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June Public Defender Commission Meeting Held

The most recent Commission meeting took place on June 14th. Formal minutes will soon be posted on our website in the near future. Here is a recap of important decisions:

1. Self-Insurance Reimbursement Now Allowed (With limits)

Counties that opt to pay for health insurance for their employees can do so in many different ways. Some counties choose to use a practice called “self-insurance.” Rather than pay a premium to an insurance company, self-insurance works by keeping funds in reserve and using that money to pay claims directly from the county. This practice transfers the risk from an insurance company to the county itself. If an employee has a claim of a million dollars, the county may be responsible for paying that entire amount.

The Commission had previously adopted the position of not paying benefit costs associated with self-insurance. As more counties are turning to this method, the Commission opted to revisit the issue. The question posed to the Commission was whether health care claims by self-insured counties would be reimbursable. After deliberation, the Commission voted to limit reimbursement to the current cap cost of insurance for state employees. That rate is \$6,333.60 annually for single coverage and \$17,877.60 for family coverage. Questions on self insurance and how to report claims on the reimbursement request should be sent to information@pdcom.in.gov.

2. No Senior Judges on PD Boards

I.C. 33-40-7-3 prohibits judges from serving on public defender boards. Both Commission standards and the law, however, were silent as to “senior judges.” After discussion, the Commission voted to prohibit senior judges from sitting



Sen. Randy Head, Rep. Thomas Washburne, Rep. Ryan Dvorak and Sen. Greg Taylor discuss agenda items at the June meeting.

on a local board. See Standard Spotlight on Page 2 for additional information on this and Standard A.

3. No Expenses Reimbursable for Private Capital Attorneys Who Are Not CR 24 Qualified

The Commission was presented with the question of whether to reimburse for death penalty expenses when the client is able to hire a private attorney, but requires the assistance of county funds to pay for experts and additional expenses. Normally, two publicly appointed attorneys must be qualified under Criminal Rule 24 (CR 24) at all times in order to receive 50% reimbursement of death penalty case expenses. What if there is only one attorney hired by the client - or any of the attorneys are not qualified?

In this instance, the Commission voted to not allow reimbursement of these additional expenditures when the attorneys are not in full compliance with CR 24. This is different from Standard N, on non-death penalty cases, that requires payment and reimbursement for cases with private counsel when the expenses are necessary, the client can't afford them, and they are court approved.

In This Issue

Page 2

Pay Parity
Standard Spotlight (NEW FEATURE!)

Page 3

Updated Forms and Requirements

Back Cover

Upcoming Dates
Deadlines and Late Payment Penalties
Welcome Hendricks County!

Submit a Story

Is there something happening in your county you'd like to share? Contact Kathleen Casey at kathleen.casey@pdcom.in.gov to submit a story idea for upcoming issues of the Public Defender Commission newsletter.

Pay Parity Audits to Begin

Commission Standard G requires that “salaries and compensation of full-time salaried public defenders shall be the same as the salaries and compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney,” and mandates “substantially comparable” compensation to contractual public defenders. The Commission periodically audits the compensation rates paid by counties to public defenders and intends to embark on this project

within the next few months. Each county will be required to provide documentation demonstrating how it meets the requirements of Standard G.

Because this task may require some information gathering, the Commission staff wish to notify counties and provide a period for questions before formal inquiry letters are sent out. If you have questions, please contact Commission staff and they can begin to guide you through the process of gathering information.



Chief Public Defender and Deputy Chief Salary Grace Period

According to Standard G, Chief Public Defenders and Deputy Chief Public Defenders in counties with offices must be compensated at the same rate as the elected prosecutor. At the most recent Commission meeting, the Commissioners voted to allow counties to have until January 2018 to match the pay raises prosecutors received on 7/1/17. Please contact Commission staff with any questions.



As mentioned on the front page of the newsletter, Commission members reviewed Standard A when determining whether a Senior Judge could be a member of a County Public Defender Board.

Public Defender Commission Standard A requires that counties with a population over 12,000 must establish a public defender board and limits a public defender from serving on the board; Indiana Code 33-40-7-3 also prohibits others such as members of law enforcement, court employees, and city or county attorneys from serving. The purpose of these exclusions are to ensure that the defense function will be independent from both the prosecution and judicial functions. Therefore,

while sitting judges appoint two of the three members of the board, they are prohibited from sitting on the board themselves.

However, it can be a struggle to find qualified persons to sit on a public defender board. Because of this difficulty, two counties approached Commission staff with the question of whether senior judges can sit on a public defender board. The position of senior judge was created in 1989 by the legislature to fill gaps where judicial officers are needed to hear cases when the elected judges are absent or unavailable. Their power is separate and distinct from that of a pro-tem or special judge. The Commission decided that senior judges meet the definition of “judge” in the statute and cannot serve on the board.

UNDER THE SPOTLIGHT

Welcome to a new column requesting public comment to update our Standards and Guidelines. So, why not start at the beginning?

Standard A is discussed to the left and can be found on our website <http://www.in.gov/publicdefender>. The current duties of the public defender

board (found in IC 33-40-7) are primarily to create the comprehensive plan and, depending on the chosen public defense system, implement it in various ways.

We want to know what you think the Standard A should say. What duties should the public defender board have or not have? What level of responsibility should a board have to monitor its contractors if there is no Chief PD? Should PD Boards have more than 3 members, who should appoint them, etc? Any thoughts or ideas should be sent to me at derrick.mason@pdcom.in.gov ASAP.



In this new feature, Senior Staff Attorney, Derrick Mason, will review a Public Defender Commission Standard and solicit feedback from our members. In this first edition, we review Standard A: County Public Defender Boards.

Updated Forms and Requirements for 3Q Submission

In our last newsletter we provided an overview of the new forms that were debuted at the inaugural annual training. These new forms will be required starting with the third quarter submission for 2017 and are available now on our website under the “Forms” tab. Here are a few more items to consider as you tackle the new forms: [Instruction Manual Now Online](#)

We understand the reimbursement request process is a task that only happens four times a year, and it can be easy to forget all the steps in the months in between—it happens to Commission staff too! This instruction manual is a living document, and it is useful only after you have determined whether your attorneys are adequately or inadequately staffed. Those important policy decisions should still be made in cooperation with Commission staff. However, once you have determined those details the booklet can walk you through each step of the process. The updated can be found on the “forms” section of our website: <http://www.in.gov/publicdefender/2376.htm>.

Make Sure To Include All Five Forms in Your Submission

Commission staff heard complaints that it was difficult to distinguish the different forms from each other, and now each form has a number and name! Make sure to include each of the forms in your submission:

- Form I: Request for Reimbursement provides an overview of all indigent expenditures by the quarter, and calculates the total amount requested for reimbursement by the county
- Form II: Attorney Qualifications lists each attorney, their qualifications, and payments for the quarter
- Form III: Case Assignment Worksheet lists each attorney and their caseload for the rolling year
- Form IV: Non-Reimbursable Calculator / Calculation of Non-reimbursable expenses is used to calculate what portion of indigent

defense expenses will not be reimbursed to the county

- Form V: Verifications is a page signed under penalty of perjury that all the included data is true to the best knowledge of the Public Defender Board Chair and the Auditor

Public Contact Section

Included on Form I is now a Public Contact box. This new field on the first page asks you to list a public contact for your county. The Commission often receives questions from persons represented by a public defender or family members seeking information. However, the Commission realizes that the person who prepares the report may not be the best person to respond to public complaints or requests. Therefore, Commission staff have added this field to allow your county to decide who should be the person to whom complaints or questions can be directed. The name and phone number will be listed on our website. This number may be a specific person or may be a general number such as the Clerk’s Office. Since this field is required, please contact staff if you have any questions.

Form IV Now Has Both Versions In One Document

One of the most frustrating parts of the reimbursement request process is keeping track of the sheet used to determine non-reimbursable expenditures. These forms have now been combined as one document with two tabs so that you may choose which one works best for your county.

Submit Your Excel Documents Electronically

Often, there might be a minor correction that is necessary, and long-time veterans know that it can happen to **even the most detail-oriented person!** Please consider submitting the Excel versions of your documents as attachments to information@pdcom.in.gov. That way, if there is a minor correction, staff may be able to take

care of it for you. Form V must be mailed in - electronic versions are not accepted at this time. We hope someday to replace the printed submission with an electronic one, and your participation in this digital experiment will help us see if it is possible!

We Want To Hear From You!

Please continue to send suggestions and ideas to information@pdcom.in.gov – Commission staff want to continue to refine the reimbursement process to make it as streamlined as possible!

Case assignments, Full Time Equilant (FTE) limits, and attorneys who work in multiple counties

On Form III (Case Assignment Worksheet), the total FTE for each attorney will turn red if the caseload exceeds 1.0 (100%). This will be useful to monitor caseloads and help highlight potential issues with caseloads. If your county has limits less than 1.0, please be sure to monitor this carefully!

When calculating if your attorney has exceeded his or her caseload, remember that attorneys who work in multiple Commission counties must work together to ensure that the maximum caseload between all counties does not exceed 100% of a full time attorney’s caseload.

As an example, if Attorney A has two part-time contracts, one in Allen County and another in Noble, this would be allowable because his total caseload does not exceed one full-time position. However, if we were to try and add a contract in Dekalb County, that could be out of compliance! All three counties are Commission counties and therefore the total across all areas must be monitored by all three public defender boards and offices, if one exists. Counties must work together to ensure case assignments do not exceed 1.0 FTE.



Join us for the Next Commission Meeting

The next Commission meeting will be held September 20, 2017 at 2 pm. The meeting is scheduled to be held in our office located at 309 West Washington Street, Suite 501, Indianapolis, IN 46204.

Please visit our website for the latest date, time and location of the meeting and information on upcoming meetings.

Deadlines and Late Submission Penalties for Reimbursement Requests

The end of the quarter is a hectic time! It's easy to forget deadlines, but it's very important to remember that financial penalties may occur if the reimbursement request is late. Claims for non-capital expenses must be received by the Commission no later than 45 days after the end of the quarter in which those expenses were incurred. Specifically:

For the Second Quarter, the deadline is August 14, 2017.

For the Third Quarter, the deadline is November 14, 2017.

If submission of the request is received after the 45 day period following the end of the quarter, the following penalties may be imposed:

- If 1-10 days after 45-day period, the reimbursement may be reduced by 10% of total maximum eligible reimbursement
- If 11-20 days after 45-day period, the reimbursement may be reduced by 25% of total maximum eligible reimbursement
- Any claims later than 65 days after the end of the quarter may be denied completely

There are exceptions available if a county submits a written request and demonstrates good cause for the late submission. Commission staff are here to help you! If you anticipate problems, submit a written request for a waiver as early as possible.

Commission Address

Please be sure all correspondence mailed to the Commission is sent to our new address:

Indiana Public Defender Commission
309 W Washington St Suite 501
Indianapolis, IN 46204

The Office of Judicial Administration will be moving soon and mail will not be forwarded.

Training Opportunity

The IPDC Juvenile Defense Project will be presenting free regional trainings for juvenile defenders on the following topics and in the following locations:

Challenging Probable Cause and Detention
September 15 Madison County
September 22 Allen County
September 29 Clark County
Role of Juvenile Defense Counsel
November 16 Marion County
December 1 Bartholomew County
December 8 Vanderburgh County

Trainings provide 3 CLEs and registration will be available through IPDC's website beginning July 15th. Contact Amy Karozos (AKarozos@pdc.in.gov) for more information.



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Hendricks County will join the Commission this quarter. They have hired a Chief Public Defender to administer their program. We welcome them to the Commission family!

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