

Indiana Public Defender Commission Meeting Minutes

April 11, 2007

Chairman Norman Lefstein called the meeting to order at 2:30 p.m. Commission members attending were Les Duvall, Bettye Lou Jerrel, Hon. Daniel Donahue, Monica Foster, Rep. Bob Kuzman (by telephone), and Rep. Amos Thomas. Also attending was Larry Landis, Director of the Indiana Public Defender Council, and Deborah Neal, Staff Counsel for the Commission. Members not attending were Susan Carpenter, Sen. Timothy Lanane and Sen. Joseph Zakas.

Other interested parties in attendance were David Happe, Madison County Public Defender Administrator, Pat Biggs, Floyd County Chief Public Defender, and Neil Weisman of St. Joseph County.

Chairman Lefstein opened the meeting by introducing Representative Amos Thomas as the new member of the Commission, replacing Representative Ralph Foley. Les Duval moved that the Commission adopt a resolution thanking Rep. Ralph Foley for all his years of service to the Public Defender Commission. Rep. Foley was a member for thirteen years, beginning in 1994. Judge Donohue seconded the motion for the resolution, and the motion passed unanimously.

Changes to the Commission and its staff were discussed. Chairman Lefstein congratulated Bettye Lou Jerrel for being reappointed by Chief Justice Randall T. Shepard to another four-year term as a member of the Public Defender Commission. Judge Donohue announced he is retiring from his position as Clark Circuit Court Judge in June of 2008, and would no longer serve as a Commission member when his term expires in February of that year. Chairman Lefstein informed the members that Deborah Neal has been handling the duties of staff counsel since that position was vacated in January of this year. Chairman Lefstein reported on his discussions with other members regarding the position of counsel to the Public Defender Commission, and it was decided that Ms. Neal be staff counsel. He also reported that an advertisement has been placed in the Indiana Lawyer seeking resumes for an assistant staff counsel. Commissioner Lefstein asked for volunteers to serve with him on a committee to interview prospective candidates for the counsel position. Bettye Lou Jerrel offered to serve on the committee. Susan Carpenter, who has been a member of an interviewing committee in the past, will be contacted to determine if she will also agree to serve. Chairman Lefstein added Larry Landis to this committee. Mr. Landis has also participated in staff interviews in the past.

1. **Meeting Minutes:** Chairman Lefstein presented minutes from the December 14, 2006 Public Defender Commission meeting for approval. He asked for approval of the minutes with one amendment – adding the word “many” before states in the fourth paragraph of page 5. Bettye Lou Jerrel moved for approval of the December 14, 2006 meeting minutes as amended, and Les Duval seconded the motion. The vote was unanimous in favor of approval.

2. **Proposed Task Force Studying Indigent Defense in Indiana:** Chairman Lefstein reported there has been no response from Chief Justice Shepard regarding the Commission’s suggestions for membership of the task force to study indigent defense in Indiana. Chairman Lefstein stated he would write to the Chief Justice thanking him for his support with the legislature on behalf of the Commission’s budget requests and also inquiring about the status of the task force. Bettye Lou Jerrel stated she believed it was the wrong time to pressure the Chief Justice concerning the task force due to the legislature still being in session, and that the letter should only address the Commission’s thanks for his efforts on our behalf.

Judge Donohue asked how the study of indigent defense in Indiana would be conducted. Chairman Lefstein said that most likely an outside consultant will be hired to gather data, and that there will be several hearings around the state to allow for public input. Chairman Lefstein reiterated his desire to include an inquiry about the status of the task force in the thank-you letter to the Chief Justice for fear this study will not get off the ground. Monica Foster moved that the thank-you letter be sent to the Chief Justice with mention of the task force, and Les Duval seconded the motion, adding that he does not think the general assembly relates to the status of the task force. The motion passed.

3. **Annual Report for 2005-2006.** Chairman Lefstein reported that the 2005-2006 Annual Report, if approved by the Commission, is ready to be electronically distributed. He said he would prepare a cover memorandum to accompany the report. Judge Donohue moved to approve the 2005-2006 Annual Report and Les Duval seconded the motion. The motion passed unanimously.

4. **Financial Status of the Public Defense Fund.** Representative Bob Kuzman (by telephone) updated the Commission on the status of the proposed budget in the general assembly. He reported that the Ways and Means Committee recommends that the Indiana Public Defender Commission's request of \$6 million for FY 07-08, and \$7 million for FY 08-09 be approved. Representative Kuzman said the House of Representatives passed the budget with the requested increases for the Fund; however, the Senate removed the increases from the budget. Chairman Lefstein asked if there was anything the Commission could do to influence the outcome of the budget in favor of the Fund. Rep. Kuzman said that Larry Landis should continue to work with Ways and Means Chairman, Bill Crawford, and that counties should be encouraged to contact their representatives. Larry Landis added that the Indiana Public Defender Council is working with the chief public defenders and county councils to contact their legislators and stress the importance of the proposed budget increases. Mr. Landis reported that the Indiana Association of Counties also is lobbying in the state senate on behalf of the counties in the Fund for the budget increases requested for FY07-08 and FY 08-09.

Chairman Lefstein reported that due to the present financial status of the Public Defense Fund it was necessary to prorate the non-capital requests for the 4th quarter of 2006. The requests would be prorated at 18.3%. Chairman Lefstein stated that the requests for reimbursement for the 1st quarter of 2007 considered at the June 27, 2007 meeting should be paid at the full 40% after the distribution to the Fund on July 1, 2007.

5. **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			
April 11, 2007			
COUNTY	DEFENDANT		TOTAL
Clark	Melcher		\$3,133.18
Fulton	Baker 1	*	\$2,528.28
	Baker 2	*	\$2,213.22
	Baker 3		\$2,972.90
	Baker 4		\$4,316.60
	Baker 5		\$4,474.78

	Baker 6		\$2,972.39
	Baker 7		\$4,117.40
	Baker 8		\$2,558.40
	Baker 9		\$1,550.00
	Baker 10		\$1,200.00
Lake	Aki-Khuam		\$27,158.76
Marion	Allen		\$25,517.53
	Turner		\$5,346.83
	Voss	*	\$2,678.46
Parke	Cottrell		\$11,795.43
	Cottrell 2		\$2,604.23
	Cottrell 3		\$9,549.23
Pike	Harbison		\$2,930.50
Spencer	Ward		\$7,573.41
Tippecanoe	Gauvin	*	\$21,922.25
Vanderburgh	Wilkes	*	\$26,502.37
Vigo	Walker		\$1,369.35
	Walker 2	*	\$8,370.73
	Walker 3		\$363.73
	Walker 4		\$1,270.60
	Walker 5		\$6,110.21
TOTAL			\$193,100.77

BAKER request 34 days past 120-day deadline. Auditor letter attached.

WALKER 2 subtracted court expense of \$386.55 for transcription.

GAUVIN had \$2,470.85 request that was court's expense. Amt. subtracted from request.

VOSS request was \$3,300.90. Eleven days late on 120-d deadline for \$622.44

Deborah Neal asked for discussion on whether the Commission approves of capital expenses for non-attorneys attending death penalty seminars, and capital defense attorneys attending a seminar on jury voir dire in death penalty cases in Colorado at the end of April, 2007. Monica Foster vouched for the seminar on jury selection stating it was an excellent seminar. Larry Landis said the Indiana Public Defender Council, which sponsors death penalty seminars, are encouraging non-attorney members of the capital defense team to attend these training programs. Judge Donohue pointed out that the statute governing reimbursement of capital expenses says the Fund will pay for defense expenditures, and that if the presiding judge has allowed the expense, then the Commission should approve reimbursement.

Deborah Neal reported that the claims in *State v. Baker*, from Parke County, had not been timely filed, but that a letter from the auditor explaining the delay was included with the Parke County requests. Ms. Neal explained that Parke County was unaware of the 120-day deadline for filing capital claims, or that the claims had not been submitted to the Commission. The auditor said there was internal confusion between the court and the auditor's office concerning the claims, and that they would be timely filed in the future.

Ms. Neal reported that Marion County’s claim in *State v. Voss* was not timely filed. Marion County was given notice and opportunity to respond to the Commission regarding the reasons for the late filing, but did not file a response. Judge Donohue moved that the Commission approve payment of the capital claims in the amount of \$193,100.77, which included the Parke County claims for the *Baker* case, excluded the \$622.44 payment to Marion County for the late claim in *State v. Holland*, and excluded other noted non-defense expenses. Representative Amos Thomas seconded the motion. Judge Donohue abstained from voting on the claims submitted by Clark County; Monica Foster abstained from voting on the claims in *State v. Allen*; and, Bettye Lou Jerrel abstained from voting on the capital claims from Vanderburgh County. The motion to pay capital claims in the amount of \$193,100.77 passed.

6. **Response to 90-Day Notice Letters:** Chairman Lefstein stated that the letters sent to the ten counties that were out of compliance with Commission Standards on attorneys’ maximum caseloads had the affect the Commission hoped they would. Each county responded with a program to get back into Commission Standards. Chairman Lefstein asked if the Commission was comfortable with processing claims for the ten counties that are out of compliance under the condition they show progress on bringing their attorneys’ caseloads into compliance. Bettye Lou Jerrel stated that the 90-Day Notice letter was excellent and had been needed for a long time. She said results of the notice should begin to show in future quarters. Mrs. Jerrel then moved to accept the responses for coming into compliance with Commission standards submitted by the ten counties, continue to reimburse their expenses, and monitor each county with respect to their proposed solution. Monica Foster seconded the motion. The motion passed.

7. **Claims for 40% Reimbursement in Non-Capital Cases:** Before claims were reviewed, Larry Landis reported that Henry county has voted to get out of the public defense program, and not make future requests for reimbursement on their non-capital claims. Mr. Landis reported that Henry County does not want to pay their Chief Public Defender the salary that would be substantially equal to the Henry County Prosecutor’s salary, or approximately \$105,000 annually. He said the Henry County Council thought that the defense costs of being in the Public Defender Fund program were too much, and that it was not worth the money.

Chairman Lefstein said that due to the 18.3% prorating of counties’ requests for reimbursement, he is recommending that the checks (upon approval for payment) not be issued to the counties until a letter explaining the prorated amount and the result of the budget request in the state legislature can be prepared and sent to the counties. Judge Donohue made a motion to approve the non-capital requests for reimbursement totaling \$1,453,555.89. Monica Foster seconded the motion. The motion was passed.

Non-capital claims for the 4th^d quarter of 2006 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION

4th Qtr (October 1, 2006 - December 31, 2006) Requests for Reimbursements in Non-Capital Cases

4/11/2007

County	Total Expenditure	Adjustment	Eligible Expenditure	40% Reimbursement	18.3% Prorated Reimbursement	Adjustment %
ADAMS	\$64,140.18	\$15,630.80	\$48,509.38	\$19,403.75	\$8,877.22	24%
ALLEN	\$651,640.14	\$38,350.38	\$613,289.76	\$245,315.90	\$112,232.03	6%
BENTON	\$12,057.46	\$1,230.35	\$10,827.11	\$4,330.84	\$1,981.36	10%

BLACKFORD	\$22,220.72	\$6,060.20	\$16,160.52	\$6,464.21	\$2,957.38	27%
CLARK	\$98,437.41	\$17,249.33	\$81,188.08	\$32,475.23	\$14,857.42	18%
DECATUR	\$31,805.13	\$11,421.73	\$20,383.40	\$8,153.36	\$3,730.16	36%
FAYETTE	\$118,305.00	\$22,927.33	\$95,377.67	\$38,151.07	\$17,454.11	19%
FLOYD	\$136,081.17	\$24,386.92	\$111,694.25	\$44,677.70	\$20,440.05	18%
FOUNTAIN	\$29,085.31	\$6,463.40	\$22,621.91	\$9,048.76	\$4,139.81	22%
FULTON	\$49,257.24	\$14,953.09	\$34,304.15	\$13,721.66	\$6,277.66	30%
GRANT	\$144,989.00	\$14,445.00	\$130,544.00	\$52,217.60	\$23,889.55	10%
GREENE	\$55,854.49	\$10,661.52	\$45,192.97	\$18,077.19	\$8,270.31	19%
HANCOCK	\$123,208.04	\$37,282.83	\$85,925.21	\$34,370.08	\$15,724.31	30%
HENRY	\$88,828.31	\$15,211.26	\$73,617.05	\$29,446.82	\$13,471.92	17%
JASPER	\$50,736.44	\$16,912.15	\$33,824.29	\$13,529.72	\$6,189.85	33%
JAY	\$38,051.62	\$13,127.81	\$24,923.81	\$9,969.52	\$4,561.06	35%
JENNINGS	\$79,156.51	\$36,071.32	\$43,085.19	\$17,234.08	\$7,884.59	46%
KNOX	\$150,511.89	\$40,136.50	\$110,375.39	\$44,150.16	\$20,198.70	27%
KOSCIUSKO	\$80,923.99	\$18,929.59	\$61,994.40	\$24,797.76	\$11,344.98	23%
LAKE	\$963,158.18	\$1,618.75	\$961,539.43	\$384,615.77	\$175,961.72	0%
LAPORTE	\$126,955.60	\$17,656.08	\$109,299.52	\$43,719.81	\$20,001.81	14%
MADISON	\$406,451.06	\$32,415.69	\$374,035.37	\$149,614.15	\$68,448.47	8%
MARION	\$3,806,509.44	\$760,474.28	\$3,046,035.16	\$1,218,414.06	\$557,424.43	20%
MONROE	\$270,509.97	\$79,982.52	\$190,527.45	\$76,210.98	\$34,866.52	30%
MONTGOMERY	\$83,531.02	\$22,181.56	\$61,349.46	\$24,539.78	\$11,226.95	27%
NOBLE	\$72,208.23	\$17,319.74	\$54,888.49	\$21,955.40	\$10,044.59	24%
OHIO	\$12,422.50	\$3,311.00	\$9,111.50	\$3,644.60	\$1,667.40	27%
ORANGE	\$27,389.07	\$6,902.94	\$20,486.13	\$8,194.45	\$3,748.96	25%
PARKE	\$30,182.59	\$7,972.76	\$22,209.83	\$8,883.93	\$4,064.40	26%
PIKE	\$52,006.16	\$20,598.21	\$31,407.95	\$12,563.18	\$5,747.65	40%
PULASKI	\$61,346.27	\$19,765.20	\$41,581.07	\$16,632.43	\$7,609.34	32%
RUSH	\$33,415.34	\$8,817.94	\$24,597.40	\$9,838.96	\$4,501.32	26%
SCOTT	\$64,538.71	\$20,136.08	\$44,402.63	\$17,761.05	\$8,125.68	31%
SHELBY	\$73,364.34	\$8,421.68	\$64,942.66	\$25,977.06	\$11,884.51	11%
SPENCER	\$16,556.45	\$4,143.75	\$12,412.70	\$4,965.08	\$2,271.52	25%
STEUBEN	\$50,914.93	\$8,561.72	\$42,353.21	\$16,941.28	\$7,750.64	17%
SULLIVAN	\$30,831.04	\$10,391.85	\$20,439.19	\$8,175.68	\$3,740.37	34%
SWITZERLAND	\$66,744.34	\$30,081.96	\$36,662.38	\$14,664.95	\$6,709.22	45%
TIPPECANOE	\$410,539.46	\$93,277.42	\$317,262.04	\$126,904.82	\$58,058.95	23%
VANDEBURGH	\$474,525.78	\$90,929.45	\$383,596.33	\$153,438.53	\$70,198.13	19%
VERMILLION	\$23,076.72	\$7,552.38	\$15,524.34	\$6,209.74	\$2,840.95	33%

VIGO	\$338,110.31	\$88,692.05	\$249,418.26	\$99,767.30	\$45,643.54	26%
WARREN	\$11,032.89	\$6,636.39	\$4,396.50	\$1,758.60	\$804.56	60%
WASHINGTON	\$153,202.22	\$46,052.00	\$107,150.22	\$42,860.09	\$19,608.49	30%
WHITLEY	\$39,734.53	\$6,273.87	\$33,460.66	\$13,384.26	\$6,123.30	16%
TOTAL	\$9,724,547.20	\$1,781,618.78	\$7,942,928.42	\$3,177,171.35	\$1,453,555.89	18%

8. **Senior Judges Serving on Public Defender Boards (Rush County):** Chairman Lefstein reported to the Commission that he had received a letter from Judge David Northrum, Rush County Circuit Court, requesting that Senior Judge Harcourt be allowed to serve on the local Public Defender Board. IC 33-40-7-3(b), which governs the establishment of county public defender boards, states, "... a member may not be a city, town or county attorney, a law enforcement officer, a judge, or a court employee." Larry Landis explained that when the statute was enacted the position of senior judges had not been established. Monica Foster said that as long as Judge Harcourt was not sitting on the bench in Rush County, there is no problem. Judge Donohue made a motion specific to Rush County, stating that Judge Harcourt may sit on the Rush County Public Defender Board so long as she is not actively serving as judge in Rush County. Bettye Lou Jerrel seconded the motion. The motion passed.

9. **Comprehensive Plans: Madison, St. Joseph and Wabash Counties:**

Madison County

David Happe, administrator for the Madison County public defender program, explained the amendments to the Madison County comprehensive plan. Originally, the comprehensive plan assigned the courts in Madison County their own public defense attorney. This made it difficult to control the caseloads of these attorneys, or substitute other public defense counsel when a caseload exceeded the Commission's standards. Mr. Happe reported to the Commission that the amended comprehensive plan directs the chief administrative public defender to monitor the caseloads and to assign cases on a rotating basis. He said the judges were reluctant to let go of their assigned public defender, however, the 90-Day Notice letter changed their thinking. Monica Foster made a motion to approve the Amended Comprehensive Plan submitted by Madison County; Les Duval seconded the motion. The motion passed unanimously.

St. Joseph County

Chairman Lefstein presented St. Joseph County's comprehensive plan for approval. He explained that the plan contain a two-year phase-in period allowing St. Joseph County public defense attorneys time to come into compliance with the Commission's standards. Chairman Lefstein also explained that the public defense attorneys in St. Joseph County, according to the comprehensive plan, would be part-time attorneys with a 55% caseload due to the amount of salary being paid to each public defense attorney. Mr. Neil Weisman from South Bend was present and spoke on behalf of St. Joseph County's comprehensive plan. Monica Foster then made a motion to approve the St. Joseph County comprehensive plan and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Wabash County

Chairman Lefstein presented the Wabash County comprehensive plan to the Commission. He stated that it was a good plan and there were no issues outstanding. Bettye Lou Jerrel made a motion to approve Wabash County's comprehensive plan, and Les Duvall seconded the motion. The motion passed unanimously.

10. **Policy Matters:**

A. Guideline re: Assignments Reported on Rolling 12-Month Period: The proposed rolling 12-month guideline reads as follows: “New case assignments to each indigent defense attorney shall be reported by counties over a 12-month period, based on a rolling year, for purposes of substantial compliance with caseload maximums allowed by Standard J.” Chairman Lefstein asked if there were any objections to including in the Guidelines the rolling 12-month period as written. No objections were expressed.

B. Standard H re: Minimum \$60 Hourly Rate for Assigned Counsel: Tabled.

C. Counties Reporting Attorneys’ Caseload Status as 75%, or 80% of a Full-Time Caseload: Vigo County reports its public defense attorneys’ maximum yearly caseloads as 80% of the full-time public defender maximum caseload figure outlined in the Commission’s Standard J. Vigo County has included this “80% of full-time caseload” provision in their comprehensive plan, which was approved by the Public Defender Commission in 1999. Floyd County reports its public defense attorneys’ maximum yearly caseloads as 75% of a full-time public defender’s maximums listed in Standard J. Pat Biggs, Floyd County Chief Public Defender, was present at the meeting and explained that Floyd County has had 75% maximums on a full-time caseload since the county began their program. He said that the decision to maximize caseloads at 75% of full-time caseloads listed in Standard J was based upon the amount of the salaries paid to the public defense attorneys in Floyd County. Chairman Lefstein stated that philosophically the Commission could have 50 counties deciding what percentage of a full-time caseload their public defense attorneys could handle in a 12-month period. Monica Foster asked Mr. Biggs how he monitored the performance of the public defense attorneys regarding the amount of time spent on indigent defense cases. Mr. Biggs said that he gets feedback from the clients. If he hears of any attorney not devoting enough time to the public defense practice, he cuts them loose. As Chief Public Defender, Biggs explained the monitoring of attorney performance was an important part of his job. He said that jail inmates are primary sources of information on the public defense attorneys. There was no objection voiced from the Commission members concerning the caseload maximums used in Floyd or Vigo County.

D. Length of Compliance Phase-In Plans (Tippecanoe County): Tabled.

E. Contract Attorneys Who Become Assigned Counsel: Tabled.

F. Adequate vs. Inadequate Staff of Public Defense Attorneys: Tabled.

11. **Meeting Dates for 2nd and 3rd quarters of 2007:** Chairman Lefstein asked Deborah Neal to send out an inquiry for proposed dates of the quarterly meetings.

Adjournment: Judge Donohue moved to adjourn the meeting and Bettye Lou Jerrel seconded the motion. The motion passed and the meeting adjourned at 5:16 p.m.

Judge Daniel Donohue, Interim Chairman

Date

Indiana Public Defender Commission Meeting Minutes

June 27, 2007

Interim Chairman Hon. Daniel Donohue introduced the new members of the Indiana Public Defender Commission, Peter Nugent and Mark Rutherford. New members unable to attend were Attorney David Hensel and Rep. Phil Hoy.

Bettye Lou Jerrel presented certificates of appreciation, signed by the Supreme Court Justices, to the outgoing members of the Commission who were present – Norman Lefstein, Monica Foster and Rep. Ralph Foley. Past members, Les Duval and Bob Kuzman were unable to attend the meeting. Ms. Jerrel, a long-time commission member, spoke of the achievements of each outgoing member and their accomplishments for the Public Defender Commission. Chief Justice Randall Shepard also spoke, commending Norman Lefstein, Monica Foster, Rep. Ralph Foley, Les Duval and Bob Kuzman for his/her unflinching dedication and service to the Public Defender Commission.

In addition to Commission members and Chief Justice Shepard, the following persons attended the ceremony to honor the outgoing members: Lilia Judson, Executive Director of State Court Administration (STAD), David Remondini, Assistant Director of STAD, Larry Landis, Executive Director of the Indiana Public Defender Council, David Schneider and Marvin Smith from Lake County Public Defender Agency, and David Happe of the Madison County Public Defender Agency.

Interim Chairman Donohue called the business meeting to order at 2:50 p.m. Commission members attending were Susan Carpenter, Bettye Lou Jerrel, Sen. Timothy Lanane, Peter Nugent, Mark Rutherford and Rep. Amos Thomas. Also in attendance was staff counsel, Deborah Neal. Commission members unable to attend were David J. Hensel, Rep. Phil Hoy and Sen. Joseph Zakas.

Meeting Minutes: Interim Chairman Donohue presented the meeting minutes from the April 7, 2007 Public Defender Commission meeting for approval. Bettye Lou Jerrel moved for approval of the minutes as presented, and Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

Proposed Task Force To Study Indigent Defense in Indiana: Chief Justice Shepard addressed the Commission offering his concerns regarding a task force to study indigent defense in Indiana. He suggested certain questions that a task force may answer, such as (1) “What is the state of affairs regarding indigent criminal defense in counties that are not in the public defense program? (2) Although the Fund does not cover the costs for defending indigent misdemeanor cases, what would be the cost to the State for the misdemeanor defense expenses? (3) How many indigent defendants are charged with misdemeanors? (4) Is the mission of the Public Defense Commission an unfilled assignment? Justice Shepard stated the task force needs to assess the status quo and assess the need to move on to a tighter system.

Sen. Tim Lanane asked if there was a study of indigent defense in Indiana before the Commission was formed. Larry Landis stated that there was an assessment by the Spangenberg Group. Sen. Lanane said we need to get a copy of the assessment to let the new task force see if the goals of the Commission were reached. He stated there is still a matter of educating people to the costs of indigent defense. Sen. Lanane pointed out that even state senators had to be reminded of why public defense reimbursement is such an important program.

Betty Lou Jerrel stated one of the recent accomplishments of the Commission was to turn the light on what is happening in the present system of providing indigent defense in Indiana. Ms. Jerrel complimented staff counsel for the amount of information provided to the Commission concerning the counties participating in the program. She asked the Commission members to look over this material because it tells us exactly what is happening in the program counties.

Larry Landis said the reason that Norman Lefstein initially proposed this statewide study was Mr. Lefstein's sense of what is happening nationally to indigent defense. Mr. Landis stated if you are going to change a delivery system or political structure, you have to have a dialog and a consensus on two critical issues. One is state funding, which I think we all agree the goal is upfront state funding, not reimbursement. The other is the governance issue of who controls, who directs, and where is the accountability for quality and costs. Without that kind of discussion by a political group, the Bar leadership and the Judiciary, you might not be able to get a consensus in the State of Indiana (which is a home rule state) about a delivery system for indigent defense because there is so much resistance. Larry Landis further stated the only reason we have this present system is Les Duval and he tried to sell a statewide delivery system for three years in a row and could not get it passed in the Legislature. The compromise was a modification of the Ohio system, which is a reimbursement system with state standards. Amos Thomas pointed out that in the rural areas of the state, the opinions of the voters who elect the legislators have to be changed. He said that in his area very few people worry about someone accused of a crime.

Deborah Neal offered copies to the members of State and County Expenditures for Indigent Defense Service in Fiscal Year 2005 and State Indigent Defense Commissions, December 2006, both prepared by The Spangenberg Group for the American Bar Association. She explained that these are national studies that the Commission may use to compare Indiana's public defense program to those in other states.

Financial Status of Public Defense Fund: Deborah Neal reported that because the fund contains \$11,862.88 and claims this quarter total \$3,408,760.65, the requests for payment will be held until after July 1, 2007, when the fund receives its first disbursement for fiscal year 07-08.

Ms. Neal distributed to the members documents that show totals for each county's capital and non-capital reimbursements from the Fund since its inception to, and including, this 1st quarter of 2007; the report prepared on the estimate of cost for indigent defense for all 92 counties; and the financial sheets showing quarterly totals per participating county for non-capital reimbursements in fiscal years 04-05, 05-06 and 06-07.

Request 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		
June 27, 2007		
COUNTY	DEFENDANT	TOTAL
Clark	Melcher	\$708.95
Fulton	Baker	\$2,253.08

Lake	Aki-Khuam		\$45,643.76
Marion	Adams		\$90.14
	Turner		\$26,056.02
	Voss		\$6,686.54
Parke	Cottrell		\$4,074.92
Pike	Harbison		\$3,108.30
	Harbison 2		\$192.50
Spencer	Ward		\$23,162.90
Vigo	Walker		\$75.00
	Walker 2	*	\$1,726.80
TOTAL			\$113,778.91

Interim Chairman Donohue called for questions on the capital claims. Peter Nugent asked about mitigation expenses on the claims, and it was explained by Deborah Neal that the county paid those expenses first, then submitted a request for 50% reimbursement to the Commission. With no further discussion, Tim Lanane moved that the capital claims in the amount of \$113,778.91 be paid, and Susan Carpenter seconded the motion. The motion passed unanimously.

Claims for 40% Reimbursement in Non-Capital Cases: Deborah Neal explained to the new members of the Commission the system for counties to report their non-reimbursable expenses. Interim Chairman Judge Donohue asked for discussion of non-capital requests. There were no amendments to the requests. Betty Lou Jerrel made a motion to approve the non-capital requests for reimbursement totaling \$3,294,481.74. Susan Carpenter seconded the motion. The motion was passed.

Non-capital claims for the 1st quarter of 2007 are to be paid as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
First Quarter (01/01/07 - 03/31/07) Requests for Reimbursements in Non-Capital Cases					
6/27/2007					
County	Total Expenditure	Adjustment	Eligible Expenditure	40% Reimbursement	Adjust %
ADAMS	\$63,907.05	\$16,817.64	\$47,089.41	\$18,835.76	26%
ALLEN	\$646,471.90	\$39,704.00	\$606,767.90	\$242,707.16	6%
BENTON	\$24,376.98	\$3,005.38	\$21,371.60	\$8,548.64	12%
BLACKFORD	\$29,131.41	\$2,914.25	\$26,217.16	\$10,486.86	10%
CARROLL			\$0.00	\$0.00	
CLARK	\$111,193.43	\$16,623.38	\$94,570.05	\$37,828.02	15%
DECATUR	\$38,478.08	\$12,826.03	\$25,652.05	\$10,260.82	33%
FAYETTE	\$122,001.80	\$23,044.78	\$98,957.02	\$39,582.81	19%
FLOYD	\$119,592.58	\$26,467.65	\$93,124.93	\$37,249.97	22%

FOUNTAIN	\$13,129.18	\$4,440.75	\$8,688.43	\$3,475.37	34%
FULTON	\$41,910.75	\$16,925.50	\$24,985.25	\$9,994.10	40%
GRANT	\$249,561.00	\$19,058.00	\$230,503.00	\$92,201.20	8%
GREENE	\$78,154.39	\$12,438.44	\$65,715.95	\$26,286.38	16%
HANCOCK	\$64,199.42	\$23,323.95	\$40,875.47	\$16,350.19	36%
HENRY	\$90,536.18	\$15,211.26	\$75,324.92	\$30,129.97	17%
HOWARD	\$386,083.99	\$53,946.48	\$332,137.51	\$132,855.00	14%
JASPER	\$26,376.15	\$9,359.28	\$17,016.87	\$6,806.75	35%
JAY	\$63,462.23	\$15,040.55	\$48,421.68	\$19,368.67	24%
JENNINGS	\$29,571.25	\$8,918.31	\$20,652.94	\$8,261.18	30%
KNOX	\$120,883.23	\$32,755.46	\$88,127.77	\$35,251.11	27%
KOSCIUSKO	\$96,431.73	\$31,456.34	\$64,975.39	\$25,990.16	33%
LAKE	\$821,759.35	\$2,453.01	\$819,306.34	\$327,722.54	0%
LAPORTE	\$125,597.60	\$26,248.49	\$99,349.11	\$39,739.64	21%
MADISON	\$394,024.94	\$37,916.58	\$356,108.36	\$142,443.34	10%
MARION	\$3,673,885.65	\$551,758.59	\$3,122,127.06	\$1,248,850.82	15%
MARTIN	\$13,416.93	\$4,367.08	\$9,049.85	\$3,619.94	33%
MIAMI			\$0.00	\$0.00	
MONROE	\$279,790.36	\$84,973.37	\$194,816.99	\$77,926.80	30%
MONTGOMERY	\$46,967.69	\$11,124.17	\$35,843.52	\$14,337.41	24%
NEWTON			\$0.00	\$0.00	
NOBLE	\$85,970.48	\$16,159.11	\$69,811.37	\$27,924.55	19%
OHIO	\$15,427.50	\$5,113.50	\$10,314.00	\$4,125.60	33%
ORANGE	\$102,600.32	\$19,008.86	\$83,591.46	\$33,436.58	19%
PARKE	\$33,397.65	\$10,924.46	\$22,473.19	\$8,989.28	33%
PERRY	\$57,590.59	\$13,976.90	\$43,613.69	\$17,445.48	24%
PIKE	\$92,926.50	\$37,353.13	\$55,573.37	\$22,229.35	40%
PULASKI	\$45,966.45	\$13,531.25	\$32,435.20	\$12,974.08	29%
RUSH	\$42,711.16	\$16,065.67	\$26,645.49	\$10,658.20	38%
SCOTT	\$36,878.65	\$8,623.37	\$28,255.28	\$11,302.11	23%
SHELBY	\$83,787.91	\$9,730.42	\$74,057.49	\$29,623.00	12%
SPENCER	\$13,245.37	\$2,899.07	\$10,346.30	\$4,138.52	22%
STEUBEN	\$58,679.42	\$9,207.15	\$49,472.27	\$19,788.91	16%
SULLIVAN	\$20,716.80	\$10,590.85	\$10,125.95	\$4,050.38	51%
SWITZERLAND	\$63,814.18	\$31,305.07	\$32,509.11	\$13,003.64	49%
TIPPECANOE	\$441,403.98	\$244,759.55	\$196,644.43	\$78,657.77	55%
UNION			\$0.00	\$0.00	
VANDERBURGH	\$533,415.12	\$86,663.44	\$446,751.68	\$178,700.67	16%

VERMILLION	\$34,114.74	\$14,351.72	\$19,763.02	\$7,905.21	42%
VIGO	\$302,261.34	\$75,931.80	\$226,329.54	\$90,531.82	25%
WARREN	\$7,200.28	\$3,717.78	\$3,482.50	\$1,393.00	52%
WASHINGTON	\$98,368.37	\$8,609.34	\$89,759.03	\$35,903.61	9%
WELLS			\$0.00	\$0.00	
WHITE			\$0.00	\$0.00	
WHITLEY	\$48,854.93	\$11,131.50	\$37,723.43	\$15,089.37	23%
TOTAL	\$9,990,226.99	\$1,752,772.66	\$8,237,454.33	\$3,294,981.74	18%

An updated summary of each county’s response to their 90-day notice of non-compliance was provided and explained by staff counsel. Progress on the efforts to attain compliance will be closely watched.

Comprehensive Plans – Fayette (amended) and Adams (amended): Interim Chairman Donohue presented Fayette County’s amended Comprehensive Plan for approval. Deborah Neal explained that Fayette County, which used an assigned counsel system that paid attorneys an hourly rate, was updating to a contract counsel system in an effort to save money. The amended comprehensive plan also included a provision for requiring written financial information from each person requesting a county appointed attorney in an effort to curtail county spending for criminal defense services for ineligible defendants. Fayette County attached a copy of the financial form to their amended comprehensive plan to be used by a judge to assist in determining indigence. Susan Carpenter moved to approve the amended comprehensive plan submitted by Fayette County, and Bettye Lou Jerrel seconded that motion. The motion passed unanimously. Judge Donohue suggested that Fayette County Public Defender Board issue a press release regarding their changes and conscientious efforts to save tax dollars and require accountability.

Interim Chairman Donohue presented Adams County’s amended Comprehensive Plan for approval. Deborah Neal reported that Adams County has a contract system for providing public defense services, with an office and chief public defender. The amendments to the comprehensive plan include changing the position of chief public defender to managing attorney. This allows Adams County to not have to pay 90% of a full-time prosecutor’s salary to a chief public defender, but instead the managing attorney contracts with the county and then receives an additional amount for the managing duties. Larry Landis said there is political resistance in the counties to the chief public defender being the highest paid county employee (Judges and Prosecutors are paid by the State). Henry County withdrew from the public defense program because they refused to pay the chief public defender the salary required by the Commission. Mr. Landis says there is proposed legislation to have the chief public defenders paid by the State in the same way that Judges and Prosecutors are paid. That would remove the local resistance to chief public defenders’ pay. Bettye Lou Jerrel moved to approve the amended comprehensive plan submitted by Adams County, and Susan Carpenter seconded the motion. The motion passed.

Additional Staff Attorney: The Commission previously formed an interview committee to consider candidates for assistant staff counsel. Deborah Neal reported on her discussion with Lilia Judson, Executive Director of State Court Administration, as to whether an additional employee for the Public Defense Committee should be an attorney or an accountant. Interim Chairman Donohue suggested that the decision of how to fill an additional position be decided between Lilia Judson and staff counsel.

Policy Matters:

Standard H - \$60 Hourly Rate for Assigned Counsel: Deborah Neal reported that the \$60 an hour attorney fee set by the Commission's Standards has been the minimum rate for assigned counsel for several years. The Commission needs to consider if this fee is still fair, and if not, do they want to raise it. She reported that several counties pay more than \$60 an hour, however, if the Commission would increase that minimum hourly rate, the counties paying only \$60 per hour will have to bear the burden of financing the increase with more tax dollars. It would be necessary to give counties sufficient notice of any anticipated increase. Tim Lanane suggested that the staff let the counties know that the Commission is looking at the amount of this hourly fee, at the same time that information is gathered on exactly what each county is paying now.

Supplemental Public Defense Funds: Deborah Neal reported to the Commissioners that each county has, by state statute, a "supplemental public defender services fund," and that one of the Commission's statutory duties is to determine how the counties spend that supplemental fund. Ms. Neal stated that the Commission has never set down any rules or standards pertaining to the counties' supplemental public defender services fund, but the Commission has always allowed county expenses paid from that fund to be included in a county's quarterly request for reimbursement. She also reported that a survey of how each county uses the supplemental fund has not been conducted. Interim Chairman Donohue suggested that staff counsel inquire from each county how their supplemental fund is spent, and then have this issue as an agenda item for the next quarterly meeting.

Non-Agenda Issues:

Clark County Non-Compliance: Interim Chairman Donohue presented a letter to the Commission from Jeff Stonebraker, Clark County Chief Public Defender, informing the Commission that the public defense program in Clark County is not complying with caseload standards. Mr. Stonebraker states that without Commission intervention, the problem is going to become significantly worse. He anticipates the need for at least two more public defense attorneys in Clark County. Stonebraker's letter is asking the Commission for a directive to Clark County concerning this problem. Interim Chairman Donohue suggests that Clark County be sent a 90-Day Notice letter. Other Commission members agreed. Staff counsel is to be the signatory on the letter.

Contract Counsel Taking Cases as Assigned Counsel: Deborah Neal reported to the Commission that there are counties in the program that allow contract counsel to take public defense cases as assigned counsel for an hourly rate once they have reached their caseload limit under their contract. It is the belief of several counties that the assigned public defense cases do not count toward the maximum number of cases allowed by Standard J because the assigned cases are part of their private practice. Ms. Neal explained that the staff has never monitored the private practices of the public defenders. However, the attorneys are expected to report all public defense cases assigned to them regardless of how they are paid for these cases. Susan Carpenter said she does not agree that public defense cases taken as assigned hourly rate cases by contract attorney are private practice cases that do not have to be reported to the

Commission. Bettye Lou Jerrel said overworked attorneys cannot move cases quickly and that causes jail overcrowding. Judge Donohue reported that in Clark County the inmates found that the longer they stayed in jail the better deal they would get from the prosecutor. However, these long jail stays costs the county money. Tim Lanane asked what is the protection for the defendant when the attorneys cannot give quality representation because they are overworked. Peter Nugent warned that such practice could result in ineffective assistance of counsel claims on appeal. Mr. Nugent also asked which cases an attorney would give more attention – better paying private cases or \$60 an hour public defense cases? Mark Rutherford said he knew attorneys who handled both private and public cases and had a very heavy caseload, but were very effective counsel. He asked if having twice the allowed caseload is a bad thing if the attorney is doing a good job? Susan Carpenter stated the Commission does not have the staff to evaluate actual representation or keep track of private caseloads, so the Commission’s Standards are used to keep the attorneys in line on the number of public cases assigned. Larry Landis stated that some public defense attorneys do not have much of a private practice and they financially depend on the extra public defense cases. He says there should be a determination between full-time contract counsel taking assigned cases and part-time contract counsel doing the same. Mr. Landis argues that if a part-time contract attorney takes public cases for half his/her time, and has time to take an assigned case or two as part of the private practice, they should be able to take the case.

The Commission’s final determination regarding the issue of contract counsel taking assigned cases was for staff counsel to draft a guideline and put the matter on the next quarterly meeting agenda. The staff is to determine which counties are allowing this practice and which public defense attorneys are taking indigent defense cases in more than one county.

Meeting Dates: The 2nd and 3rd quarter meetings of 2007 will be held at 2:00 p.m. on September 26th and December 12th respectively. These meetings will take place in National City Center, 115 W. Washington Street, 12th Floor, Court of Appeals Conference Room A, Indianapolis, Indiana. The quarterly meetings scheduled for 2008 will be held at 2:00 p.m. on March 26th, June 25th, September 24th and December 10th. The offices of State Court Administration, which includes the staff counsel for the Public Defender Commission, will be moving January 2, 2008 to 30 S. Meridian Street, Indianapolis, and will occupy several floors of that building. There will be meeting rooms available for the Commission meetings; however, it is not possible to reserve one at this time. Location of the 2008 quarterly meetings will be announced at a later date.

The meeting adjourned at 4:35 p.m.

Judge Daniel Donohue, Interim Chairman

Date

Indiana Public Defender Commission Meeting Minutes

September 26, 2007

Interim Chairman Donohue introduced and welcomed the new assistant staff counsel, Jeffrey S. Wiese, and called the business meeting to order at 2:14 p.m. Commission members in attendance were Bettye Lou Jerrel, Sen. Timothy S. Lanane, Sen. Joseph C. Zakas, Rep. Amos Thomas, Peter D. Nugent and Mark W. Rutherford. Also in attendance were Executive Director of the Indiana Public Defender Council, Larry Landis, and staff counsels, Deborah Neal and Jeffrey S. Wiese.

Meeting Minutes: Interim Chairman Donohue presented the meeting minutes from the June 27, 2007 Public Defender Commission meeting for approval. Sen. Tim Lanane moved for approval of the minutes as presented and Bettye Lou Jerrel seconded the motion. The vote was unanimous in favor of approval.

Task Force to Study Indigent Defense in Indiana: Chairman Donohue reported that he would contact Chief Justice Shepard regarding the task force.

Financial Status of the Public Defense Fund: Deborah Neal reported that after the July 1, 2007 distribution into the Public Defense Fund, and the payment of June 28, 2007 claims for \$3,408,760.65 plus salaries and overhead, the Fund balance is \$3,823,529. The total of payroll and overhead to December 31, 2007, plus the capital and non-capital claims (if reimbursing 40%) is \$4,071,327. The non-capital claims will have to be prorated to 37.3% this quarter. The Public Defense Fund should have approximately \$8,310 in December. The December claims will be paid after January 1, 2008, when the Fund receives its second distribution for FY 07-08.

Request 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		
September 26, 2007		
COUNTY	DEFENDANT	TOTAL
Fulton	Baker	\$2,306.94
	Baker 2	\$3,083.18
	Baker 3	\$4,581.33
	Baker 4	\$2,331.93
	Baker 5	\$4,295.69
Lake	Aki-Khuam	\$58,569.47
Marion	Adams	\$584.50
	Allen 1	\$21,553.20
	Allen 2	\$8,759.88
	Turner *	\$10,955.27
	Turner 2	\$21,208.58

	Voss	\$538.71
Parke	Cottrell	\$7,604.51
Pike	Harbison *	\$6,093.68
Spencer	Ward	\$31,355.85
Vigo	Walker	\$2,665.48
	Walker 2	\$382.38
Vanderburgh	Wilkes	\$35,266.17
TOTAL		\$222,136.75

Deborah Neal reported the following reductions made to the requests for reimbursement for capital cases this quarter:

1. Pike County's claim in the *Harbison* case was reduced for the amount of charges (\$163.20) that were incurred after the death penalty was dismissed on June 22, 2007.
2. Marion County was over 120 days late filing its request for reimbursement in *St. v. Turner*. The Marion County Auditor was notified of the rejection of a \$4,307.24 request.

Interim Chairman Donohue asked for discussion regarding the capital cases. There was no discussion and Rep. Amos Thomas moved the capital claims in the amount of \$222,136.75 be paid. Sen. Tim Lanane seconded the motion. The motion passed unanimously.

Claims for 40% Reimbursement in Non-Capital Cases: The Commission addressed the following counties' 2nd quarter claims for 40% reimbursement of non-capital expenses:

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter (April 1, 2007 - June 30, 2007) Requests for Reimbursements
in Non-Capital Cases

9/26/2007

COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% ADJ.	Eligible Expenditure	If 40% Reimbursed	37.3% Prorated Reimbursed	Loss Due to Prorating
ADAMS	\$55,486.96	\$12,946.96	23%	\$42,540.00	\$17,016.00	\$15,867.42	\$1,148.58
ALLEN	\$606,440.71	\$43,420.90	7%	\$563,019.81	\$225,207.92	\$210,006.39	\$15,201.53
BENTON	\$5,270.94	\$1,054.19	20%	\$4,216.75	\$1,686.70	\$1,572.85	\$113.85
BLACKFORD	\$27,844.07	\$4,849.75	17%	\$22,994.32	\$9,197.73	\$8,576.88	\$620.85
CARROLL				\$0.00	\$0.00	\$0.00	\$0.00
CLARK	\$116,339.36	\$24,359.35	21%	\$91,980.01	\$36,792.00	\$34,308.54	\$2,483.46
DECATUR	\$33,421.08	\$7,769.03	23%	\$25,652.05	\$10,260.82	\$9,568.21	\$692.61
FAYETTE	\$70,923.75	\$18,328.61	26%	\$52,595.14	\$21,038.06	\$19,617.99	\$1,420.07
FLOYD	\$117,809.71	\$22,285.11	19%	\$95,524.60	\$38,209.84	\$35,630.68	\$2,579.16
FOUNTAIN	\$25,608.48	\$7,501.47	29%	\$18,107.01	\$7,242.80	\$6,753.91	\$488.89
FULTON	\$41,534.66	\$10,980.43	26%	\$30,554.23	\$12,221.69	\$11,396.73	\$824.96

GRANT	\$197,826.44	\$21,568.30	11%	\$176,258.14	\$70,503.26	\$65,744.29	\$4,758.97
GREENE	\$65,585.58	\$11,049.52	17%	\$54,536.06	\$21,814.42	\$20,341.95	\$1,472.47
HANCOCK	\$94,675.28	\$24,162.47	26%	\$70,512.81	\$28,205.12	\$26,301.28	\$1,903.84
HENRY	\$88,310.49	\$10,968.93	12%	\$77,341.56	\$30,936.62	\$28,848.40	\$2,088.22
HOWARD	\$361,123.50	\$47,858.91	13%	\$313,264.59	\$125,305.84	\$116,847.69	\$8,458.15
JASPER	\$52,114.00	\$16,968.33	33%	\$35,145.67	\$14,058.27	\$13,109.33	\$948.94
JAY	\$42,184.19	\$15,320.52	36%	\$26,863.67	\$10,745.47	\$10,020.15	\$725.32
JENNINGS	\$42,082.64	\$17,233.84	41%	\$24,848.80	\$9,939.52	\$9,268.60	\$670.92
KNOX	\$151,945.97	\$46,027.85	30%	\$105,918.12	\$42,367.25	\$39,507.46	\$2,859.79
KOSCIUSKO	\$118,681.06	\$34,161.93	29%	\$84,519.13	\$33,807.65	\$31,525.64	\$2,282.01
LAKE	\$933,009.92		0%	\$933,009.92	\$373,203.97	\$348,012.70	\$25,191.27
LAPORTE	\$130,995.55	\$26,240.89	20%	\$104,754.66	\$41,901.86	\$39,073.49	\$2,828.37
MADISON	\$424,556.14	\$38,086.33	9%	\$386,469.81	\$154,587.92	\$144,153.24	\$10,434.68
MARION	\$5,490,487.45	\$1,325,725.14	24%	\$4,164,762.31	\$1,665,904.92	\$1,553,456.34	\$112,448.58
MARTIN	\$21,759.53	\$4,901.42	23%	\$16,858.11	\$6,743.24	\$6,288.08	\$455.16
MIAMI				\$0.00	\$0.00	\$0.00	\$0.00
MONROE	\$236,633.71	\$40,277.73	17%	\$196,355.98	\$78,542.39	\$73,240.78	\$5,301.61
MONTGOMERY	\$61,378.62	\$16,392.94	27%	\$44,985.68	\$17,994.27	\$16,779.66	\$1,214.61
NEWTON				\$0.00	\$0.00	\$0.00	\$0.00
NOBLE	\$79,450.39	\$13,930.00	18%	\$65,520.39	\$26,208.16	\$24,439.11	\$1,769.05
OHIO	\$13,669.11	\$5,482.86	40%	\$8,186.25	\$3,274.50	\$3,053.47	\$221.03
ORANGE	\$39,242.55	\$12,744.34	32%	\$26,498.21	\$10,599.28	\$9,883.83	\$715.45
PARKE	\$35,321.31	\$10,324.69	29%	\$24,996.62	\$9,998.65	\$9,323.74	\$674.91
PERRY	\$75,811.66	\$18,477.50	24%	\$57,334.16	\$22,933.66	\$21,385.64	\$1,548.02
PIKE	\$70,911.20	\$17,528.61	25%	\$53,382.59	\$21,353.04	\$19,911.71	\$1,441.33
PULASKI	\$53,791.29	\$20,397.00	38%	\$33,394.29	\$13,357.72	\$12,456.07	\$901.65
RUSH	\$50,606.31	\$17,517.57	35%	\$33,088.74	\$13,235.50	\$12,342.10	\$893.40
SCOTT	\$55,955.47	\$12,189.77	22%	\$43,765.70	\$17,506.28	\$16,324.61	\$1,181.67
SHELBY	\$79,734.39	\$9,545.94	12%	\$70,188.45	\$28,075.38	\$26,180.29	\$1,895.09
SPENCER	\$13,077.81	\$2,327.00	18%	\$10,750.81	\$4,300.32	\$4,010.05	\$290.27
STEUBEN	\$54,430.07	\$10,004.58	18%	\$44,425.49	\$17,770.20	\$16,570.71	\$1,199.49
SULLIVAN	\$21,292.75	\$5,999.75	28%	\$15,293.00	\$6,117.20	\$5,704.29	\$412.91
SWITZERLAND	\$51,655.59	\$20,016.54	39%	\$31,639.05	\$12,655.62	\$11,801.37	\$854.25
TIPPECANOE	\$381,559.85	\$150,785.92	40%	\$230,773.93	\$92,309.57	\$86,078.68	\$6,230.89
UNION				\$0.00	\$0.00	\$0.00	\$0.00
VANDEBURGH	\$536,559.83	\$92,423.45	17%	\$444,136.38	\$177,654.55	\$165,662.87	\$11,991.68
VERMILLION	\$23,913.01	\$10,356.03	43%	\$13,556.98	\$5,422.79	\$5,056.75	\$366.04
VIGO	\$444,221.93	\$96,892.27	22%	\$347,329.66	\$138,931.86	\$129,553.96	\$9,377.90

WABASH	\$42,749.97	\$11,480.87	27%	\$31,269.10	\$12,507.64	\$11,663.37	\$844.27
WARREN	\$7,619.00	\$4,145.00	54%	\$3,474.00	\$1,389.60	\$1,295.80	\$93.80
WASHINGTON	\$106,071.38	\$10,044.23	9%	\$96,027.15	\$38,410.86	\$35,818.13	\$2,592.73
WELLS				\$0.00	\$0.00	\$0.00	\$0.00
WHITE				\$0.00	\$0.00	\$0.00	\$0.00
WHITLEY	\$47,734.64	\$10,879.06	23%	\$36,855.58	\$14,742.23	\$13,747.13	\$995.10
TOTAL	\$11,899,409.30	\$2,413,933.83	20%	\$9,485,475.47	\$3,794,190.16	\$3,538,082.36	\$256,107.80

Before the Commission voted on payment of the quarterly claims, they discussed compliance issues. Since the last meeting, Clark and Montgomery counties were sent a 90-day notice of possible termination of funds. Deborah Neal summarized the responses from the counties.

Clark County: In response to the Commission's 90-day notice to Clark County, the Clark County Council authorized the addition of two deputy public defenders. A letter from Jeff Stonebraker, Clark County's Chief Public Defender, outlines the plan and timetable for coming into compliance. The Commission accepted Clark County's plan and timetable.

Montgomery County: Montgomery County's plan for achieving compliance is to hire more public defenders and taking whatever additional steps are necessary to gain control of the public defenders' caseloads. Montgomery County states that improvements to the public defense program will have to be paid from their 2008 budget, so they do not expect to be in compliance until next year. The Commission accepted Montgomery County's plan and timetable.

Washington County: Washington County is back in compliance. Deborah Neal sent the county a thank you note on behalf of the Commission.

Other counties with compliance issues, but who have not been given notice of possible termination of funds, are listed below:

Grant County: Grant County had not been sending a running 12-month total on the caseload worksheets. Once Deborah Neal recreated the running total it was apparent that Grant County was out of compliance. Deborah Neal discussed this situation with Bob Rittman, Grant County Managing Public Defender, on September 19, 2007. In Grant County, contract public defenders take cases up to their contract limit and then start taking assigned cases. Deborah Neal and Bob Rittman reached the understanding that the maximum caseload allowable under the Grant County public defenders' contracts indicates the attorneys work part time. If a Grant County public defender chooses to take assigned cases in numbers equaling the maximum allowable caseload for a part-time public defender in addition to his/her contract case assignment, it might be best to consider him/her full time and report his/her caseload on a full-time/inadequately staffed caseload worksheet. If a contract public defender chooses not to take assigned cases over his/her contract limit, then that public defender's cases should be reported on a part-time caseload worksheet.

Responding to the scenario for Grant County, Larry Landis noted it is difficult to know if a county is overloading a public defender. Some public defenders have active private practices while others do not. Those without an active private practice might be able to take on more cases. Deeming an attorney to be

part time or full time based on the number of public defense cases doesn't deal with reality. The counties, public defenders and judges need to have flexibility. If the Commission does not allow public defenders to take cases as assigned counsel, whom will the court appoint? In some counties there may be no other criminal defense lawyers available. Public defenders comprise a county's experienced pool of criminal defense attorneys. Interim Chairman Donohue asked the commission members if there was a number that might trigger a red flag. He suggested more assignments than 10% or 20% of a part-time defense counsel's caseload.

Larry Landis offered this example: A county expects to have 300 public defense cases each year and hires five part-time contract public defenders. The contract states there is a maximum case limit of 60 cases. This year the county has 320 cases. Should the county assume every year from now on there will be 320 or more cases and spend the money to hire another public defender? What if next year the county only has 300 public defense cases? Why not give the county and courts the flexibility to farm these cases out to the contract public defenders as assigned cases as long as the contract public defender chooses to take them?

Sen. Tim Lanane asked what is the incentive for a public defender to take more cases. Deborah Neal responded the assigned cases are usually paid at an hourly rate, which nets more than the contract rate. He further asked if we discover that a part-time public defender exceeds the 60 case maximum due to taking assigned cases, can the Commission deem them to be full-time so that a public defender can have the 120 case maximum? Interim Chairman Donohue said the Commission is interested in knowing about all cases because they have an affect on the public defender's ability to provide effective representation. This is a policy matter that is before the Commission today. Larry Landis cautioned the Commission that if part-time public defenders are deemed to be full-time based on their caseload, the county would be forced to pay them a full-time salary. He believes that if a contract public defender takes an assigned case the Commission should treat that just as if he had taken a private case.

Mark Rutherford said public defenders take assigned cases because they have time and need to pay their bills. The caseload limit for part-time public defenders keeps judges from the natural inclination to bump up the number of cases assigned to part-time public defenders when the court is faced with a large number of cases. The current system should work as long as the Commission keeps track of all cases a public defender is assigned.

Interim Chairman Donohue suggested paying Grant County's request for reimbursement and sending a letter to the county council expressing concern over the public defenders' caseloads and notifying them the Commission is discussing caseload maximums.

Rep. Amos Thomas asked if the Commission could assume that the contract public defenders that have time to take more cases are inexperienced? Deborah Neal said major felony cases require a public defender qualified under Standard E, however, misdemeanors and Class D felonies could be assigned to an inexperienced public defender.

Interim Chairman Donohue called for a motion. Sen. Joseph Zakas commented the Commission should send a letter to all counties regarding its investigation of this issue. Sen. Tim Lanane moved that the Commission pay Grant County for its non-capital cases and notify all counties that it is investigating the caseload limit standard. Rep. Amos Thomas seconded this motion. The motion passed unanimously.

Bettye Lou Jerrel commented the county auditors and Public Defender Boards should also be involved in the investigation and subsequent discussion.

Howard County: Deborah Neal explained Howard County has several public defenders that mainly handle misdemeanor cases but their caseload also includes some D felony cases and some reimbursable juvenile cases. The Commission does not normally monitor misdemeanor cases, however, when a public defender has a “mixed” caseload, they could be out of compliance. Deborah Neal informed Howard County by letter that they would have to determine the percentage of non-reimbursable expenses for attorneys handling mixed caseloads.

Deborah Neal reported there is also a problem with how appeals are reported. Some counties, such as Howard and St. Joseph, want to report appeals separately from the public defender’s other cases. Howard County thought a part-time public defender with a maximum caseload of 60 would still be in compliance if he/she takes public defense appeals. Larry Landis stated most counties, other than the largest counties, use contract part time public defenders. Courts assign appeals to the public defenders because they are the most experienced criminal attorneys in the county and best able to handle appeals. One appeal is the equivalent of five cases according to the Commission’s standards. So if the Commission follows Standard J limits; a part-time public defender’s maximum caseload is 55 cases plus one appeal. This significantly changes how most counties have always worked. It could force a judge to appoint a real estate attorney to handle an appeal or go outside of the county to find representation.

Deborah Neal asked then how should cases be reported? Larry Landis said report the number of contract cases, the number of assigned cases and then the Commission can look at the results and determine if it is an excessive caseload. Mark Rutherford cautioned the commission that public defenders are under tremendous pressure to accept all assigned cases.

The Commission discussed perhaps making additional categories of cases on the caseload worksheets because they could be weighted differently. Mark Rutherford stated he is not concerned with the part-time public defender that reaches his/her 60 case maximum and takes five or six more cases; that public defender probably knows what he/she can handle. The Public Defender Commission is not only to protect public defenders from being assigned too heavy a caseload but also to allow public defenders that know they can handle more cases, to take more cases.

Deborah Neal asked if the Commission is forcing a public defender in a large county like Marion County who is paid a salary to abide by the case limits set by Standard J but is making exceptions for public defenders in smaller counties by ignoring Standard J.

Bettye Lou Jerrel said the Commission needs something that is understandable and fair to all counties, and then stick to that solution. Sen. Tim Lanane said the Commission needs to know the extent of this problem. Obviously, if a part-time public defender’s contract and assigned cases exceed the Standard J limits for a full-time public defender there is a problem. The Commission needs to know more before any decisions are made. Sen. Tim Lanane stated the Commission should investigate this further. He made a motion to pay Howard County’s request for reimbursement, and Mark Rutherford seconded the motion. The motion passed unanimously.

Kosciusko County: A warning letter was sent to Kosciusko County on September 5, 2007. The county had not been reporting caseloads on a rolling 12-month basis. When this was done, three of their public defenders were out of compliance with Standard J. The warning letter informs the county of the problem and gives the county a chance to make changes. Deborah Neal stated she would monitor the county to determine if an effort is being made to come into compliance. Bettye Lou Jerrel made the motion to pay Kosciusko County's request for reimbursement. Sen. Joseph Zakas seconded this motion. The motion passed unanimously.

Rush County: Rush County is out of compliance with Standard J. Deborah Neal has received notice from county officials that they are instituting changes to resolve this problem. Deborah Neal will visit the county to further investigate the matter. Bettye Lou Jerrel made the motion to pay Rush County's 2nd quarter request for reimbursement, and Peter Nugent seconded the motion. The motion passed unanimously.

Whitley County: The Whitley County Auditor responded September 19th to the notice sent August 14, 2007 by Commission staff counsel informing the county about the non-compliance issues. The response indicates county officials understand they are not in compliance and are ineligible to receive reimbursements from the Indiana Public Defense Fund. This letter tells us the county doesn't understand the Public Defense program and the need to abide by the Commission's Standards. Deborah Neal recommends that Whitley County be paid and she will arrange a meeting with the county council, a county commissioner, board member, judge and auditor to explain this process. Interim Chairman Donohue suggested telling Whitley County the reason for this meeting is to make sure the Commission can reimburse them in the future and delivering the reimbursement check at the meeting. Bettye Lou Jerrel commented the county probably does not understand this program and we need to educate them.

A motion was made by Bettye Lou Jerrel to pay Whitley County subject to a meeting between the staff attorney and all interested parties in Whitley County. Mark Rutherford seconded this motion. The motion passed unanimously.

Policy Matters:

Contract Counsel Taking Cases as Assigned Counsel: Interim Chairman Donohue suggested that since the Commission had considered this issue during its discussion of the non compliant counties, that it be tabled while the staff attorneys conduct an investigation. The staff attorneys will report back to the Commission with the results of their investigation at the December meeting.

Salary Guidelines for Chief Public Defenders and Other Salaried Public Defense Attorneys: Deborah Neal stated that prosecutors are paid by state funds, not county, however, counties are allowed by statute to appropriate up to an additional \$5,000 for the county prosecutor. Standard G states a chief public defender should be paid 90% of the county prosecutor's salary. Should the extra county appropriation paid to prosecutors be included in the 90% calculation? Interim Chairman Donohue and Bettye Lou Jerrel commented on the sensitivity of this issue. County prosecutors and judges are paid by the state funds but the county pays public defenders. This results in county residents perceiving that the highest paid county employee is the chief public defender. If the Commission tells the counties they must pay the chief public defender 90% of an additional \$5,000 the result could be the county halting the process of paying the extra \$5,000 to judges and prosecutors. Larry Landis stated he would like to see the

\$5,000 included in the calculation as a matter of principal but agrees that given the current state of Indiana finances it would be difficult for the counties to pay more.

Deborah Neal asked if the Commission's interpretation of Standard G is that all salaries public defenders are paid 90% of a similarly situated prosecutor's salary? Larry Landis said when standards were adopted the commission chose "substantially comparable" carefully and interpreted that phrase to mean at least 90% for a chief public defender because there was a set salary for a county prosecutor. The Commission should look into developing guidelines for the other public defenders. Deborah Neal offered to have staff contact the counties and gather salary and benefit information for county prosecutors.

Supplemental Public Defense Fund: Deborah Neal stated that 62 of Indiana's 92 counties have responded to the request for information on their county's supplemental public defense services fund. The staff is working on obtaining information from the remaining 28 counties.

Standard H - \$60 Hourly Rate for Assigned Counsel: The Commission tabled this matter until further investigation by staff.

The Commission will meet again on December 12, 2007 at its current location. Deborah Neal reminded Commission members that the State Court Administration, which includes the Public Defender Commission's staff, will be moving to its new location at 30 S. Meridian Street on January 1, 2008. The Commission's March meeting will be held at 30 S. Meridian Street. Staff counsel will distribute a map to all members before the March meeting.

Interim Chairman Donohue recommended that the Commission hold an election for chairman of the commission at the March meeting.

Interim Chairman Donohue will contact Chief Justice Shepard regarding his appointment of a member to the Commission.

Chairman Donohue thanked Deborah Neal for her hard work and knowledge about the Public Defense Fund.

The meeting adjourned at 3:45 p.m.

Judge Daniel Donohue, Interim Chairman

Date

Indiana Public Defender Commission Meeting Minutes

December 12, 2007

Interim Chairman Bettye Lou Jerrel called the business meeting to order at 2:20 p.m. Commission members in attendance were Susan Carpenter, David Hensel, Bettye Lou Jerrel, Peter D. Nugent, Mark W. Rutherford, and Rep. Phil Hoy. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Hon. Daniel F. Donahue, Sen. Timothy S. Lanane, Sen. Joseph C. Zakas, and Rep. Amos Thomas.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Dave Cook, Marion County Chief Public Defender, Vicki Ursulskis, Chief Counsel for the MCPDA and Ray Casanova, Felony Supervisor at MCPDA.

Chairman Jerrel reminded the members that the last item on today's agenda is an election for chairman of the commission.

Meeting Minutes: Interim Chairman Jerrel presented the meeting minutes from the September 26, 2007 Public Defender Commission meeting for approval. Mark Rutherford moved for approval of the minutes as presented and Peter Nugent seconded the motion. The vote was unanimous in favor of approval.

Task Force to Study Indigent Defense in Indiana: Judge Donohue reported (by telephone) that he had sent a reminder, through Dave Remondini, State Court Deputy Director, to Chief Justice Shepard regarding the task force to study indigent defense in Indiana. Commission members discussed the report titled "Streamlining Local Government" prepared by the Governor's Commission on Local Government Reform. The report recommends replacing county control and funding of public defense with a state agency.

Annual Report for Fiscal Year 2006-2007: Susan Carpenter moved to approve the report as prepared and Mark Rutherford seconded the motion. The vote was unanimous in favor of approval. Deborah Neal reported that the newly elected chairman would prepare the cover memorandum for the annual report, and then it will be distributed.

Financial Status of the Public Defense Fund: Deborah Neal reported that after the January 1, 2008 distribution into the Public Defense Fund, and the payment of December 12, 2007 claims for \$3,929,232, plus salaries and overhead, the Fund balance will be \$3,262,860. The 3rd quarter non-capital claims will be reimbursed at the full 40%; however, a prorating of claims is anticipated at the next commission meeting for the 2007 4th quarter requests.

State Funding: Larry Landis reported on the efforts of the Indiana Public Defender Council and the Chief Public Defenders Association to obtain more state funding for public defense. The conclusion of these groups is that direct state funding would result in a better per capita funding for public defense and that they needed to work on proposing and developing an infrastructure for delivering a state defense program to the counties. In the interim, Mr. Landis reported that the IPDC is also working on several possible changes to the present system, such as, increasing reimbursements on non-capital expenses to

50%, adding types of cases that are not currently reimbursed, and having chief public defender salaries be a state expense like judges and prosecutors' salaries to give property tax relief to the counties.

Betty Lou Jerrel asked Larry Landis to clarify the role of this commission in a possible state program. Mr. Landis said the commission would still exist and he recommends that the number of members be expanded. The commission members would answer to the appointing authority, as they do now. Mrs. Jerrel asked if the IPDC and Chief Defenders have examined how much money is needed for a state agency and how the funds will be raised. Larry Landis said the group does not yet have an answer, however, he promises to provide the commission with a copy of whatever is proposed by the group, if and when that happens.

Peter Nugent asked if there are states that could be models for Indiana. Larry Landis stated that Wisconsin and Colorado have fully funded state programs and their systems are the traditional hierarchal-top-down programs. Mr. Landis stated that he believed Louisiana and Georgia have systems that might fit better with Indiana's "home rule" concept.

Request 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 12, 2007			
COUNTY	DEFENDANT	TOTAL	
Allen	Rios 1*	\$47,310.63	
	Rios 2*	\$24,455.25	
Fulton	Baker 1	\$988.55	
	Baker 2	\$1,161.60	
	Baker 3	\$3,334.05	
	Baker 4	\$1,506.51	
	Baker 5	\$8,282.10	
	Baker 6	\$427.20	
Lake	Azania	\$7,767.56	
Madison	Baer	\$1,396.14	
Marion	Adams	\$696.00	
	Allen 1****	\$11,184.37	
	Turner 1	\$18,155.28	
	Turner 2	\$4,829.53	

Parke	Cottrell	\$19,830.81	
Pike	Harbison	\$1,502.68	
Spencer	Ward	\$55,627.75	
Vanderburgh	Wilkes	\$62,403.76	
Vigo	Walker 1	\$1,464.55	
	Walker 2	\$5,744.05	
	Walker 3	\$1,701.70	
TOTAL		\$279,770.07	
** <i>Rios</i> I reduced by \$31,592.36 for charges incurred prior to death sentence request and charges not related to public defense			
*** <i>Rios</i> 2 reduced by \$4,118.62 for charges not related to public defense			
**** <i>Allen</i> 1 \$2,409.60 filed late and subtracted from request. Notice sent to Marion County.			

State vs. Rios: Staff Counsel, Jeff Wiese, discussed the Allen County death penalty case of *State v. Rios*. Originally, he notified Allen County that their request for reimbursement of defense claims in this case were in jeopardy due to three factors; untimely filing of claims, incorrect compensation under Criminal Rule 24 paid to lead and co-counsel, and caseloads of lead and co-counsel being in excess of limits set by CR24. Mr. Wiese stated that the compensation issue had been resolved, but the commission needed to decide if the claims in *Rios* should be paid despite Allen County not adhering to the 120-day reporting rule and the alleged excess public defense felony caseloads of lead and co-counsel.

Regarding the 120-day limit for requesting reimbursement in capital cases, a letter from Charles Leonard, Allen County Chief Public Defender, was distributed to the commission members. Mr. Leonard asks that the commission forgive the county's oversight on timely requesting reimbursement and stated that it had been a long time between capital cases in Allen County and the present Auditor's staff was not familiar with all the requirements in making a reimbursement request. Mr. Leonard's letter also states that the county will adhere to the 120-day reporting rule in the future.

Regarding the 20-felony caseload restriction in Criminal Rule 24, staff counsel reminded the commission that in two Indiana Supreme Court Cases, *Wrinkles* and *Prowell*, the Court ruled that the excessive caseloads of the public defenders serving as lead and co-counsel in these death penalty cases was ineffective assistance of counsel. Susan Carpenter stated that her office (State Public Defender) handled these cases in post-conviction, and that after the Supreme Court ruling, Vanderburgh County had to repay the Fund all the reimbursement monies previously given to the county. Ms. Carpenter stated there should be a method for auditing the felony caseloads of capital qualified public defenders when they take a death penalty case, instead of waiting until the end of the case and, where a violation is found, asking for a return of the funds.

Commission members discussed the 20-felony limit imposed by CR24, and whether that included private felony cases in addition to public cases. Larry Landis stated his belief that CR24 only covers public defense felony cases. He stated it was put in place to prevent judges from overloading public defenders with cases while they were handling a capital case, noting that attorneys can control their private inventory of cases, but a public defender has no control over how many public cases are assigned

to him/her. Jeff Wiese stated his reading of the rule says the limit is 20 open felony cases without differentiating between public and private cases.

Larry Landis spoke on behalf of Charles Leonard and reported that Mr. Leonard wanted the commission to know that his office did monitor the felony caseloads of lead and co-counsel in *Rios*, and that the attorneys were in compliance with CR24.

David Hensel said the 120-day issue is not a problem because Allen County sent a satisfactory explanation of how the oversight occurred. The commission has forgiven this infraction in the past. Mr. Hensel made the motion that staff counsel Jeff Wiese contact Charles Leonard and request a written statement certifying both public defenders were in compliance with CR24's restriction to the 20-felony cases during the time the death penalty was on the table in the *State v. Rios* case; when the commission receives this certification, the claim will be paid. Susan Carpenter seconded the motion. The vote was unanimous in favor of reimbursing 50% of the defense costs in *State v. Rios* after staff counsel receives certification.

As to all other capital claims submitted for payment, David Hensel made the motion to pay the capital claims as recommended and Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

Claims for 40% Reimbursement in Non-Capital Cases: The commission addressed the following counties' 3rd quarter claims for 40% reimbursement of non-capital expenses:

INDIANA PUBLIC DEFENDER COMMISSION						
Third Quarter Requests for Reimbursements in Non-Capital Cases						
12/12/2007						
COUNTY	2007 Period Covered	Total Expenditure	Adjustment for Non- Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbrsed
ADAMS	7/1-9/30	\$57,056.87	\$15,438.92	27%	\$41,617.95	\$16,647.18
ALLEN	7/1-9/30	\$739,457.78	\$40,737.91	6%	\$698,719.87	\$279,487.95
BENTON	7/1-9/30	\$3,867.00	\$892.38	23%	\$2,974.62	\$1,189.85
BLACKFORD	7/1-9/30	\$34,970.75	\$6,945.00	20%	\$28,025.75	\$11,210.30
CARROLL	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
CLARK	7/1-9/30	\$122,157.95	\$22,967.45	19%	\$99,190.50	\$39,676.20
DECATUR	7/1-9/30	\$32,372.07	\$13,742.86	42%	\$18,629.21	\$7,451.68
FAYETTE	7/1-9/30	\$66,249.30	\$23,166.93	35%	\$43,082.37	\$17,232.95
FLOYD	7/1-9/30	\$125,148.68	\$24,593.50	20%	\$100,555.18	\$40,222.07
FOUNTAIN	7/1-9/30	\$36,875.46	\$9,833.46	27%	\$27,042.00	\$10,816.80
FULTON	7/1-9/30	\$57,688.27	\$19,928.68	35%	\$37,759.59	\$15,103.84
GRANT	7/1-9/30	\$181,953.00	\$17,092.37	9%	\$164,860.63	\$65,944.25
GREENE	7/1-9/30	\$90,765.02	\$12,699.44	14%	\$78,065.58	\$31,226.23
HANCOCK	7/1-9/30	\$110,140.32	\$32,949.38	30%	\$77,190.94	\$30,876.38
HENRY	7/1-9/30	\$93,028.62	\$12,696.40	14%	\$80,332.22	\$32,132.89
HOWARD	7/1-9/30	\$339,049.73	\$51,218.78	15%	\$287,830.95	\$115,132.38
JASPER	7/1-9/30	\$51,602.67	\$18,039.96	35%	\$33,562.71	\$13,425.08

JAY	7/1-9/30	\$46,068.88	\$12,668.94	27%	\$33,399.94	\$13,359.98
JENNINGS	7/1-9/30	\$50,869.20	\$13,873.42	27%	\$36,995.78	\$14,798.31
KNOX	7/1-9/30	\$136,607.91	\$42,466.64	31%	\$94,141.27	\$37,656.51
KOSCIUSKO	7/1-9/30	\$101,767.75	\$32,902.36	32%	\$68,865.39	\$27,546.16
LAKE	7/1-9/30	\$834,736.84	\$2,405.58	0%	\$832,331.26	\$332,932.50
LAPORTE	7/1-9/30	\$126,616.56	\$25,972.63	21%	\$100,643.93	\$40,257.57
MADISON	7/1-9/30	\$353,750.09	\$35,093.81	10%	\$318,656.28	\$127,462.51
MARION	7/1-9/30	\$4,492,827.84	\$1,060,570.38	24%	\$3,432,257.46	\$1,372,902.98
MARTIN	7/1-9/30	\$11,250.60	\$2,707.80	24%	\$8,542.80	\$3,417.12
MIAMI	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
MONROE	7/1-9/30	\$278,713.98	\$45,490.63	16%	\$233,223.35	\$93,289.34
MONTGOMERY	7/1-9/30	\$56,823.75	\$18,080.61	32%	\$38,743.14	\$15,497.26
NEWTON	7/1-9/30	\$0.00	\$0.00	0%	\$0.00	\$0.00
NOBLE	7/1-9/30	\$77,553.25	\$14,836.10	19%	\$62,717.15	\$25,086.86
OHIO	7/1-9/30	\$14,049.05	\$3,177.80	23%	\$10,871.25	\$4,348.50
ORANGE	7/1-9/30	\$60,241.14	\$13,943.50	23%	\$46,297.64	\$18,519.06
PARKE	7/1-9/30	\$23,596.15	\$5,634.90	24%	\$17,961.25	\$7,184.50
PERRY	7/1-9/30	\$54,963.00	\$8,827.00	16%	\$46,136.00	\$18,454.40
PIKE	7/1-9/30	\$56,988.79	\$24,841.27	44%	\$32,147.52	\$12,859.01
PULASKI	7/1-9/30	\$97,283.26	\$20,736.14	21%	\$76,547.12	\$30,618.85
RUSH	7/1-9/30	\$40,814.82	\$10,904.72	27%	\$29,910.10	\$11,964.04
SCOTT	7/1-9/30	\$61,598.90	\$15,399.73	25%	\$46,199.17	\$18,479.67
SHELBY	7/1-9/30	\$78,712.01	\$9,835.39	12%	\$68,876.62	\$27,550.65
SPENCER	7/1-9/30	\$18,037.90	\$1,699.50	9%	\$16,338.40	\$6,535.36
STEUBEN	7/1-9/30	\$64,661.26	\$11,884.92	18%	\$52,776.34	\$21,110.54
ST. JOSEPH	7/1-9/30	\$505,489.56	\$59,578.25	12%	\$445,911.31	\$178,364.52
SULLIVAN	7/1-9/30	\$28,775.23	\$9,535.48	33%	\$19,239.75	\$7,695.90
SWITZERLAND	7/1-9/30	\$57,618.71	\$21,380.53	37%	\$36,238.18	\$14,495.27
TIPPECANOE	7/1-9/30	\$370,194.38	\$159,910.45	43%	\$210,283.93	\$84,113.57
UNION	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
VANDEBURGH	7/1-9/30	\$575,287.72	\$104,957.56	18%	\$470,330.16	\$188,132.06
VERMILLION	7/1-9/30	\$25,262.07	\$9,137.34	36%	\$16,124.73	\$6,449.89
VIGO	7/1-9/30	\$358,529.73	\$74,638.16	21%	\$283,891.57	\$113,556.63
WABASH	7/1-9/30	\$41,999.97	\$7,478.35	18%	\$34,521.62	\$13,808.65
WARREN	7/1-9/30	\$9,617.02	\$4,506.00	47%	\$5,111.02	\$2,044.41
WASHINGTON	7/1-9/30	\$110,375.75	\$8,609.34	8%	\$101,766.41	\$40,706.56
WELLS	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
WHITE	7/1-9/30	\$0.00	\$0.00		\$0.00	\$0.00
WHITLEY	7/1-9/30	\$45,539.89	\$11,822.86	26%	\$33,717.03	\$13,486.81
TOTAL		\$11,409,606.45	\$2,228,451.51	20%	\$9,181,154.94	\$3,672,461.98

Before the commission voted on payment of the quarterly claims, the following issues were discussed:

- a. Amended 2nd Quarter Reimbursement from Marion County. Deborah Neal explained that in November 2007, Marion County Public Defender Agency reported to staff counsel that their 2nd quarter expenses were overstated by approximately \$850,000. MCPDA was

asked to send an amended 2nd Quarter Request for Reimbursement, and reimburse the Fund \$128,650.79. Marion County immediately complied with this request; the repayment allowed all other counties in the program to receive additional reimbursement for the 2nd quarter of 2007. The previous prorating at 37.3% for reimbursement of 2nd quarter requests was adjusted to a 39.8% reimbursement.

- b. Summary of Response to 90-Day Notice. Deborah Neal reminded the commission that caseload changes in the counties that received the 90-day notice of non-compliance would not be significant until these counties are into their 2008 fiscal year.
- c. Rush County: Deborah Neal reported on her meeting in Rushville, Indiana with the Rush County Public Defender Board President, both superior and circuit court judges, and a public defense attorney. The county has developed a plan to come into compliance by hiring a full-time public defense attorney.
- d. Whitley County: After meeting with the judges and county officials of Whitley County, Deborah Neal reports that Whitley County does not intend to alter their public defense program to come into compliance with commission standards. Ms. Neal issued a 90-day notice letter to the county, to which the county did not respond.
- e. Grant County: Ms. Neal met with judges, county officials and public defense attorneys in Marion, Indiana to discuss their public defense program. The county is working to alter its delivery of defense services and intends to come into compliance with commission standards. Another meeting with county commissioners and council members is scheduled for January 2008, and Deborah Neal has been invited to attend and answer questions regarding the Fund.
- f. Appeals: Staff counsel recommends that a study of public defense appeals be conducted to determine if there is significant difference in the amount of time allotted to trial appeals as opposed to sentencing appeals. If so, then each category should be given a different weight, and maximum caseload standards. Larry Landis reported that some counties are already studying this issue and he will inform the commission when the data is finalized.

Interim Chairman Jerrel asked for a motion regarding payment of the non-capital reimbursement requests totaling \$3,672,461.98. Susan Carpenter made the motion to pay the non-capital reimbursement requests and David Hensel seconded the motion. The motion passed unanimously.

Dave Cook announced he had submitted his resignation as Chief Public Defender of Marion County and wanted to address this group to impress upon the commission members how important the work is that they do, and how important the reimbursements they offer counties is to advancing the case of indigent defense. He reported that the MCPDA has grown from a staff of 35 in 1995, to 220 full time people, 160 full time attorneys, and another 100 contract attorneys. Mr. Cook stated that the MCPDA has moved to a new professional office space, and that their budget is approaching \$20 million next year.

Policy Matters:

Supplemental Public Defense Fund: Commission staff compiled information received from counties that have a Supplemental Public Defense Services Fund. Eighty-five of 92 counties responded to the request for information. Of those 85, three counties reported having no supplemental public defense services fund; three counties reported keeping a separate fund for each court; and 11 counties reported using the fund for public defense salaries. Other common uses for this fund are public defense secretary

and investigator salaries and benefits, travel expenses and mileage reimbursement, continuing legal education seminars, legal periodicals, books and research, additional benefits for public defenders such as life insurance, transcript services, and office supplies and equipment. Larry Landis reported he would share this information with the chief public defenders.

Standard H - \$60 Hourly Rate for Assigned Counsel: The hourly rate paid for public defense attorneys in the 92 counties was reported as follows: four counties pay \$0 – because they only pay by contract, not hourly; two counties \$50 per hour; one county \$55; 49 counties pay \$60; seven counties pay \$65 and seven pay \$70; 11 counties pay \$75 per hour and one county pays \$78.50; there are four counties paying \$80, three paying \$85, one pays \$90, one pays \$95 and one pays \$110.00. Only the counties in the public defense program that receive reimbursement from the Fund are obligated by Standard H to pay a minimum \$60 per hour for public defense. This information was compiled in the event the commission wishes to recommend an increase in the Standard H rate for compensation for assigned counsel in non-capital cases. The rate was last adjusted on March 8, 1995. As the results show, many counties already pay a rate that exceeds the Standard H rate.

Election of Chairman: Interim Chairman Bettye Lou Jerrel asked for nominations for the position of Chairman of the Public Defender Commission. Peter Nugent nominated Mark Rutherford for Chairman and David Hansel seconded that nomination. The members unanimously elected Mark Rutherford as Chairman of the Public Defender Commission.

The next meeting of the commission is March 26, 2008 at the new location, 30 South Meridian Street, 5th floor, Indianapolis, Indiana.

The meeting adjourned at 3:55 p.m.

Bettye Lou Jerrel, Interim Chairman

Date