained the 120-day rule for filing death penalty claims, and noted the Marion County Auditor's reason for the untimely filing was staff changes within the office. There was also a commitment from the Auditor to timely filing future claims. Ms. Jerrel asked if Marion County did not get the information that there is a 120-day deadline. David Cook of the Marion County Public Defender Agency stated that in the past the Commission's staff had not been quite as strict with following the 120-day guideline, but he assured the Commission that Marion County would timely file claims in the future. Bettye Lou Jerrel moved to authorize the payment on the late claims for Marion County, and Sen. Tim Lanane seconded the motion. Judge Daniel Donohue abstained from voting. Motion passed.

A motion and second to approve all other capital claims was inadvertently omitted from the meeting. The Commission staff contacted, by telephone, all members present at the July 13, 2006 meeting, and received a motion by Bettye Lou Jerrel to pay all other capital claims presented at this meeting; the motion was seconded by Sen. Timothy Lanane. Mr. Les Duvall and Norman Lefstein voted in favor of the motion. Monica Foster and Judge Donohue abstained from voting. Motion passed.

Deborah Neal reported to the Commission that an attorney in Vigo County and one in Tippecanoe County received waivers from the Supreme Court to be appointed to capital cases, contingent upon completing the 12 CLE's required by Criminal Rule 24, as soon as possible, and were then appointed by the respective trial courts to open death penalty cases. Ms. Neal noted that the claims would be coming into the Commission for attorney hours at a time when the capital defense counsel was not qualified. She asked for the opinion of the State Court Executive Administrator, and was told that since the Chief

Justice granted the waivers it was not for the Commission to call them unqualified for purposes of receiving reimbursement.

Next, Deborah Neal asked the Commission to approve the death penalty defense training provided by the National Consortium for Capital Defense Training, in conjunction with the Clarence Darrow Death Penalty Defense College in Chicago, held May 30 to June 3, 2006, as continuing legal education for Criminal Rule 24 qualifications. This seminar had 38 credits available to participants. Les Duvall moved that the Commission authorize this program as fulfilling the CLE requirements of CR24, and Timothy Lanane seconded the motion. Motion passed unanimously.

- 4) **Claims for 40% Reimbursement in Non-Capital Cases:** Before giving specific attention to reimbursement requests in non-capital cases, Chairman Lefstein presented a proposal for dealing with non-reimbursable county expenditures. Chairman Lefstein noted the proposed changes would have implications for what is approved at this meeting, implications going forward, and will likely lead to greater claims upon our budgetary resources. The proposal distributed to the members present is as follows:

Proposal to Eliminate Method for Determining the Amount of
Non-Reimbursable County Expenditures for Indigent Defense

Justification for Change

For many years, the Commission has used a relatively complicated mathematical formula for determining the amount of a county's non-reimbursable indigent defense expenditures. The formula is difficult to explain and is not well understood by county chief public defenders and other county officials. Sometimes the mechanical formula penalizes counties by weighing more heavily their misdemeanor and other non-reimbursable indigent defense expenses than would be justified based upon examination of their actual non-reimbursable expenditures. Conversely, the formula may sometime award counties additional funds to which they would not be entitled if only actual non-reimbursable expenses were considered.

But regardless of how the formula plays out in practice clearly its use has been a constant source of irritation for chief public defenders and other county officials and especially in recent months has been a frequent source of friction between the Commission's staff and chief public defenders. Elimination of the formula is certain to be well received among the Commission's eligible counties and should do much to restore trust and confidence between Commission staff and persons with whom they interact.

Proposed Change

The elements of the proposed change are as follows:

- Counties will be required, as they are now, to list all of their expenditures on the form that has been designated.
- Counties will be required to deduct from their total expenditures, the cost of salaries and overhead related to non-reimbursable misdemeanors and other non-reimbursable cases. (The amount of these non-reimbursable expenses will be shown on the face of the "Request for Reimbursement" form; the form will be modified in order to show this deduction as well as the final sum eligible for 40% reimbursement.)

- Counties will be required to show in writing the method that they used to determine the amount of their non-reimbursable salaries and other expenses.
- The Commission will accept a county's explanation of its non-reimbursable indigent defense expenditures unless it is patently clear that the method of computation is neither fair nor reasonable.

Implementation

The proposal for implementing this change is as follows:

- The change will be implemented beginning with second quarter reimbursement requests for calendar year 2006.
- Counties will be advised of the changes in a letter to be sent to them during the week of July 17, 2006.
- Counties will be afforded additional time, i.e., until August 31, 2006, in which to submit without penalty their second quarter requests for reimbursement. (Absent this extension, all county reimbursement requests would be due by August 15.)
- Respecting first quarter payments for 2006, Counties will be advised that they can accept the Commission's computation pursuant to its formula for non-reimbursable indigent defense expenditures, or alternatively, they can submit additional information to the Commission explaining their non-reimbursable defense expenditures, and the Commission will then determine whether the county may be due a supplemental payment.

Chairman Lefstein provided examples where the long-standing formula used by the Commission to determine non-reimbursable expenses resulted in undue hardship to some counties. Bettye Lou Jerrel noted that county councils and auditors should be warned if the proposed changes are adopted, that prorating is going to come sooner than later. Chief Public Defenders David Cook and Steve Owens offered testimony in favor of the proposed changes. Discussion followed regarding which quarters of 2006 would be effected by the proposed change in reporting. Rep. Ralph Foley, Sen. Timothy Lanane and Judge Daniel Donahue stated the changes should be prospective and not include the 1st quarter of 2006. David Cook pointed out that using the formula in the 1st quarter costs Marion County, in part, \$164,000 because of one attorney's misdemeanor caseload. Deborah Neal further explained the difference in Marion County's 1st quarter reporting if figured by the formula or reported in accordance to the proposed changes, and noted that the monetary difference was significant. David Cook offered a compromise in the interest of finality to split the difference of additional monies requested by Marion County for the 1st quarter 2006. Mike Murphy informed the Commission that including the 1st quarter of 2006 in the proposed changes would cause prorating in the next quarter. Chairman Lefstein called for a motion. Sen. Timothy Lanane moved for approval of the Proposal to Eliminate the Method for Determining the Amount of Non-Reimbursable County Expenditures. Bettye Lou Jerrel asked if that included going back to the first quarter. Sen. Lanane said it does. Les Duvall seconded the motion. Chairman Lefstein asked if there was further discussion and then called for a vote. Sen. Timothy Lanane, Sen. Joseph Zakas, Les Duvall and Norman Lefstein voted in favor of the motion. Bettye Lou Jerrel, Rep. Ralph Foley and Judge Daniel Donahue voted against the motion. The motion passed 4 to 3. (Monica Foster had not yet arrived at the meeting)

5) **Financial Status and Biennial Recommendations:** Chairman Lefstein directed the Commission to the staff analysis of the financial recommendation for future adequate funding of indigent defense. The recommendation

is \$14 million for fiscal year 2007-2008, if no new counties qualify for reimbursement, or \$16 million for the same year if five new counties are added to the program. The recommendation is \$15 million for fiscal year 2008-2009, if no new counties qualify for reimbursement, or \$17 million for the same year if five new counties are added to the program. Chairman Lefstein asked Larry Landis if he thought the Commission should ask the Chief Justice for the \$16 - \$17 million figure, in anticipation of future growth, and Mr. Landis agreed. Ralph Foley moved to request \$16 million in 2007-2008, and \$17 million in 2008-2009, in a letter to the Chief Justice. Monica Foster seconded the motion. Chairman Lefstein called for the vote. The motion passed unanimously.

6) **Revision of Standard J:** The following revisions to Standard J were presented to the Commission:

STANDARD J.

CASELOADS OF COUNSEL. The comprehensive plan shall insure that all counsel appointed under the plan are not assigned caseloads which, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. In determining whether the caseloads are excessive, the following caseload guidelines are recommended.

1. **Caseloads for Counsel Without Adequate Support Staff.** Salaried, contractual, or assigned counsel that do not have support staff consistent with Table 2 should generally not be assigned more than the number of cases in Table 1 in any one category in a 12-month period. The categories in Table 1 should be considered in the disjunctive. Thus, if counsel is assigned cases from more than one category, the percentage of the maximum caseload for each category should be assessed and the combined total should generally not exceed 100%.

02-06-06 PROPOSED (revised)TABLE 1

Type of Case	Full Time	Part Time (50%)
TRIAL		
All Felonies (for use in CR 24 compliance only)	120	60
Non-Capital Murder; Class A, B, C felonies	100	50
Class D felonies only	150	75
Misdemeanors only	300	150
JD-C Felony and above	200	100
JD-D Felony	250	125
JD-Misd	300	150
JS-Juvenile Status	400	200
JC-Juvenile CHINS	100	50
JT-TPR	100	50
Juvenile Probation violation	400	200
JM-Juvenile Miscellaneous	400	200
Other (e.g., probation violation, contempt, extradition)	300	150
APPEAL	20	10

2. **Caseloads for Counsel With Adequate Support Staff.** Salaried, contractual, or assigned counsel with support staff consistent with Table 2 should generally not be assigned more than the number of cases in Table 3 in any one category in a 12-month period. The categories in Table 3 should be considered in the disjunctive. Thus, if counsel is assigned cases from more than one category, the percentage of the maximum caseload for each category should be assessed and the combined total should generally not exceed 100%.

TABLE 2

Paralegal – Felony	One for every four attorneys
Paralegal – Misdemeanor	One for every five attorneys
Paralegal – Juvenile	One for every four attorneys
Paralegal – Mental Health	One for every two attorneys
Investigator – Felony	One for every four attorneys
Investigator – Misdemeanor	One for every six attorneys
Investigator – Juvenile	One for every six attorneys
Law Clerk – Appeal	One for every two attorneys
Secretary – Felony	One for every four attorneys
Secretary – Misdemeanor	One for every six attorneys
Secretary – Juvenile	One for every five attorneys

02-06-06 PROPOSED TABLE 3

Type of Case	Full Time	Part Time (50%)
TRIAL		
All Felonies (for use in CR 24 compliance only)	150	75
Non-Capital Murder; Class A, B, C felonies	120	60
Class D felonies only	200	100
Misdemeanors only	400	200
JD-C Felony and above	250	125
JD-D Felony	300	150
JD-Misd	400	200
JS-Juvenile Status	500	250
JC-Juvenile CHINS	120	60
JT-TPR	120	60
Juvenile Probation violation	500	250
JM- Juvenile Miscellaneous	400	200
Other (e.g., probation violation, contempt, extradition)	400	200
APPEAL	25	12

Chairman Lefstein noted that the proposed changes had been discussed at the meeting in May. Mike Murphy explained the changes, as seen in proposed Tables 1 and 3. He reported that two categories are being eliminated; “Non-Capital Murder and all felonies” and “Class D felonies and misdemeanors.” “All Felonies (for use in CR24 compliance only)” is added. Sen. Timothy Lanane moved to adopt the new “Standard J,” and Rep. Ralph Foley seconded the motion. Motion passed unanimously.

8) **Form Revisions to Request for Reimbursement in Non-capital Cases:** Chairman Lefstein noted that due to prior action of changing how reimbursement requests in non-capital cases are to be reported, the form will be amended to conform to the new changes.

9) **Analysis of Requests for 40% Reimbursement in Non-capital Cases:** Staff Counsel, Mike Murphy reported compliance issues to the Commission. Lake County has appellate attorneys who are severely out of compliance. Chairman Lefstein stated that due to the clarification at the May meeting of the Commission, to consider caseloads on a rolling 12-month period for compliance issues, and that the 12-month period begins with the 1st quarter of 2006, Lake County should not have funding withheld, but be advised that they need to be

aware of the compliance issues going forward for the year 2006. Dave Schneider, Chief Public Defender of Lake County, needs to be advised that the spreadsheet furnishes a way for a supervisor, or chief defender, to monitor the caseloads of their lawyers.

Mike Murphy stated that Marion County issues fall into the same category. It was noted that Marion County's domestic violence defense attorneys have reached almost half a year's quota in the 1st quarter. David Cook said they are aware of that problem, and have asked the county for an additional \$3.9 million to hire 13 full-time D-felony lawyers to address the very issue that "Standard J" raised.

Chairman Lefstein suggested developing a letter to the counties warning of attorney caseloads that are out of compliance. Judge Rosemary Higgins Burke, Miami Circuit Court, stated that Miami County would be on that list of counties out of compliance because of the Commission's adoption of a rolling year for determining compliance. Judge Burke said that in October, Miami County reaches its quota of allowable caseloads, and at that time, hires attorneys on an hourly basis to fill up the rest of the year. In order to participate in the program, she explained that Miami County would have to hire three more attorneys, adding, number one, the county does not have three more attorneys in town to do that, and two, the county will not give us the funding. Bettye Lou Jerrel pointed out that there are also funding problems due to the legislature doing their business on a totally different schedule than the counties.

Chairman Lefstein explained the thinking of the Commission is how many cases can a lawyer really handle over the course of a 12-month period; beginning date does not matter. The Commission's standards have caused counties to reduce caseloads of their lawyers. We have had all kinds of impact in terms of counties coming up with additional funds, but it has never been linked to a calendar year. Judge Burke stated that what Miami County does after its public defenders reach their quota – contracting with other attorneys, is outside the public defender reimbursement reporting. Brian Michaud, Miami Chief Public Defender, said he thinks smaller counties start to focus on Commission standards and caseload numbers, and find they need more attorneys. The prosecutors don't have caseload standards, so the counties think why should defenders have to increase their personnel. It makes it difficult to tell the county that we need more money to stay in the program; it is just easier to contract with an attorney locally to do unlimited caseloads because we don't ask for reimbursement. Chairman Lefstein pointed out that the Commission's caseload standards are applicable to contract attorneys. Judge Burke stated if Miami County does not seek reimbursement for them, they are not held to the Standards. Chairman Lefstein said the conception of this Commission has always been that if there are indigent cases being handled by lawyers, we want to look at the total caseload of the individual attorney. Judge Burke said you'd never know, because I will not be seeking reimbursement for that attorney contracting cases in October until December 31st. Chairman Lefstein inform Judge Burke that if Miami County has an eligible Comprehensive Plan that has been approved by the Commission, then the Commission is seeking that information. He further explained that if there are attorneys handling felonies – reimbursable cases – and misdemeanors – non-reimbursable cases, all the cases must still be reported to determine if the attorney is out of compliance on the number of cases he/she can handle.

Chairman Lefstein then asked what other counties needed to be discussed. Mike Murphy reported there are issues with Vanderburgh, Steuben and Switzerland counties. Chairman Lefstein said he would entertain a motion to approve the 40% reimbursement for all counties, with the exception of Vanderburgh, Steuben and Switzerland. Rep. Ralph Foley so moved. Sen. Timothy Lanane seconded the motion. Motion passed unanimously. The 40% reimbursement requests are as follows:

INDIANA PUBLIC DEFENDER COMMISSION

Analysis of First Quarter Requests for Reimbursements in Non-Capital Cases

7/13/06

County	Penalty Factor	Period Covered	Total Expenditure	Adjustment	Eligible Expenditure	Reimbursement
ADAMS	0.00	1/1/06 - 3-31-06	\$67,088.05	\$13,006.87	\$54,081.18	\$21,632.47
ALLEN	0.00	1/1/06 - 3-31-06	\$677,556.66	\$345.16	\$677,211.50	\$270,884.60
BENTON	0.00	1/1/06 - 3-31-06	\$26,044.14	\$6,319.73	\$19,730.41	\$7,892.16
BLACKFORD	0.00	1/1/06 - 3-31-06	\$15,048.63	\$0.00	\$15,048.63	\$6,019.45
CARROLL	0.00	1/1/06 - 3-31-06	\$24,408.12	\$5,366.32	\$19,041.80	\$7,616.72
CLARK	0.00	1/1/06 - 3-31-06	\$97,895.01	\$3,514.18	\$94,380.83	\$37,752.33
DECATUR	0.00	1/1/06 - 3-31-06	\$34,322.30	\$14,300.96	\$20,021.34	\$8,008.54
FAYETTE	0.00	1/1/06 - 3-31-06	\$86,049.62	\$20,531.14	\$65,518.48	\$26,207.39
FLOYD	0.00	1/1/06 - 3-31-06	\$240,901.74	\$0.00	\$240,901.74	\$96,360.70
FOUNTAIN	0.00	1/1/06 - 3-31-06	\$17,411.06	\$5,110.34	\$12,300.72	\$4,920.29
FULTON	0.00	1/1/06 - 3-31-06	\$66,266.37	\$24,154.79	\$42,111.58	\$16,844.63
GRANT	0.00	1/1/06 - 3-31-06	\$174,528.00	\$5,111.70	\$169,416.30	\$67,766.52
GREENE	0.00	1/1/06 - 3-31-06	\$59,510.45	\$0.00	\$59,510.45	\$23,804.18
HANCOCK	0.00	1/1/06 - 3-31-06	\$66,458.15	\$15,639.21	\$50,818.94	\$20,327.58
HENRY	0.00	1/1/06 - 3-31-06	\$88,097.79	\$327.50	\$87,770.29	\$35,108.12
JASPER	0.00	1/1/06 - 3-31-06	\$26,530.00	\$7,823.71	\$18,706.29	\$7,482.52
JAY	0.00	1/1/06 - 3-31-06	\$57,562.26	\$19,334.75	\$38,227.51	\$15,291.00
JENNINGS	0.00	1/1/06 - 3-31-06	\$38,727.50	\$9,120.24	\$29,607.26	\$11,842.90
KNOX	0.00	1/1/06 - 3-31-06	\$200,631.57	\$47,081.05	\$153,550.52	\$61,420.21
KOSCIUSKO	0.00	1/1/06 - 3-31-06	\$74,931.56	\$0.00	\$74,931.56	\$29,972.62
LAKE	0.00	1/1/06 - 3-31-06	\$794,240.71	\$2,893.41	\$791,347.30	\$316,538.92
LAPOORTE	0.00	1/1/06 - 3-31-06	\$118,571.50	\$22,806.14	\$95,765.36	\$38,306.14
LAGRANGE	0.00	1/1/06 - 3-31-06	\$378,797.94	\$18,972.90	\$359,825.04	\$143,930.02
LARSEN	0.00	1/1/06 - 3-31-06	\$2,796,660.81	\$1,108,894.73	\$1,687,766.08	\$675,106.43
MARTIN	0.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00
MIAMI	0.00	1/1/06 - 3-31-06	\$84,449.60	\$18,890.04	\$65,559.56	\$26,223.82
MONROE	0.00	1/1/06 - 3-31-06	\$271,261.58	\$79,412.29	\$191,849.29	\$76,739.72
MONTGOMERY	0.00	1/1/06 - 3-31-06	\$35,188.98	\$12,619.96	\$22,569.02	\$9,027.61
NEWTON	0.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00
NOBLE	0.00	1/1/06 - 3-31-06	\$61,094.88	\$1,592.68	\$59,502.20	\$23,800.88
OHIO	0.00	1/1/06 - 3-31-06	\$16,382.71	\$5,908.26	\$10,474.45	\$4,189.78
ORANGE	0.00	1/1/06 - 3-31-06	\$57,019.45	\$13,713.54	\$43,305.91	\$17,322.36
PARKE	0.00	1/1/06 - 3-31-06	\$19,373.75	\$0.00	\$19,373.75	\$7,749.50
PERRY	0.00	1/1/06 - 3-31-06	\$12,198.54	\$3,326.87	\$8,871.67	\$3,548.67
PIKE	0.00	1/1/06 - 3-31-06	\$31,495.56	\$10,312.71	\$21,182.85	\$8,473.14
PULASKI	0.00	1/1/06 - 3-31-06	\$23,924.51	\$8,288.57	\$15,635.94	\$6,254.38
RUSH	0.00	1/1/06 - 3-31-06	\$41,719.05	\$15,407.15	\$26,311.90	\$10,524.76
SCOTT	0.00	1/1/06 - 3-31-06	\$33,562.04	\$9,451.69	\$24,110.35	\$9,644.14
SHELBY	0.00	1/1/06 - 3-31-06	\$56,685.37	\$0.00	\$56,685.37	\$22,674.15
SPENCER	0.00	1/1/06 - 3-31-06	\$11,264.03	\$1,355.27	\$9,908.76	\$3,963.50
STEUBEN	0.00	1/1/06 - 3-31-06	\$32,663.50	\$9,168.70	\$23,494.80	\$9,397.92
SULLIVAN	0.00	1/1/06 - 3-31-06	\$14,119.90	\$6,266.17	\$7,853.73	\$3,141.49
SWITZERLAND	0.00	1/1/06 - 3-31-06	\$22,565.50	\$7,451.08	\$15,114.42	\$6,045.77
TIPPECANOE	0.00	1/1/06 - 3-31-06	\$423,876.45	\$87,368.62	\$336,507.83	\$134,603.13
UNION	1.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00
VANDERBURGH	0.00	1/1/06 - 3-31-06	\$396,028.00	\$9,798.63	\$386,229.37	\$154,491.75
VERMILLION	1.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00
VIGO	0.00	1/1/06 - 3-31-06	\$282,815.51	\$64,667.31	\$218,148.20	\$87,259.28
WARREN	0.00	1/1/06 - 3-31-06	\$4,362.50	\$671.15	\$3,691.35	\$1,476.54
WASHINGTON	0.00	1/1/06 - 3-31-06	\$50,916.24	\$16,972.08	\$33,944.16	\$13,577.66
WELLS	1.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00

TITLE	1.00	1/1/06 - 3-31-06	\$0.00	\$0.00	\$0.00	\$0.00
TITLE	0.00	1/1/06 - 3-31-06	\$49,557.60	\$9,498.54	\$40,059.06	\$16,023.62
TOTAL			\$8,260,765.19	\$1,742,790.14	\$6,517,975.05	\$2,607,190.04

notes:

- Adams - 117 total - 38 misdemeanors - claims ADEQUATE support- reports 1Q06 only
- Allen - 982 total - 1 misdemeanor - excludes 3 misdemeanor attorneys assigned 762 cases in 1Q06 - reports 1Q06 only
- Benton - 41 total - 16 misdemeanors reports 1Q06 only
- Blackford - needs spreadsheet for attorneys
- Carroll - 86 total - 31 misdemeanors - reports 1Q06 only
- Clark - 195 total - 7 non-reimbursable JC, JT or Title IV cases - claims ADEQUATE support - reports 1Q06 only
- Decatur - 102 total - 60 misdemeanors - claims ADEQUATE support - reports 1Q06 only
- Fayette - 105 total - 20 misdemeanors and 14 non-reimbursable JC or JT cases - reports 1Q06 only
- Floyd - 150 total - 0 misdemeanors this quarter! OLD v. NEW COMPARISON
- Fountain - 93 total - 41 misdemeanors, 1 Title IV - reports 1Q06 only
- Fulton - 104 total - 32 misdemeanors and 19 non-reimbursable JC or JT cases - reports 1Q06 only
- Grant - 246 total - 14 misdemeanors - county pays \$110/hr for MH cases - reports 1Q06 only
- Greene - 67 total - reports 1Q06 only
- Hancock - 128 total - 42 misdemeanors and 5 non-reimbursable JC or JT cases - reports 1Q06 only
- Henry - 135 total - 1 misdemeanors - reports 1Q06 only
- Jasper - 173 total - 65 misdemeanors and 11 non-reimbursable JC, JT or GAL cases - 1Q06 only
- Jay - 68 total - 23 misdemeanors and 9 non-reimbursable JC and JT cases - claims ADEQUATE support - reports 1Q06 only
- Jennings - 90 total - 26 misdemeanors and 6 non-reimbursable JC and JT cases - reports 1Q06 only
- Knox - 254 total - 83 misdemeanors and 10 non-reimbursable JC or JT cases - reports 1Q06 only
- Kosciusko - 92 total - reports 1Q06 only
- Lake - 551 total - 4 misdemeanors - claims ADEQUATE support
- Laporte - 336 total - 91 misdemeanors and 12 non-reimbursable JC, JT or Title IV cases - reports 1Q06 only
- Madison - 849 total - 9 misdemeanors and 38 non-reimbursable JC, JT, Title IV, and civil cases
- Marion - 8555 total - 4858 misdemeanors - 0 JC or JT reported?
- Martin - 152 total - 34 non-reimbursable JC, JT and civil cases
- Monroe - 433 total - 170 misd and 21 non-reimb JC or JT cases - Claims ADEQUATE support by not reporting Misd attorneys - 1Q06 only
- Montgomery - 229 total - 112 misdemeanor and 8 non-reimbursable JC or JT cases - reports 1Q06 only
- Noble - 96 total - 1 misdemeanor - 2 non-reimbursable cases - claims ADEQUATE support - reports 1Q06 only
- Ohio - 53 total - 27 misdemeanors and 1 non-reimbursable civil case - reports 1Q06 only
- Orange - 49 total - 19 misdemeanors -claims ADEQUATE support
- Parke County - 37 total 0 misdemeanors - reports 1Q06 only
- Perry - 14 total - 6 misdemeanors - reports 1Q06 only
- Pike - 75 total - 37 misdemeanors - reports 1Q06 only
- Pulaski - 75 total - 27 non-reimbursable JC, JT, GAL and civil cases - claims ADEQUATE support - reports 1Q06 only
- Rush - 78 total - 22 misdemeanors and 16 non-reimbursable JC or JT cases - reports 1Q06 only
- Scott - 195 total - 82 misdemeanors and 3 non-reimbursable other cases-
- Shelby -130 total - 0 misdemeanors -claims ADEQUATE support - reports only 1Q06
- Spencer - 48 total - 7 misdemeanors and 2 non-reimbursable JC or JT cases
- Steuben - 292 total - 128 misdemeanors - reports 1Q06 only
- Sullivan - 78 total - 46 misdemeanors and 2 non-reimbursable JC or JT cases - claims ADEQUATE support - reports 1Q06 only
- Switzerland - 293 total - 102 misdemeanors and 35 non-reimbursable JC, JT or civil cases
- Tippecanoe - 810 total - 221 misdemeanors and 39 non-reimbursable Title IV cases reports 1Q06 only
- Vanderburgh - 970 total - 0 misdemeanors - 24 non-reimbursable other cases - claims ADEQUATE support - reports 1Q06 only NO JUVI cases
- Vigo - 595 total - 190 misdemeanors and 23 non-reimbursable JC or JT cases
- Warren - 30 total - 8 misdemeanors - reports 1Q06 only
- Washington - 180 total - 72 misdemeanors- 15 Title IV cases - reports 1Q06 only
- Whitley - 32 total - 4 misdemeanors - 4 JC, JT or civil cases -reports 1Q06 only

Mike Murphy continued the discussion with issues in Vanderburgh County. He stated Vanderburgh County has not been reporting misdemeanor cases or their entire juvenile department. Both areas are out of compliance. Steve Owens, Chief Public Defender of Vanderburgh County, stated the misdemeanor cases were not reported

because they are non-reimbursable. He explained that at the time Vanderburgh started in the plan, the juvenile department had been operating out of compliance, and since that was not going to be in the plan, then we wouldn't be receiving any reimbursement for that, so we didn't report. The current caseloads of the three juvenile attorneys handling mixed caseloads would need seven part-time public defenders to be in compliance.

Steve Owens said he asked to be placed on the agenda to get a feel from the Commission as to what they want us to do. He stated we have been given apparently mixed messages over the course of the five and a half years. Chairman Lefstein said he was not aware that the Commission had ever taken steps to excuse Vanderburgh County from reporting delinquency cases. He noted that Marion County was given leeway when their juvenile department was out of compliance, until the matter required further action.

After more discussion, Mr. Owens requested that the Commission not view Vanderburgh County out of compliance, but allow us time to resolve this issue. He stated it might mean going to three or four judges and refusing to take juvenile matters, or contracting out those cases.

Monica Foster stated that Marion County was helped with their juvenile caseload problem when the Commission wrote letters to the council for funding. Steve Owen said he believed a letter from the Commission to the Vanderburgh County Commissioners would be helpful. He stated further that he does not need a 5-year plan to get into compliance, but that Vanderburgh would need some time. Monica Foster moved that the Commission give Vanderburgh County until January 1, 2007 to get their juvenile cases into compliance. Sen. Timothy Lanane seconded the motion. Motion passed. Bettye Lou Jerrel abstained from voting.

Mike Murphy reported that Steuben and Switzerland Counties had attorneys whose caseloads were seriously out of compliance for the 1st quarter. Chairman Lefstein wanted more communication with those counties, and stated he and staff counsel would talk about it.

Regarding Noble County, Mike Murphy informed the Commission that this county was reporting their attorney caseloads on "adequate staffed" sheets, by considering one office staff person as 33% secretary, 33% paralegal and 33% investigator. Mr. Murphy said he had talked with Noble County concerning this reporting method, and the Chief Public Defender, Jim Abbs told staff counsel that he had an agreement with a person outside the office who would do investigations if needed. Noble County has never reported any investigative expenses and they do not, in fact, have a contract with the investigator. Mike Murphy noted that 12 other counties use the "adequate support staff" forms, but do not have four attorneys to one paralegal, to one investigator, and to one secretary. For instance, Adams County has three part-time contract attorneys to one secretary.

As regards Noble County, Rep. Ralph Foley said they have only two attorneys to one staff person. He said the Commission should make sure there is some investigative staff to support those two attorneys. If someone is fulfilling that function in some reasonable fashion, then we probably would not deprive Noble County of funding, but what we want to know is that person fulfilling an investigatory function.

Rep. Ralph Foley asked the Commission if it would be acceptable to approve Noble County's claim for the 1st quarter with the understanding that we will ask for some further explanation regarding the investigative services. Les Duvall so moved, and Ralph Foley seconded the motion. Motion passed unanimously.

Chairman Lefstein then discusses the other counties excluded in the vote to reimburse the non-capital expenses. Monica Foster moved to approve Steuben and Switzerland with the idea that we would be sending them a letter about the caseloads issues. Bettye Lou Jerrel seconded the motion. Motion passes unanimously.

10) Next **Meeting Date**: The Commission set the 2nd quarter meeting for Thursday, October 5, 2006 at 2:00 p.m. and the 3rd quarter meeting for Thursday, December 14, 2006 at 2:00 p.m.

11) Criminal **Rule 24**: A letter from Pat Biggs, President of the Indiana Chief Defender Association, proposing changes to Criminal Rule 24 was discussed by the Commission. The letter suggested changing CR24 from having the trial court judge appoint a qualified defense attorney in a capital case to allowing the public defender, in counties that have a public defender office or agency, to appoint two attorneys for capital cases. Monica Foster stated from a historical perspective the Commission already suggested such a change to CR24, and the Court rejected it. However, she said she believes it is time to go back to the Court with several possible changes. Ms. Foster would like limits on the number of capital cases one attorney can handle. Chairman Lefstein stated he would form a subcommittee of the Commission to consider changes to CR24.

12) Proposal **for Counting Probation Violations**: Mike Murphy, staff counsel, explained this proposal says that if the case number has been listed as a case handled by a public defender, it should not be listed again when a public defender accepts the case for probation revocation purposes. The Proposal for Counting Probation Violations is as follows:

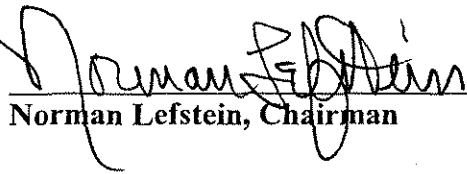
Any probation violation charge, under a Cause Number that was previously defended by a court-appointed public defender, shall not be counted as a new case. Any probation violation, under a Cause Number that was previously defended by private counsel, and a public defender is appointed by the court to defend the probation violation charge, said case shall be counted as a new case.

Reportable probation violation cases shall be listed on the New Case Assignment Worksheet in the column titled "Adult Probation Violation, and Mental Health," with a maximum caseload of 150.

Monica Foster moved to adopt the proposal on counting probation violations, and Bettye Lou Jerrel seconded the motion. Motion passed unanimously.

13) Requests **for Reconsideration of Denied Reimbursement in Non-capital Requests**: Mike Murphy, staff counsel, reported on the response to denied requests for Adams, Jasper and Pike counties. He noted that Adams County stated they did send the reimbursement request, but the Commission staff never received it; Jasper County claimed it did not know the forms had changed; and, Pike County has a completely new public defender board. Judge Donohue moved to approve all three claims. Bettye Lou Jerrel seconded the motion, with the caveat that staff will visit all three counties. Motion passed unanimously.

In conclusion of the meeting, the Commission encourages the staff, if possible, to notify Chief Defenders with recommendations, so they have the option to respond at meetings. It was also the consensus of the Commission members that they do not want copies of each county's spreadsheets in their packets, only the summary sheet. Meeting adjourned at 4:50 p.m.


Norman Lefstein, Chairman

10/6/06
Date

INDIANA PUBLIC DEFENDER COMMISSION
AGENDA: October 5, 2006

- 1) Minutes from the July 13, 2006 meeting of the Commission.
- 2) Status Report: Task Force to Study Indigent Defense in Indiana
 Criminal Rule 24 Study
- 3) Requests for 50% Reimbursement in Capital Cases
- 4) New Comprehensive Plan Review
 - Howard County – Chief Public Defender
- 5) Requests for 40% Reimbursement in Non-capital Case
 - Compliance issues
 - Stephen Owens, Chief Public Defender, Vanderburgh County
 - Pat Biggs, Chief Public Defender, Floyd County
- 6) Requests for Reconsideration of 1st Quarter Reimbursement in Noncapital Requests
 - Hancock County
 - Marion County
 - Ohio County
 - Switzerland County
- 7) Financial Status of Public Defense Fund
- 8) Comparison of 1st Quarter to 2nd Quarter Noncapital Requests for Reimbursement
- 9) Form Revisions to Request for Reimbursement in Non-capital Cases
 - Provision of Data to Support use of “Adequate Support” classification
- 10) Requiring Statutory, Standard and Comprehensive Plan compliance
- 11) \$60 Hourly Rate for Assigned Counsel
- 12) Staff Report
- 13) Full-time Public Defenders with Private Practices
- 14) Next Meeting: December 14, 2006 2:00 p.m.

Indiana Public Defender Commission Meeting Minutes

October 5, 2006

Chairman Norman Lefstein called the meeting to order at 2:06 p.m. Commission members attending were: Susan Carpenter, Les Duvall, Bettye Lou Jerrel, and Sen. Timothy Lanane. Also attending was Larry Landis of the Indiana Public Defender Council, Michael Murphy and Deborah Neal, Staff Counsel for the Commission, and Amber Holland, recording secretary. Members not attending were Monica Foster, Ralph Foley, Judge Daniel Donahue, Sen. Joseph Zakas and Rep. Bob Kuzman.

Also in attendance: Bob Rittman, Grant County Managing Public Defender; Joseph Certain, Grant County Public Defender Board Member; Doug Long, Public Defender Madison County; Tim States, Madison County Court Administrator; David Cook, Marion County Chief Public Defender, and Debra Green, Marion County Public Defender Agency.

1. **Meeting Minutes:** Chairman Lefstein presented minutes from the July 13, 2006 Public Defender Commission meeting for approval. Bettye Lou Jerrel moved for approval and Les Duvall seconded the motion. Votes by attending members unanimously in favor of approval. Ralph Foley and Judge Donohue voted for approval by telephone.

2. **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein reports he is hopeful that the Commission will have a response soon from Chief Justice Shepard as to whether or not he wishes to proceed in organizing a task force to study indigent defense in Indiana, or in the alternative, defers to the Commission to proceed on its own.

3. **Claims for 50% Reimbursement in Capital Cases:** The Commission addressed claims for 50% reimbursement in capital cases as follows:

Reimbursement Requests in Capital Cases			
October 5, 2006			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$3,618.56
	Melcher	*	\$1,452.69
Lake	Aki-Khuam (Williams)		\$19,524.35
	Britt		\$26,303.30
	Jeter		\$101,973.34
Madison	Baer		\$4,104.19
Marion	Allen		\$4,971.99
	Allen 2		\$12,466.58
	Allen 3		\$24,618.75
	Voss		\$6,592.03
Morgan	Pruitt		\$4,702.95
Parke	Cottrell		\$3,051.40

Spencer	Ward		\$15,781.03
Tippecanoe	Gauvin		\$15,258.60
TOTAL			\$244,419.76
* The 7/13/06 request on Melcher contained an error in salary for lead counsel			
Of \$2,905.38 [50%=\$1,452.69] Request for reconsideration attached.			

Deborah Neal explained the mathematical error in the Melcher claim. Susan Carpenter moved to approve the capital claims, and Sen. Timothy Lanane seconded the motion. All Commission members present voted to approve; Ralph Foley voted for approval, by telephone, and Judge Donohue abstained from voting on this motion, by telephone. Motion passed.

Ms. Neal also reported that the list of attorneys qualified as lead, co-counsel, and appellate counsel in capital cases has been updated and will be published on the Website.

The Commission considered for approval a death penalty seminar sponsored by the Indiana Public Defender Council scheduled for November 8th through 11th, 2006, with 24 CLE credits available to participants. Susan Carpenter moved to approve this seminar for purposes of Criminal Rule 24's mandatory 12 continuing legal education credits required of capital defense attorneys; Sen. Timothy Lanane seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed

Claims for 40% Reimbursement in Non-Capital Cases: Chairman Lefstein invited questions or comments from guest present at the meeting.

Marion County: Dave Cook, Marion County Public Defender Chief, asked the amount of the 1st Quarter adjustment that would be granted to Marion County, and how was prorating of the 2nd Quarter requests calculated. First, Mike Murphy, staff counsel, informed Marion County that they would be receiving the amount requested [\$209,904.57] on the 1st quarter adjustment. Second, Mr. Murphy explained the percentage of prorating is based upon the ratio of available funds to the reimbursement requests. Dave Cook then asked what the adjustment percentage reflected on the 2nd quarter list of Request for Reimbursements represented. Mike Murphy explained that was the percentage that each county self-adjusted their request for reimbursement by excluding non-reimbursable expenses. The information should help the Commission decide what is "fair and reasonable" in determining if a county's self-adjustment of their request is appropriate.

Non-Capital Claims: Chairman Lefstein noted in review of the system that the Commission voted to implement at the last meeting, all of the participating counties, with the exception of six, are recommended for approval of their request for reimbursement on non-capital claims, at the percentage of available funds. The requests for reimbursement have been self-adjusted by the counties, with each presenting an explanation of how they arrived at their total non-reimbursable amounts. Mike Murphy explained that the percentage of self-adjustment by the counties ran from a high of 52% for non-reimbursable expenses, to figures as low as 3.3% and 4.4%. Mr. Murphy asked for guidance from the Commission as to what is going to be the threshold of what is a fair and reasonable self-adjustment by the counties, noting that if a county is not reporting all of their cases, or not adjusting in an appropriate fashion, it is penalizing other counties.

Grant County: The first example presented by Mike Murphy was Grant County. Mr. Murphy noted that Grant County reported handling 280 indigent defense cases appointed in the 2nd quarter. The statistics kept

State Court Administration indicates there were 315 appointments made during the quarter in question. Additionally, Grant County claims expenses of \$161,572 and non-reimbursable of \$7,148. This is an adjustment of 4.4%. Bob Rittman from Grant County was invited to explain why the number of public defense cases he reported to the Commission differs with the reports submitted by Grant County courts to State Court Administration. He stated that often when one defendant has multiple cases, but is granted one public defender, it is reported as one case. He said the same thing happens on probation violation cases. Mr. Rittman said he gets his public defense case figures from the individual court reporters, not from the attorneys handling the cases, and that often the Court does not find defendants to be indigent on misdemeanor cases. Bettye Lou Jerrel asked if defendants were being properly advised on their right to counsel, and Mr. Rittman assured the Commission that all defendants were given the same information regarding constitutional rights.

Mr. Rittman further explained case assignment in Grant County is handled by contracting with the part-time attorneys for specific number of new case assignments; upon reaching their contract limit of cases, the contract attorneys may be appointed as counsel on new cases at an hourly rate of \$80. Also, appeals and murder cases are not considered contract cases, and are paid to assigned counsel at a rate of \$80. In figuring the percentage of non-reimbursable expenses, Rittman found that the misdemeanor cases were 13.57% of all the indigent defense cases; then, in figuring that misdemeanor cases would take half the time of a felony case, he reduced that 13.57% by half, and figured Grant County's non-reimbursable expenses at 6.79%. Mr. Rittman stated this was Grant County's first attempt to self-adjust its non-reimbursable cases, and if the Commission felt that figure was not fair and reasonable, then they were open to discussion.

Chairman Lefstein questioned Bob Rittman about Grant County's practice of contracting for indigent defense services and then offering appointment of cases on an assigned basis, at a rate of \$80 per hour, to defense attorneys who have reached their contract limit and wish to take more cases. Lefstein asked if any other counties have this structure for performing indigent defense services. Larry Landis stated yes, there were other counties doing what Grant County does, but maybe not to that extent.

After further discussion, it was determined that Grant County's non-reimbursable expenses were valued at 9.2% of their gross expenses, instead of the 6.79% reported. Susan Carpenter moved to approve Grant County at the revised 9.2% for the non-reimbursable expenditures. Sen. Timothy Lanane seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed.

Madison County: Tim States, Court Administrator in Madison County, addressed the Commission concerning changes to the Comprehensive Plan that Madison County is considering. The county is looking at four or five different systems across the state, and may want to implement a full-time defender system with additional contract counsel. Mr. States reports that Madison County would like to hire all full-time attorneys without private practices, but the county will not pay a salary that would encourage attorneys to take these positions. Chairman Lefstein told Mr. States that the Commission appreciates his attendance at the meeting; however, he does not believe this is the forum to address the specific kinds of questions related to Madison County. Mr. Lefstein said that staff members and Larry Landis would be glad to discuss these issues with representatives of Madison County.

Chairman Lefstein then directed the meeting back to the issue of non-capital claims. Mike Murphy stated there are five other counties (in addition to Grant), which are not being recommended for approval at this time. However, he does recommend deferral because the information submitted by these counties was not complete,

and the Commission needs to offer guidance as to a fair and reasonable threshold percentage of self-adjusting that counties should be making. Mr. Murphy stated he has had discussions with Floyd, Clark and Allen counties, and they are aware of the adjustments that need to be made. Their adjusted requests will be submitted at the 3rd quarter meeting.

Miami and Steuben counties have had difficulties reporting any non-reimbursable cases. Mr. Murphy will continue to work with these counties in order to submit an acceptable 2nd quarter request for reimbursement, at the 3rd quarter meeting in December.

Susan Carpenter moved to defer Allen, Clark, Floyd, Miami and Steuben's request for reimbursement until the next quarterly meeting. Sen. Timothy Lanane seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley voted for approval of this motion by telephone. Judge Donohue voted for approval of this motion with the exception that he abstains from voting on Clark County. Motion passed.

Susan Carpenter then moved to approve the balance of the counties' 2nd quarter requests, including Grant County at the amended rate of 9.2%, and prorating appropriately in light of the change in Grant County. Bettye Lou Jerrel seconded the motion. All members present at the meeting voted in favor of the motion; Ralph Foley and Judge Donohue voted for approval of this motion by telephone, with Judge Donohue abstaining on the vote for Clark County. Motion passed.

Non-capital claims for the 2nd quarter of 2006 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter (April 1, 2006-June 30, 2006) Requests for Reimbursements in Non-Capital Cases

Revised 10/9/2006

County	Total Expenditures	Adjustment	Eligible Expenditures	40% Reimbursement	25.3% Prorated Reimbursement
Adams	\$54,090.96	\$11,387.57	\$42,703.39	\$17,081.36	\$10,803.96
Allen	\$623,499.54	\$21,179.10	\$602,320.44	\$0.00	\$0.00
Benton	\$11,394.55	\$1,035.87	\$10,358.68	\$4,143.47	\$2,620.75
Blackford	\$38,156.33	\$6,338.00	\$31,818.33	\$12,727.33	\$8,050.04
Carroll	\$40,729.48	\$16,643.87	\$24,085.61	\$9,634.24	\$6,093.66
Clark	\$109,179.40	\$8,156.23	\$101,023.17	\$0.00	\$0.00
Decatur	\$30,949.73	\$9,392.70	\$21,557.03	\$8,622.81	\$5,453.93
Fayette	\$78,582.30	\$16,111.02	\$62,471.28	\$24,988.51	\$15,805.23
Floyd	\$88,222.48		\$0.00	\$0.00	\$0.00
Fountain	\$19,552.47	\$5,831.44	\$13,721.03	\$5,488.41	\$3,471.42
Fulton	\$49,609.17	\$21,797.97	\$27,811.20	\$11,124.48	\$7,036.23
Grant	\$161,572.76	\$14,864.69	\$146,708.07	\$58,683.23	\$37,117.14
Greene	\$62,380.68	\$10,661.52	\$51,719.16	\$20,687.66	\$13,084.95
Hancock	\$100,843.99	\$27,955.73	\$72,888.26	\$29,155.30	\$18,440.73
Henry	\$99,247.34	\$18,505.98	\$80,741.36	\$32,296.54	\$20,427.56
Jasper	\$40,820.00	\$14,332.36	\$26,487.64	\$10,595.06	\$6,701.37
Jay	\$54,012.03	\$10,153.20	\$43,858.83	\$17,543.53	\$11,096.28
Madison	\$62,106.96	\$17,744.85	\$44,362.11	\$17,744.84	\$11,223.61
Monroe	\$146,350.70	\$43,870.11	\$102,480.59	\$40,992.24	\$25,927.59

Posciusko	\$114,074.24	\$39,702.31	\$74,371.93	\$29,748.77	\$18,816.10
Lake	\$934,365.65	\$0.00	\$934,365.65	\$373,746.26	\$236,394.51
LaPorte	\$122,478.85	\$16,2120.44	\$106,268.41	\$42,507.36	\$26,885.91
Madison	\$407,456.92	\$43,369.26	\$364,087.66	\$145,635.06	\$92,114.18
Marion	\$3,326,346.57	\$702,113.18	\$2,624,233.39	\$1,049,693.36	\$663,931.05
Martin	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Miami	\$74,802.00	\$0.00	\$74,802.00	\$0.00	\$0.00
Monroe	\$292,346.96	\$105,667.37	\$186,679.59	\$74,671.84	\$47,229.94
Montgomery	\$48,375.35	\$15,427.34	\$32,948.01	\$13,179.20	\$8,335.85
Newton	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Noble	\$81,665.64	\$14,418.71	\$67,246.93	\$26,898.77	\$17,013.47
Ohio	\$14,397.00	\$2,721.00	\$11,676.00	\$4,670.40	\$2,954.03
Orange	\$49,953.93	\$14,934.68	\$35,019.25	\$14,007.70	\$8,859.87
Parke	\$24,667.71	\$7,928.91	\$16,738.80	\$6,695.52	\$4,234.92
Perry	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Pike	\$62,958.00	\$30,159.64	\$32,798.36	\$13,119.34	\$8,297.99
Pulaski	\$63,401.07	\$26,481.53	\$36,919.54	\$14,767.82	\$9,340.64
Rush	\$43,595.45	\$14,531.82	\$29,063.63	\$11,625.45	\$7,353.10
Scott	\$48,600.56	\$14,940.81	\$33,659.75	\$13,463.90	\$8,515.92
Shelby	\$68,336.70	\$7,212.00	\$61,124.70	\$24,449.88	\$15,464.55
Spencer	\$14,892.85	\$2,769.00	\$12,123.85	\$4,849.54	\$3,067.33
Steuben	\$53,526.44	\$0.00	\$53,526.44	\$0.00	\$0.00
Sullivan	\$26,758.71	\$13,913.60	\$12,845.11	\$5,138.04	\$3,249.81
Switzerland	\$48,960.82	\$7,142.00	\$41,818.82	\$16,727.53	\$10,580.16
Wabash	\$368,847.57	\$84,663.48	\$284,184.09	\$113,673.64	\$71,898.57
Union	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Vanderburgh	\$423,359.52	\$75,840.82	\$347,518.70	\$139,007.48	\$87,922.23
Vermillion	\$23,976.52	\$6,083.59	\$17,892.93	\$7,157.17	\$4,526.91
Vigo	\$321,107.00	\$91,343.52	\$229,763.48	\$91,905.39	\$58,130.16
Warren	\$8,141.56	\$1,382.73	\$6,758.83	\$2,703.53	\$1,709.98
Washington	\$71,867.86	\$27,419.46	\$44,448.40	\$17,779.36	\$11,245.45
Wells	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
White	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Whitley	\$39,155.42	\$16,611.39	\$22,544.03	\$9,017.61	\$5,703.64
TOTAL	\$9,049,717.74	\$1,658,950.80	\$7,390,766.94	\$2,588,348.93	\$1,637,130.72

5. **Request for Reconsideration of 1st Quarter Reimbursement in Non-Capital Requests:** In accordance with the action taken at the 2nd Quarter meeting, allowing counties to resubmit their 1st Quarter Request for Reconsideration with figures attained by using the county's own method of determining the amount of non-reimbursable expenditures (as opposed to the formula used by the Commission staff). Four counties submitted amended requests in the following adjusted amounts: Hancock County - \$10,944.05; Marion County - \$209,904.57; Ohio County - \$2,363.30; and Switzerland County - \$2,135.83. The total 1st quarter amended requests is \$225,347.75. Mike Murphy reported that each of these counties had been refigured, reduced for misdemeanor cases, and should be paid at 40%. Bettye Lou Jerrel made the motion to approve the reconsideration at the full 40% rate. Susan Carpenter seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion second.

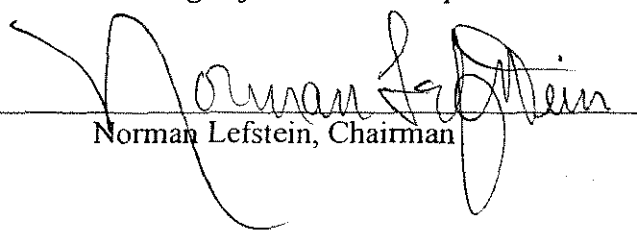
Howard County Comprehensive Plan: Mike Murphy, staff counsel, reported he had made several trips to Howard County to assist them in forming their Comprehensive Plan; Howard County understands completely the system of a public defender office with part-time salaried public defenders. He also noted that the county intends to join the program with all their attorneys in full compliance with Commission standards. Susan Carpenter made a motion to approve Howard County's Comprehensive Plan, and Les Duvall seconded the motion. All Commission members present voted to approve; Ralph Foley and Judge Donohue voted for approval of this motion by telephone. Motion passed

7. **Comparison of 1st Quarter to 2nd Quarter Non-capital Requests for Reimbursement:** Chairman Lefstein stated the comparison figures show what is happening with the new system of having the counties declare the amount of their non-reimbursable expenditures. He noted that the total of the counties' reported expenses were actually much higher than the 1st quarter. Mike Murphy stated that he had visited 17 counties during the quarter, explaining the new system, and stressing that all expenses must be reported, which would cause an increase in total expenses reported. It was noted that several counties adjusted their request by a much higher percentage of non-reimbursable expenses than the formula. Mike Murphy stated he was monitoring the percentage of adjustment, and if it is below 10%, will contact the county to see if everything is being reported.

8. **Form Revisions to Request for Reimbursement in Non-capital Cases – Provision of Data to Support Use of "Adequate Support" Classifications.** Mike Murphy discussed the counties that use the caseload worksheets having standards for part-time attorneys with "adequate support." These worksheets allow for higher maximum caseloads. The problem is the reports from the counties using these sheets does not indicate that sufficient staff is employed by the agency to support the "adequate" designation. Mr. Murphy said instead of revising the form, the staff would contact the counties using these "adequate support" worksheets, and tell them if they intend to continue to use these worksheets to please give us the documentation to support it.

9. **Requiring Statutory, Standard and Comprehensive Plan Compliance.** There was discussion among Commission members and staff regarding partial reporting of indigent expenses by counties in the program, and the issue of civil cases that receive an attorney at public expense. On the question of Comprehensive Plans including all courts in a county, the Commission members present agreed that all courts are included in each Plan. On the question of should a county's Request for Reimbursement include all expenditures in the county spent on behalf of indigent defense, the Commission members present agreed that all expenditures should be part of the Request. As to whether a county auditor is required to certify the total amount spend on indigent defense in the county to the Commission; the members present suggested that a guideline should be developed to address this matter. Several members of the Commission had left before this last agenda item was discussed; therefore, no final resolutions were passed.

Meeting adjourned at 5:16 p.m.


Norman Lefstein, Chairman


Date

INDIANA PUBLIC DEFENDER COMMISSION

December 14, 2006

AGENDA HIGHLIGHTS

- 1) Minutes from October 5, 2006 meeting of the Commission
Accepted, unanimous vote
- 2) Recommendation Re: Task Force to Study Indigent Defense in Indiana
Chief Justice Shepard will appoint a task force to study Indigent defense in Indiana. Commission will suggest Group membership.
- 3) Financial Status of Public Defense Fund
Upon review of figures, Commission agreed to 40% reimbursement for non-capital requests.
- 4) Requests for 50% Reimbursement in Capital Cases
Commission denied one request not timely filed. All other requests granted.
- 5) Reconsideration of 2nd Quarter Reimbursement in Non-Capital Cases
Commission reconsidered deferred 2nd quarter requests for six counties. After review, all requests granted.
- 6) Requests for 40% Reimbursement in Non-Capital Cases
After review, all request for 40% reimbursement In non-capital cases granted.
- 7) Contract Attorneys Who Become Assigned Counsel
Tabled
- 8) \$60 Hourly Rate for Assigned Counsel
Tabled
- 9) Meeting Dates for 2007
*April 11, 2007 2:30 pm Wednesday, 4th Quarter 2006 Meeting
June 27, 2007 2:00 pm Wednesday, 1st Quarter 2007 Meeting*

Indiana Public Defender Commission Meeting Minutes

December 14, 2006

Chairman Norman Lefstein called the meeting to order at 2:05 p.m. Commission members attending were: Susan Carpenter, Les Duvall, Bettye Lou Jerrel, Rep. Ralph Foley, Sen. Timothy Lanane and Hon. Daniel Donahue (by telephone conferencing). Also attending was Larry Landis of the Indiana Public Defender Council, and Deborah Neal, Assistant Staff Counsel for the Commission. Members not attending were Monica Foster, Sen. Joseph Zakas and Rep. Bob Kuzman.

Other interested parties in attendance were David Happe, Madison County Public Defender Administrator; David Cook, Marion County Chief Public Defender; Steve Owens, Vanderburgh County Chief Public Defender; Gretchen Etling, Vigo County Chief Public Defender; and Leann Taflinger of the Vigo County Public Defender office.

Chairman Lefstein opened the meeting by having the interested parties introduce themselves. He then reported that Mike Murphy, staff counsel, is taking a different position within the Division of State Court Administration, and that after the first of the year the Commission will likely be in a position to seek a full-time replacement for Mr. Murphy's position.

1. **Meeting Minutes:** Chairman Lefstein presented minutes from the October 5, 2006 Public Defender Commission meeting for approval. Ralph Foley moved for approval and Susan Carpenter seconded the motion. The vote by attending members was unanimously in favor of approval. Judge Donohue voted for approval by telephone. Commission minutes of October 5, 2006 were accepted as written.
2. **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein said that Chief Justice Shepard has agreed to organize a task force to study indigent defense in Indiana. The Chief justice has asked the Public Defender Commission to propose a list of persons for possible appointment to this task force. Further discussion of this matter was tabled until later in the meeting.
3. **Financial Status of Public Defense Fund:** After the first of the year, the Public Defense Fund will have received two disbursements from the State, for a total of \$5,000,000. At that time, the claims approved at this meeting will be paid. Today's claims include capital claims, 2nd quarter non-capital deferred claims, and 3rd quarter claims, totaling \$3,288,885.50. It is projected that by the meeting in April 2007, the Fund will have a balance of approximately \$1.7 million.
4. **Claims for 50% Reimbursement in Capital Cases:** The Commission addressed claims for 50% reimbursement in capital cases as follows:

INDIANA PUBLIC DEFENDER COMMISSION

Reimbursement Requests in Capital Cases		
December 14, 2006		
COUNTY	DEFENDANT	TOTAL
Clark	Melcher	\$5,415.58
Lake	Aki-Khuam (Williams)	\$26,930.23
	Britt	\$26,424.65
Marion	Allen	\$8,886.42
	Allen 2	\$17,560.24
	Holland	*
	Turner	\$11,957.42
	Turner 2	\$9,054.80
	Voss	\$2,500.23
Pike	Harbison	\$468.00
	Harbison 2	\$17.50
	Harbison 3	\$2,577.60
Spencer	Ward	\$8,127.40
Tippecanoe	Gauvin	\$11,628.91
Vigo	Walker	\$2,745.65
TOTAL		\$134,294.63
*Marion County submitted claim in <i>St. v. Holland</i> for \$503.29 - 12 days past the 120 day deadline.		

Deborah Neal explained the Marion County claim in *State v. Holland* was not timely filed. Marion County was given notice and opportunity to respond to the Commission regarding the reasons for the late filing. Marion County responded that the claim had been mailed timely in September. After determining the exact date of mailing by the postmark on the envelope, Marion County conceded the claim was filed late. Bettye Lou Jerrel moved that the Commission not pay the Marion County claim in *State v. Holland*. Senator Lanane seconded the motion. The motion passed unanimously.

Chairman Lefstein inquired as to transcript costs in capital cases and how the staff insures that this is a defense expense. Deborah Neal explained that the presiding court's chronological case summary of all events and filings in the death penalty case is submitted with the county's request for reimbursement. It can be perused for evidence of who ordered the transcript. If it cannot be ascertained through the chronological case summary that the defense requested the transcript, commission staff contacts the attorney handling the case for confirmation.

Ralph Foley moved to approve all other capital request for reimbursement (except *Holland*), and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

5. **Reconsideration of 2nd Quarter Reimbursement in Non-Capital Claims:** The Commission discussed the five counties whose reimbursement requests for the 2nd quarter were deferred until this meeting. A list of those counties and claims is below:

INDIANA PUBLIC DEFENDER COMMISSION						
Second Quarter (April 1, 2006 – June 20, 2006) Requests for Reimbursement in Non-Capital Cases						
Deferred to 12/14/06						
County	Period Covered	Total Expenditures	Adjustment	Eligible Expenditures	25.3% Prorated	Adjustment %
Allen	4/01/06-6/30/06	\$623,499.54	\$21,179.10	\$602,320.44	\$152,387.07	3%
Clark	4/01/06-6/30/06	\$109,179.40	\$ 8,156.23	\$101,023.17	\$ 25,558.86	7%
Floyd	4/01/06-6/30/06	\$105,479.98	\$ 17,970.89	\$ 87,509.09	\$ 22,139.80	17%
Miami	4/01/06-6/30/06	\$ 74,808.62	\$ 5,236.60	\$ 69,572.02	\$ 17,601.72	7%
Steuben	4/01/06-6/30/06	\$ 61,938.55	\$ 16,834.23	\$ 45,104.32	\$ 11,411.39	27%
Total		\$974,906.09	\$ 69,377.05	\$905,529.04	\$229,098.84	

Deborah Neal explained each deferred claim. Allen County's claims were deferred in October 2006 because the 3% self-adjusted amount submitted did not seem fair and reasonable. Ms. Neal reported that she contacted Allen County for an explanation of all their non-reimbursable expenses. The Allen County Public Defender office has two attorneys who handle only misdemeanor cases. The misdemeanor attorneys' salaries for the 2nd quarter were excluded as non-reimbursable expenses. Additionally, a portion of the salaries and benefits of Allen County Public Defender Agency's supervisors, staff and investigators, based on the number of hours worked related to misdemeanors in the quarter, were excluded as non-reimbursable expenses. Ms. Neal reported that she found Allen County's figure for non-reimbursable expenses to be credible, and believes the 2nd quarter claims should be paid. Chairman Lefstein reported his conversation with Charles Leonard, Chief Public Defender of Allen County, wherein Mr. Leonard explained that Chins and TPR cases are not paid from the public defense fund; therefore, expenses for these cases were not reported to the Commission. This is one of the reasons why Allen County's non-reimbursable expense percentage is low.

Ms. Neal reported she spoke with Jeff Stonebraker, Clark County Chief Public Defender, about their 2nd quarter request that was deferred. Mr. Stonebraker explained that the misdemeanor attorney is not paid out of the agency's public defense budget, but that the check for the attorney passes through his office. Stonebraker said he would include the income for this attorney in the agency's expenses, and then exclude it as a non-reimbursable. All other public defense attorneys in Clark County reported only three non-reimbursable cases in the 2nd quarter. Stonebraker created a formula based on the FTE percentages of attorneys handling these non-reimbursable cases. This gave him a weighted measure of the time spent on the cases. In determining the amount of supervisor, administrative and investigative staff time attributable to the non-reimbursable cases, a formula based on FTE percentage of all attorneys, minus the FTE percentage for non-reimbursable cases, resulted in a weighted measure of staff time and office overhead expenses spent on non-reimbursable cases. Ms. Neal reported Clark County's 2nd quarter report appears to be fair and reasonable and she recommends that the request be paid.

Floyd County submitted a new report for the 2nd quarter. The first report had no amount for non-reimbursable expenses. After discussions, Floyd County's amended 2nd quarter report was revised with a 17% adjustment for non-reimbursable expenses. It was recommended that the 2nd quarter amended request for reimbursement from Floyd County be paid.

Miami County's 2nd quarter adjustment was improperly reported at the October 5, 2006 meeting. The list of requests for reimbursement showed Miami County as having zero non-reimbursable expenses. However, upon review of their 2nd quarter submission, Ms. Neal discovered that they actually had \$5,000 in non-reimbursable expenses for a 7% adjustment. Ms. Neal concluded that the adjustment was fair and reasonable and recommended the payment of the 2nd quarter request for reimbursement to Miami County. Ms. Neal was also informed by Brian Michaud, Miami County Chief Public Defender, that the county does not believe it is cost effective to stay in the program and they are, therefore, not submitting a 3rd quarter report. Chairman Lefstein stated it would be helpful to visit the county and see if we can come to some better understanding of the problem. Judge Donohue stated he thought Judge Burke of Miami County would appreciate that effort.

Steuben County did not submit a request for reimbursement for the 2nd quarter. Mike Murphy, therefore, visited Steuben County to help them with their reporting. Steuben County then submitted a 2nd quarter request for reimbursement, with 27% non-reimbursable expenses. Ms. Neal recommended Steuben County be reimbursed for the 2nd quarter expenses.

Susan Carpenter moved that the Commission pay the 2nd quarter requests for reimbursement for the five counties, and Senator Lanane seconded the motion. The motion was passed. Judge Donohue abstained from voting on Clark County.

6. **Claims for 40% Reimbursement in Non-Capital Cases:** Before claims were reviewed, Chairman Lefstein noted that several counties were out of compliance with Commission caseload standards. He stated there is real concern regarding non-compliance, because for the first time we are getting data on which we can rely to determine caseloads. The Commission needs to discuss giving notice to the counties whose attorneys are out of compliance. Chairman Lefstein read the portion of Indiana statute that addresses this matter, "unless the county public defender board corrects the deficiencies to comply with the standards not more than 90 days after the date of the notice, the county's eligibility for reimbursement from the Public Defense Fund terminates at the close of that fiscal year." He noted that out-of-compliance counties could not be terminated from the Fund, until given notice and time to respond.

Madison County

Chairman Lefstein next decided to hear from interested parties attending this meeting. David Happe of Madison County was invited to speak first. He stated that he had just been appointed to the position of administrator of the public defender program in Madison County, and was not sure which issues were on the table about Madison County. Deborah Neal noted that Mike Murphy had written to Madison County because they were close to being substantially out of compliance. Chairman Lefstein recommended that Madison County work with Debby Neal and present a plan for getting into compliance. Susan Carpenter asked if the letter sent to Madison County by Mike Murphy constituted formal notice of possible termination of reimbursements. Sen. Lanane stated this is a very serious step and that any notice needs to be clear and unequivocal about the ramifications of non-compliance with the standards. Chairman Lefstein noted that the Commission has threatened counties, but never tried a formal notice in accordance with the Indiana statute. Chairman Lefstein told Mr. Happe there was nothing more the Commission was planning to do today regarding Madison County's compliance issues, and thanked him for coming.

Vanderburgh County

Steve Owens, Vanderburgh Chief Public Defender, was invited to discuss Vanderburgh County's recent letter to the Commission concerning compliance. Mr. Owens outlined a plan that would involve hiring more attorneys and staff to be in full compliance with Commission standards by 2009. Steve Owen said that until a year ago, they did not report juvenile delinquency caseload numbers, mistakenly believing they were not required to do so. He said the county knows it needs to bring juvenile caseloads into compliance; however, the 2007 budget is already set. There were three different proposals offered to the Vanderburgh county councilmen to provide funds for more attorneys to handle juvenile cases. It was determined that due to the large number of indigent appointments in juvenile court, it would be May 2009 before this area was fully complying. Chairman Lefstein stated there is concern regarding the length of time suggested by Vanderburgh County to come into compliance with their juvenile cases.

Mr. Owen asked if the Commission was concerned with caseload numbers for non-reimbursable cases. Chairman Lefstein responded that the Commission had never decided to terminate county reimbursements when those numbers were out of compliance with standards. However, the Commission does review caseloads where attorneys have a mixed caseload.

Judge Donohue asked if Vanderburgh County had started implementing its hiring program. Mr. Owens stated that if the Commission approves Vanderburgh's plan, and the county agrees to the funding, the program would start April 1, 2007.

Betty Lou Jerrel asked if the Commission was going to discuss public defenders' private caseloads. Chairman Lefstein stated that we have no way to retrieve that kind of information. The lawyers themselves have an ethical duty not to accept more cases than what they can handle. Susan Carpenter pointed out the problem in Grant County where contract attorneys, upon reaching their contract limit of cases, become assigned counsel taking more indigent defense cases. Lefstein noted the difficulty is in monitoring public and private caseloads. Senator Lanane asked if a statewide program with full-time defenders would be a better system. Chairman Lefstein noted that states have statewide programs, and they are usually more consistent in their overall approach than Indiana.

Chairman Lefstein directed the Commission back to the problem of Vanderburgh County and suggested that a formal notice letter regarding lack of compliance needed to be sent to the county. He noted, however, that what Mr. Owens proposed in his letter would likely address the county's compliance issues in a satisfactory way.

Vigo County

Gretchen Etling, Vigo County Chief Public Defender, explained that Vigo County public defense attorneys' maximum caseload figures are 80% of a full-time public defense attorney's caseload, as outlined in Standard J, of the Commission's Standards for Indigent Defense Service in Non-Capital Cases. (It is specifically written into the Vigo County Comprehensive Plan that the attorneys' maximum is .8, not 1.0). Ms Etling informed the Commission that when Vigo County started their recent reporting on the Commission's authorized forms (caseload worksheets for full-time attorneys with inadequate staff versus part-time attorneys with inadequate staff), it became clear that several Vigo County public defenders were out of compliance. She stated that her visit was also preemptive, and she was informing the Commission that the same compliance issue would exist the next quarter. Vigo County's budget for 2007 is already fixed, which makes it difficult now to hire more attorneys to handle the excess cases. Ms. Etling reported that a new attorney was hired to begin in January 2007, but that three more attorneys would be needed to solve the compliance issue. She would appreciate a

formal notice letter from the Commission concerning the compliance issue to encourage the Vigo County Council to create a solution to the problem.

Marion County

Dave Cook, Marion County Chief Public Defender, addressed non-compliance issues within the agency. He reminded the Commission that when the forms for reporting cases were revised, and the maximum full-time caseload for Class D felonies was clarified to be 200 (instead of 350 cases between two combined categories), it was then that Marion County's Class D felony public defenders became substantially out of compliance with the Commission's Standards. Mr. Cook also brought to the attention of the Commission that several attorneys noted by commission staff to be out of compliance, were not "substantially" out of compliance according to him. Mr. Cook feels that an attorney whose FTE number is 1.1 or less is not "substantially" out of compliance. With that being said, Mr. Cook reported on his discussions with the Marion County Council. He told the council he would need 14 full-time new attorneys for the Class D felony courts, but the agency received only seven. He also asked for five new CHINS/TPR attorneys, but received none. However, in the fall of 2006, the Marion County Council provided funds for additional public defender personnel due to a rise in homicides and violent crimes in Marion County. Mr. Cook reported they have hired five new major felony attorneys, anticipated hiring during 2007 nine more major felony attorneys and ten to eleven Class D felony attorneys. There also is money in the 2007 budget for the hiring of five full-time and 27 contract attorneys to handle CHINS/TPR cases. Dave Cook pointed out that in 1995 when the public defender agency was first formed in Marion County, it operated on a budget of less than \$5 million. Today the budget is \$18 million. He asked that the Commission recognize that Marion County has made substantial strides in the past towards providing quality defense services. Mr. Cook further stated that steps are being taken to bring the Marion County Public Defender Agency into compliance with Commission standards. Chairman Lefstein acknowledged the major strides Marion County has taken in its indigent defense program. He stated that a "notice" letter needs to be sent to Marion County so the Commission's position on its standards is clearly stated. Mr. Cook agreed that a letter would be useful in explaining to the council the budget needs of his agency.

Chairman Lefstein continued with the discussion of other counties that are out of compliance with caseload standards. He proposed to develop a letter to notify these counties of the Commission's concerns, and asked if there were any questions concerning sending such a letter. No opposition to a notice letter was expressed.

Chairman Lefstein asked if there were additional questions regarding requests for reimbursement in non-capital cases. No one offered further discussion, so Chairman Lefstein said he would entertain a motion to approve the requests for reimbursement totaling \$2, 925,497. Susan Carpenter moved to approve the 40% claims for reimbursement, and Senator Lanane seconded the motion. All members present voted in favor of the motion, and Judge Donohue, by telephone, voted to pay all claims, but abstained from a vote on Clark County. The motion was passed.

Non-capital claims for the 3rd quarter of 2006 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Third Quarter (July 1, 2006 – September 30, 2006) Requests for Reimbursement in Non-Capital Cases						
12/14/2006						
COUNTY	PERIOD COVERED	TOTAL EXPENDITURE	ADJUSTMENT	ELIGIBLE EXPENDITURE	40% REIMBURSEMENT	%
DAMS	7/1/06-9/30/06	\$70,279.90	\$25,333.45	\$44,946.45	\$17,978.58	36%
ALLEN	7/1/06-9/30/06	\$736,602.35	\$28,937.77	\$707,664.58	\$283,065.83	4%

BENTON	7/1/06-9/30/06	\$9,933.75	\$1,625.52	\$8,308.23	\$3,323.29	16%
BLACKFORD	7/1/06-9/30/06	\$18,919.68	\$3,684.50	\$15,235.18	\$6,094.07	19%
CARROLL	7/1/06-9/30/06					
CLARK	7/1/06-9/30/06	\$110,616.28	\$15,005.25	\$95,611.03	\$38,244.41	14%
DECATUR	7/1/06-9/30/06	\$28,869.93	\$9,623.31	\$19,246.62	\$7,698.65	33%
FAYETTE	7/1/06-9/30/06	\$30,492.90	\$11,278.20	\$19,214.70	\$7,685.88	37%
FLOYD	7/1/06-9/30/06	\$123,358.75	\$28,928.63	\$94,430.12	\$37,772.05	23%
FOUNTAIN	7/1/06-9/30/06	\$20,034.97	\$7,978.53	\$12,056.44	\$4,822.58	40%
FULTON	7/1/06-9/30/06	\$54,067.10	\$17,563.20	\$36,503.90	\$14,601.56	32%
GRANT	7/1/06-9/30/06	\$147,774.37	\$14,823.84	\$132,950.53	\$53,180.21	10%
GREENE	7/1/06-9/30/06	\$64,049.21	\$12,438.44	\$51,610.77	\$20,644.31	19%
HANCOCK	7/1/06-9/30/06	\$104,492.61	\$30,467.36	\$74,025.25	\$29,610.10	29%
HENRY	7/1/06-9/30/06	\$103,411.80	\$13,674.01	\$89,737.79	\$35,895.12	13%
JASPER	7/1/06-9/30/06	\$37,730.36	\$16,897.65	\$20,832.71	\$8,333.08	45%
JAY	7/1/06-9/30/06	\$52,200.12	\$12,632.43	\$39,567.69	\$15,827.08	24%
JENNINGS	7/1/06-9/30/06	\$44,959.38	\$14,130.09	\$30,829.29	\$12,331.72	31%
KNOX	7/1/06-9/30/06	\$127,996.85	\$27,766.51	\$100,230.34	\$40,092.14	22%
KOSCIUSKO	7/1/06-9/30/06	\$151,151.98	\$51,051.33	\$100,100.65	\$40,040.26	34%
LAKE	7/1/06-9/30/06	\$811,063.18	\$5,834.99	\$805,228.19	\$322,091.28	1%
LAPORTE	7/1/06-9/30/06	\$123,092.10	\$30,174.33	\$92,917.77	\$37,167.11	25%
MADISON	7/1/06-9/30/06	\$392,326.43	\$28,321.19	\$364,005.24	\$145,602.10	7%
MARION	7/1/06-9/30/06	\$3,267,645.03	\$667,462.55	\$2,600,182.48	\$1,040,072.99	20%
MARTIN	7/1/06-9/30/06					
MIAMI	7/1/06-9/30/06					
MONROE	7/1/06-9/30/06	\$307,307.69	\$103,558.48	\$203,749.21	\$81,499.68	34%
MONTGOMERY	7/1/06-9/30/06	\$57,636.07	\$18,548.54	\$39,087.53	\$15,635.01	32%
NEWTON	7/1/06-9/30/06					
NOBLE	7/1/06-9/30/06	\$82,647.94	\$16,546.27	\$66,101.67	\$26,440.67	20%
OHIO	7/1/06-9/30/06	\$16,500.82	\$3,323.02	\$13,177.80	\$5,271.12	20%
ORANGE	7/1/06-9/30/06	\$41,699.46	\$10,796.04	\$30,903.42	\$12,361.37	26%
PARKE	7/1/06-9/30/06	\$27,781.83	\$7,129.85	\$20,651.98	\$8,260.79	26%
PERRY	7/1/06-9/30/06					
PIKE	7/1/06-9/30/06	\$67,503.25	\$28,428.34	\$39,074.91	\$15,629.96	42%
PULASKI	7/1/06-9/30/06	\$62,856.08	\$23,406.86	\$39,449.22	\$15,779.69	37%
RUSH	7/1/06-9/30/06	\$36,060.55	\$13,703.01	\$22,357.54	\$8,943.02	38%
SCOTT	7/1/06-9/30/06	\$50,364.61	\$13,640.42	\$36,724.19	\$14,689.68	27%
SHELBY	7/1/06-9/30/06	\$74,522.98	\$9,080.71	\$65,442.27	\$26,176.91	12%
SPENCER	7/1/06-9/30/06	\$32,187.78	\$3,367.00	\$28,820.78	\$11,528.31	10%
STEBEN	7/1/06-9/30/06	\$75,350.00	\$26,618.34	\$48,731.66	\$19,492.66	35%
SULLIVAN	7/1/06-9/30/06	\$19,446.90	\$5,755.70	\$13,691.20	\$5,476.48	30%
SWITZERLAND	7/1/06-9/30/06	\$38,776.93	\$12,925.64	\$25,851.29	\$10,340.52	33%
TIPPECANOE	7/1/06-9/30/06	\$433,577.51	\$139,259.71	\$294,317.80	\$117,727.12	32%
UNION	7/1/06-9/30/06					
VANDERBURGH	7/1/06-9/30/06	\$523,824.13	\$84,406.15	\$439,417.98	\$175,767.19	16%
VERMILLION	7/1/06-9/30/06	\$27,904.42	\$7,576.70	\$20,327.72	\$8,131.09	27%
VIGO	7/1/06-9/30/06	\$290,855.36	\$82,262.12	\$208,593.24	\$83,437.30	28%
WARREN	7/1/06-9/30/06	\$7,076.00	\$3,368.00	\$3,708.00	\$1,483.20	48%
WASHINGTON	7/1/06-9/30/06	\$87,239.93	\$24,839.15	\$62,400.78	\$24,960.31	28%
WELLS	7/1/06-9/30/06					
WHITE	7/1/06-9/30/06					
WHITLEY	7/1/06-9/30/06	\$43,012.67	\$7,286.30	\$35,726.37	\$14,290.55	17%
TOTAL		\$9,035,201.94	\$1,721,459.43	\$7,313,742.51	\$2,925,497.03	19%

Continued Discussion of Item 2, Proposed Task Force Studying Indigent Defense in Indiana:

Chairman Lefstein presented a memorandum to the Commission concerning the proposed membership of the Task Force to Study Indigent Defense in Indiana, to be sent to Chief Justice Shepard.

The proposal calls for the task force to be comprised of 15 persons, organized as follows:

- Two members appointed by the Chief Justice of Indiana
- Two members appointed by the Governor of Indiana
- One member appointed by the Indiana Senate President Pro Tem
- One member appointed by the Indiana Speaker of the House
- As a member, the Chair of the Indiana Public Defender Commission
- Two members of the Indiana Public Defender Commission appointed by the Commission
- State Public Defender
- Executive Director of the Indiana Public Defender Council
- Executive Director of the Indiana Prosecuting Attorneys Council
- One member appointed by the President, Indiana State Bar Association
- One member appointed by the President, Association of Indiana Counties
- One member appointed by the Chairman, Indiana Public Defender Council

Chairman Lefstein invited discussion of the proposal. Judge Donohue stated that he believed all the bases were covered. Chairman Lefstein explained that the Commission was only making recommendations to the Chief Justice about a way to organize the task force. Assuming Commission approval, a letter would be sent to the Chief Justice in December with these recommendations. Ralph Foley stated he thought more than 15 would be an unworkable group.

Chairman Lefstein said that he thought the Commission should be well represented on this task force because the Commission has a statutory duty to make recommendations about indigent defense in Indiana. He also stated that the Commission may have to provide some monies from the Public Defense Fund to support the task force. He believes the American Bar Association may also provide a contribution. He estimated that a statewide study would likely cost more than \$100,000. Bettye Lou Jerrel pointed out that the task force would need a member that understood the state legislature, and who can help with funding problems. She recommended that the task force educate the Commission fully about the findings of the study. Senator Lanane questioned whether there would be sufficient representation of people in the communities on this task force. Chairman Lefstein pointed out there would likely be public meetings and interviews in different parts of the state, thereby giving communities an opportunity to voice their concerns. After further discussion, Ralph Foley moved to recommend to the Chief Justice the memorandum's approach to organizing the statewide task force. Les Duval seconded the motion. The motion passed unanimously.

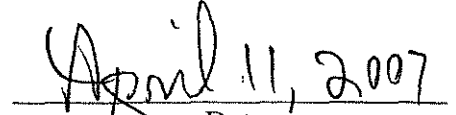
8. **St. Joseph County**: Chairman Lefstein noted the Commission has an issue that was not on the agenda. St. Joseph County council is forming a Public Defender Board but is proposing that the county judges appoint all members of the board, thus eliminating an appointment by the county executive as required by statute. The Commission concluded that a county public defender board should not be named solely by the judiciary. Bettye Lou Jerrel made a motion to that effect, and Susan Carpenter seconded the motion. The motion passed unanimously.

9. **Meeting Dates**: After much discussion, it was agreed that the 1st quarter meeting of the Public Defender Commission will be held on Wednesday, April 11, 2007 at 2:30 p.m., and the 2nd quarter meeting will be held on Wednesday, June 27, 2007 at 2:00 p.m. It was also announced that all other agenda matters are tabled until the next meeting.

The meeting adjourned at 5:16 p.m.



Norman Lefstein, Chairman



Date