

# Indiana Public Defender Commission Meeting Minutes

March 26, 2008

Chairman Mark Rutherford called the business meeting to order at 2:07 p.m. Commission members in attendance were David Hensel, Bettye Lou Jerrel, Peter D. Nugent, Sen. Joseph C. Zakas, Rep. Amos Thomas and Rep. Phil Hoy. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Sen. Timothy S. Lanane and Susan Carpenter.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Marion County Public Defender Agency's Chief Counsel, Vicki Ursulskis, and Chief Financial Officer, Deborah Green, and Madison County's Supervising Public Defender, David Happe.

**Presentation to Judge Daniel F. Donahue:** On behalf of the Public Defender Commission, Bettye Lou Jerrel made a presentation to Judge Daniel F. Donahue honoring him for 12 ½ years of service to the Commission. Judge Donahue's term as a Commission member expired in February 2008. Ms. Jerrel asked that the following biography of Judge Donohue be read into the minutes.

Judge Donahue graduated with an A.B. degree from John Carroll University in 1962. He entered military service in September of 1964 as a Second Lieutenant and served through September of 1966. Upon his release from service, Judge Donahue went to work as a security analyst for the then Commonwealth Life Insurance Company. He attended the University of Louisville School of Law at night and received his Jurist Doctorate Degree on June 8, 1969. After graduation, he left his employment and opened an office for the practice of law in Charlestown, Indiana. In the spring of 1970, he campaigned as a democrat for the primary nomination as prosecuting attorney. Shortly thereafter he was elected chairman of the Clark County Democrat Party and served for two years. In that capacity, he called for open primary elections where people were not "slated" by the party. Judge Donahue served as prosecuting attorney from 1971 through 1982. He became Clark County's first full time prosecutor, a position he advocated while serving on the board of directors of the Indiana Prosecuting Attorney's Council. In 1975 and 1976, he served as chairman of the board.

From 1983 through 1986, Judge Donahue practiced law in Jeffersonville. In 1986 he stood for election as Judge of the Clark Circuit Court and will have served in that capacity for twenty-two and one-half years when he retires in June of 2008. From 1991 through 2000, he served on the board of directors of the Indiana Judicial Conference and became the first chairman of the Domestic Relations Committee, which was organized in 1995. He served through 2003 and was the primary influence behind the adoption of the Indiana Parenting Time Guidelines giving parents, generally fathers, more parenting time with their children and also recognizing the financial costs of parenting.

Judge Donahue is a graduate of the Indiana Judicial College and the Indiana Graduate Program for Judges. He served on the Indiana Supreme Court Committee on Character and Fitness and is also a fellow of the Indiana Bar Foundation and a member of the Judicial Administration Committee of the Indiana Judicial Conference. In 1999, Judge Donahue

was the leading force behind the creation of the Sherman Minton American Inn of Court and served as president of the organization through 2000. Judge Donahue was a participant in the 1995 Class of Leadership Southern Indiana and became a member of its board of directors serving through 2002. He was program chair of the organization in 2000 and became its chairman in 2001. He has been a member of the Jefferson Rotary since 1987.

**Meeting Minutes:** Chairman Rutherford presented the minutes from the December 12, 2007 meeting for approval. Peter Nugent moved for approval of the minutes as presented and Sen. Joseph Zakas seconded the motion. The vote was unanimous in favor of approval.

**Financial Status of Public Defense Fund:** Deborah Neal reported that the amount available in the Public Defense Fund to pay claims is \$3,224,705.72. After payment of the 4<sup>th</sup> Quarter 2007 capital and non-capital claims, the Public Defense Fund will have a remaining balance of \$8,996.81.

Ms. Neal also informed the Commission that Marion County Public Defender Agency (“MCPDA”) recently admitted an error in their expense reporting for the past eight quarters. MCPDA added capital expenses to non-capital expenses in the quarterly requests for reimbursement. Deborah Neal calculated that MCPDA received overpayment of \$210,396.91, and that amount has been deducted from MCPDA’s 4<sup>th</sup> quarter reimbursement request.

Deborah Neal reported that, due to insufficient funds, the non-capital claims would have to be prorated at 33.85% for the 4<sup>th</sup> quarter 2007. Senator Zakas asked what was the lowest pro rata the Commission had to make. Ms. Neal reported it was 18.3% for the 4<sup>th</sup> quarter of 2006. Bettye Lou Jerrel asked if the Commission staff ever notifies the county public defender boards and auditors when there is a shortage in the Public Defender Fund and pro rating will be necessary. Deborah Neal said that letters were sent to the counties when the non-capital claims were prorated at 18.3% in the spring of 2007. She also reported that consideration has been given to creating an electronic newsletter about the Public Defender Commission, and this would be an ideal forum to distribute information.

**Capital and Non-Capital Expense Summary:** The Commission reviewed the analysis of the Public Defense Fund appropriations and expenses prepared by Deborah Neal, and a five-year projection created with the base fiscal year of 2006-2007 to compare with actual expenses paid so far in FY 2007-2008. David Hensel inquired if the 12.5% projected increases the Public Defense Fund needs compares with the historical increases the Fund has received from the legislature. Larry Landis said generally the Fund receives an increase of between 10% and 14% and when you consider the initial funding was \$650,000, these are big increases. Historically, these increases are always a “catch up” game.

For analysis of capital expenses, the staff distributed summaries of expenses in death penalty cases since the beginning of the Fund: One list is by county and one by defendant.

**Approval of 2007 Florida Death Penalty Seminar for CR24 Requirements:** The Commission considered for approval the Florida Association of Criminal Defense Lawyers’ death penalty seminar presented February 16-17, 2007, for purposes of Criminal Rule 24’s required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel. David Hensel made the motion to approve the 2007 Florida Death Penalty Seminar for CR24 requirements. Peter Nugent seconded the motion and the motion passed unanimously.

**State v. Wilkes:**

The Vanderburgh County capital case, *State v. Wilkes*, is on track to exceed the cost of the most expensive capital case to date, the *Stevenson* case. Bettye Lou Jerrel commented that the Vanderburgh County Council is up in arms about the high defense costs in *Wilkes*. Jeff Wiese reported the case has moved into the appeal phase and he learned the names of the two appellate attorneys from a newspaper article. He checked to ensure they are qualified pursuant to CR24 requirements and discovered the lead appellate attorney, John Goodridge, does not have the 12 hours of Commission approved death penalty CLEs. He does have 11.7 hours from an approved course and 12 hours from a non-approved course. Jeff Wiese presented a course schedule and biographies of the presenters at the 2007 Federal Capital Defense Strategy Session, Baltimore, Maryland, held November 9, 2007, that Mr. Goodridge attended, for CR24 qualification and approval by the Commission. Phil Hoy made the motion to approve this course for CR24 requirements. Joseph Zakas seconded the motion. The motion passed unanimously. Both Phil Hoy and Larry Landis asked staff to inform the attorney and the judge involved of the action the Commission took and remind them about the requirements of CR24 and that violations of CR24 could jeopardize reimbursements from the Public Defense Fund.

**Request from Marion County for an Exception to Standard F:**

Marion County contacted Deborah Neal about a potential public defender they are considering hiring to handle appeals. This potential employee does not have the 3 years experience the standard requires to handle murder and A and B felonies. He does have 18 years of experience clerking for a judge and 1-½ years of criminal experience. Bettye Lou Jerrel said what we are deciding is whether to stick to our rules or make an exception. Mark Rutherford said it is obvious the Commission did not consider this situation when it drafted Standard F. On behalf of Marion County, Deb Green and Victoria Ursulkis withdrew this request. Mark Rutherford said perhaps we should examine this Standard at a future meeting to see if changes should be made.

**Requests for 50% Reimbursement in Capital Cases:** The commission addressed claims for 50% reimbursement in capital cases as follows:

Reimbursement Requests in Capital Cases		
March 26, 2008		
COUNTY	DEFENDANT	TOTAL
Allen	Rios	\$12,293.85
Fulton	Baker	\$569.10
Marion	Allen	\$9,514.42
	Allen 2	\$11,379.05
	Turner	\$34,529.31
	Voss	\$2,912.00
Parke	Cottrell*	\$7,631.90
Spencer	Ward**	\$7,486.74
Vanderburgh	Wilkes***	\$53,124.75
<b>TOTAL</b>		<b>\$139,441.12</b>

<b>* Cottrell reduced by \$277.50 for charges not related to public defense</b>		
<b>** Ward reduced by \$5,071.23 for untimely filing of claim</b>		
<b>***Wilkes reduced by \$639.51 for charges not related to the capital case</b>		

Peter Nugent made a motion to pay the capital claims as recommended. Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

**Requests for 40% Reimbursement in Non-Capital Cases:**

The Commission addressed the following counties' 4<sup>th</sup> quarter requests for reimbursement of non-capital expenses. Deborah Neal said the Public Defense Fund balance was not sufficient to reimburse the claims at 40%. The claims were pro rated at 33.85%.

INDIANA PUBLIC DEFENDER COMMISSION							
4 <sup>th</sup> Qtr (Oct. 1, 2007 - Dec. 31, 2007) Requests for Reimbursements in Non-Capital Cases							
AMENDED 3/26/2008							
COUNTY	Total Expenditure	Adjust For Non-Reimbrs	% Of Adjstmt	Eligible Expenditure	If 40% Reimbursed	Prorated at 33.85%	Loss Due to Prorating
ADAMS	\$72,784.87	\$19,850.42	27%	\$52,934.45	\$21,173.78	\$17,918.31	\$3,255.47
ALLEN	\$714,540.68	\$31,706.18	4%	\$682,834.50	\$273,133.80	\$231,139.48	\$41,994.32
BENTON	\$6,281.25	\$0.00	0%	\$6,281.25	\$2,512.50	\$2,126.20	\$386.30
BLACKFRD	\$19,289.15	\$5,554.75	29%	\$13,734.40	\$5,493.76	\$4,649.09	\$844.67
CARROLL	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
CLARK	\$127,631.51	\$21,099.25	17%	\$106,532.26	\$42,612.90	\$36,061.17	\$6,551.73
CRAWFRD	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
DECATUR	\$32,910.68	\$9,430.55	29%	\$23,480.13	\$9,392.05	\$7,948.02	\$1,444.03
FAYETTE	\$102,771.48	\$24,665.16	24%	\$78,106.32	\$31,242.53	\$26,438.99	\$4,803.54
FLOYD	\$156,814.11	\$28,430.49	18%	\$128,383.62	\$51,353.45	\$43,457.86	\$7,895.59
FOUNTAIN	\$37,396.17	\$9,898.99	26%	\$27,497.18	\$10,998.87	\$9,307.80	\$1,691.07
FULTON	\$56,215.51	\$20,300.05	36%	\$35,915.46	\$14,366.18	\$12,157.38	\$2,208.80
GRANT	\$237,981.00	\$28,473.00	12%	\$209,508.00	\$83,803.20	\$70,918.46	\$12,884.74
GREENE	\$76,085.16	\$11,033.52	15%	\$65,051.64	\$26,020.66	\$22,019.98	\$4,000.68
HANCOCK	\$119,446.85	\$41,247.85	35%	\$78,199.00	\$31,279.60	\$26,470.36	\$4,809.24
HENRY	\$83,613.49	\$11,485.44	14%	\$72,128.05	\$28,851.22	\$24,415.34	\$4,435.88
HOWARD	\$346,305.53	\$54,044.61	16%	\$292,260.92	\$116,904.37	\$98,930.32	\$17,974.05
JASPER	\$66,565.10	\$24,810.63	37%	\$41,754.47	\$16,701.79	\$14,133.89	\$2,567.90
JAY	\$59,090.76	\$12,468.15	21%	\$46,622.61	\$18,649.04	\$15,781.75	\$2,867.29

JENNINGS	\$69,785.27	\$37,496.56	54%	\$32,288.71	\$12,915.48	\$10,929.73	\$1,985.75
KNOX	\$136,404.47	\$34,284.89	25%	\$102,119.58	\$40,847.83	\$34,567.48	\$6,280.35
KSCIUSKO	\$121,571.29	\$36,142.82	30%	\$85,428.47	\$34,171.39	\$28,917.54	\$5,253.85
LAKE	\$935,139.30	\$4,283.08	0%	\$930,856.22	\$372,342.49	\$315,094.83	\$57,247.66
LAPORTE	\$130,001.41	\$27,591.12	21%	\$102,410.29	\$40,964.12	\$34,665.88	\$6,298.24
MADISON	\$368,366.96	\$26,946.59	7%	\$341,420.37	\$136,568.15	\$115,570.80	\$20,997.35
MARION	\$4,656,228.68	\$1,142,474.98	25%	\$3,513,753.70	\$1,405,501.48	\$979,008.72	\$216,095.85
MARTIN	\$15,364.68	\$4,780.62	31%	\$10,584.06	\$4,233.62	\$3,582.70	\$650.92
MIAMI	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
MONROE	\$331,955.84	\$48,578.90	15%	\$283,376.94	\$113,350.78	\$95,923.09	\$17,427.69
MNTGMRY	\$115,162.04	\$32,922.01	29%	\$82,240.03	\$32,896.01	\$27,838.25	\$5,057.76
NEWTON	\$0.00	\$0.00	0%	\$0.00	\$0.00	\$0.00	\$0.00
NOBLE	\$77,002.30	\$13,641.97	18%	\$63,360.33	\$25,344.13	\$21,447.47	\$3,896.66
OHIO	\$13,947.50	\$3,985.00	29%	\$9,962.50	\$3,985.00	\$3,372.31	\$612.69
ORANGE	\$30,518.39	\$6,189.04	20%	\$24,329.35	\$9,731.74	\$8,235.48	\$1,496.26
PARKE	\$28,529.66	\$6,249.35	22%	\$22,280.31	\$8,912.12	\$7,541.88	\$1,370.24
PERRY	\$56,820.00	\$11,981.00	21%	\$44,839.00	\$17,935.60	\$15,178.00	\$2,757.60
PIKE	\$64,003.42	\$16,272.06	25%	\$47,731.36	\$19,092.54	\$16,157.07	\$2,935.47
PULASKI	\$74,640.08	\$29,523.00	40%	\$45,117.08	\$18,046.83	\$15,272.13	\$2,774.70
RUSH	\$46,984.60	\$19,346.60	41%	\$27,638.00	\$11,055.20	\$9,355.46	\$1,699.74
SCOTT	\$84,405.56	\$17,849.20	21%	\$66,556.36	\$26,622.54	\$22,529.33	\$4,093.21
SHELBY	\$81,520.75	\$9,926.53	12%	\$71,594.22	\$28,637.69	\$24,234.64	\$4,403.05
SPENCER	\$31,010.69	\$2,939.25	9%	\$28,071.44	\$11,228.58	\$9,502.18	\$1,726.40
STEBEN	\$58,659.80	\$13,211.94	23%	\$45,447.86	\$18,179.14	\$15,384.10	\$2,795.04
ST. JSEPH	\$509,737.29	\$65,451.89	13%	\$444,285.40	\$177,714.16	\$150,390.61	\$27,323.55
SULLIVAN	\$24,942.60	\$12,626.20	51%	\$12,316.40	\$4,926.56	\$4,169.10	\$757.46
SWTZRLN	\$72,128.91	\$28,365.30	39%	\$43,763.61	\$17,505.44	\$14,813.98	\$2,691.46
TIPPECN	\$376,939.61	\$107,975.46	29%	\$268,964.15	\$107,585.66	\$91,044.36	\$16,541.30
UNION	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
VNDRBRG	\$571,240.04	\$106,161.68	19%	\$465,078.36	\$186,031.34	\$157,429.02	\$28,602.32
VERMILLN	\$31,839.78	\$12,129.44	38%	\$19,710.34	\$7,884.14	\$6,671.95	\$1,212.19
VIGO	\$430,349.07	\$72,828.30	17%	\$357,520.77	\$143,008.31	\$121,020.78	\$21,987.53
WABASH	\$42,249.97	\$8,454.50	20%	\$33,795.47	\$13,518.19	\$11,439.77	\$2,078.42
WARREN	\$8,689.91	\$4,693.50	54%	\$3,996.41	\$1,598.56	\$1,352.78	\$245.78
WASHGTN	\$93,979.06	\$10,044.09	11%	\$83,934.97	\$33,573.99	\$28,411.99	\$5,162.00
WELLS	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
WHITE	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00

WHITLEY	\$45,056.01	\$10,053.82	22%	\$35,002.19	\$14,000.88	\$11,848.24	\$2,152.64
<b>TOTAL</b>	<b>\$12,050,898.24</b>	<b>\$2,339,899.73</b>	<b>19%</b>	<b>\$9,710,998.51</b>	<b>\$3,884,399.39</b>	<b>\$3,076,776.05</b>	<b>\$807,623.34</b>
<b>NOTE:</b>	Marion Co.'s request reduced due to error mixing capital/non-capital expenses in 4th qtr. 07.						
	Marion Co.'s non-cap. Expenses amended from \$4,754,993.69 to \$4,656,228.68.						
	After prorating at 33.85%, Marion Co. had additional amount of \$210,396.91 subtracted due to						
	error (adding cap. exp. to non-cap. exp.) for past seven quarters.						

Peter Nugent made a motion to pay the non-capital claims as recommended and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

**Status of Compliance Issues in Counties Given 90-Day Notice:**

Deborah Neal said that when a county received a 90-day Notice, it was in the middle of a budget year and few changes could be made to reach compliance; the 1<sup>st</sup> quarter 2008 request should be more informative regarding compliance. At the next meeting of the Commission, the staff will provide a detailed status report.

**Task Force to Study Indigent Defense in Indiana:**

Deborah Neal gave a short history of the proposal to study indigent defense in Indiana. The Commission is anticipating a response from Chief Justice Shepherd regarding a task force for this project.

**Indiana Public Defender Council – Larry Landis:**

Larry Landis reported that the Council has analyzed each county's spending on indigent defense. The information is necessary should the state legislature need to know the costs of a state supported public defense program for all counties as recommended by the Shepherd/Kernan task force. The total cost per year of public defense for all 92 counties is approximately \$60 million. There is also data on public defender caseloads. Mr. Landis reported that public defenders are saying their caseloads keep increasing. The Council can show that there is no increase in the crime rate. Case filings are not up except for D felonies. It appears case loads are increasing because of a trend to appoint public defenders more often. It is possible this trend is starting now that each individual court no longer covers the cost of public defense. The Commission might want to consider creating some screening mechanism to determine if a public defender is needed or a mechanism that requires the defendant to pay back some or all of the public defense costs. Many states have an active pre-trial services agency to conduct an investigation of the defendant's finances to determine if a public defender is required.

With no further business to discuss, Peter Nugent made a motion to adjourn the meeting and David Hensel seconded. The motion passed unanimously and Mark Rutherford closed the meeting at 3:25 PM. The next Commission meeting will be held on June 25, 2008 at 2:00 PM.

\_\_\_\_\_  
Mark Rutherford, Chairman

\_\_\_\_\_  
Date

## Indiana Public Defender Commission Meeting Minutes

June 25, 2008

Chairman Mark Rutherford called the business meeting to order at 2:03 p.m. Commission members in attendance were Susan Carpenter, Bettye Lou Jerrel, Peter D. Nugent, Sen. Timothy S. Lanane, Rep. Phil Hoy, and Judge Diane Ross Boswell. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Sen. Joseph Zakas, Rep. Amos Thomas and David Hensel.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Ray Casanova of the Marion County Public Defender Agency, David Happe and Tim States from Madison County, Stephen Owens, Vanderburgh County Chief Public Defender, Jim Lisher, Shelby County Chief Public Defender, Jerry Lux, Shelby County Public Defender Board Chairman, Hon. John Potter, Jasper Circuit Court, Hon. James R. Ahler, Jasper Superior Court, Edward Dumas, Jasper County Public Defender Board Chairman, Hon. Thomas K. Milligan, Montgomery Circuit Court, Sara Houston Dick, Montgomery County Public Defender, and Deborah Outcalt, Monroe County Public Defender Office Administrator.

**Introduction of New Commission Member, Hon. Diane Boswell.** Mark Rutherford began the meeting by welcoming the newest Commission member, Hon. Diane Boswell. Judge Boswell serves Lake Superior Court, Criminal Division #3. She was appointed to the Commission by Chief Justice Randall T. Shepard and her term runs until April 23, 2012.

**Approval of Minutes from 3/26/08 Meeting.** Chairman Rutherford presented the minutes from the March 26, 2008 meeting for approval. Bettye Lou Jerrel moved for approval of the minutes as presented. Rep. Phil Hoy seconded the motion. The vote was unanimous in favor of approval.

**Proposed Meeting Dates for 2009.** The proposed dates are March 25, 2009, June 24, 2009, September 23, 2009 and December 16, 2009. All meetings will convene at 2:00 p.m. Bettye Lou Jerrel moved for approval of the proposed dates and Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

**Report on Counties Receiving 90-Day Notice in 2007.** The Commission issued 90-Day Notices of Non-Compliance to thirteen counties in 2007. Each county was informed that their reimbursements from the Public Defense Fund for non-capital expenditures was in jeopardy due to continued non-compliance with Standard J's maximum caseloads for public defense attorneys. The Commission chose not to enforce suspending payments until after the 1<sup>st</sup> quarter 2008 reimbursement requests, allowing these counties 15 months to come into compliance.

Deborah Neal reported that twelve of the thirteen counties are still not in compliance – Washington County being the exception. Vigo, Marion, Madison and Lake Counties have been in constant contact with the Commission's staff counsels, and marked improvement towards full compliance has been achieved by those counties. The remaining eight counties were notified of the need to present convincing evidence to the Commission of why the reimbursements to the county should not be suspended.

Deborah Neal further explained to the Commission that counties with extraordinary events occurring in a quarter disrupting the plan for achieving caseload compliance would be allowed to request additional time to achieve compliance without suspension of reimbursements. One example of this is Lake County. In 2008, the Lake County Public Defender Agency had over 30 appeals cases assigned in one month, which is more than all of the appeals assigned to the agency in 2007. Dave Schneider, Lake County Chief Public Defender, has kept staff counsel informed of the caseload situation in Lake County. Deborah Neal stated the counties cannot control crime rates or economics which both affect the public defenders' caseloads in a county, and the Commission should give consideration to counties that report significant increases in caseload assignments due to these environmental factors.

Those counties that did not provide a written explanation to the Commission of their continued non-compliance were invited to attend this meeting to address the issue of staying in the public defender program. Mark Rutherford asked if any counties that received the invitation would not be at the meeting. Deborah Neal responded that Hugh Taylor, Chairman of Steuben County Public Defender Board, is in a criminal trial and unable to attend. However, Mr. Taylor will be attending the September Commission meeting. Attorney Jennifer Lewis, Scott County, informed staff counsel that the Scott County Council approved hiring another public defender in 2009. She was told she did not need to attend this meeting. A letter from Jeff Stonebraker, Clark County Chief Public Defender, to the Commission staff stated he has been receiving help from Judge Carmichael. Clark County's compliance problem is the number of CHINS and Termination of Parental Rights cases. These cases are handled in Judge Carmichael's court and she is requesting additional funds for her court from the county council so she may appoint indigent counsel on a case-by-case basis, rather than utilize the public defender office. Removing the assignment of CHINS and TPR cases will advance the efforts of Clark County public defenders to come into compliance on caseload standards. Mr. Stonebraker was informed that it was not necessary for him to attend this meeting.

Mark Rutherford thanked all the guests present for coming to our meeting. He stated that the Commission will withhold ruling on whether to suspend reimbursements until after all the counties represented at the meeting have been heard.

**Montgomery County:**

Judge Milligan reported that, by his calculation, the county would need to hire an additional 3.5 public defenders to handle the caseload and be in compliance with Standard J. The Montgomery County Public Defender Board took this matter to the County Council. The Council decided that for the amount of reimbursement provided by the Commission, it was not worth the expense of hiring additional public defenders. Judge Milligan stated he had had no complaints from the public defenders about being overworked nor had there been any complaints from the defendants about poor representation although he had not conferred with the public defenders before meeting with the council. He presented these options to the council: hire additional part time public defenders, hire a full time public defender, or establish a public defender office with adequate support staff. The county council was not willing to pursue any of these options. Chairman Rutherford asked if there was anything unique about Montgomery County that should qualify it for an exception to compliance with Standard J. Judge Milligan said he was not aware of anything. Larry Landis asked if the public defenders handled mixed caseloads of reimbursable and non-reimbursable cases. Judge Milligan said yes. Larry asked if the county was aware that compliance with Standard J was only required for public defenders who handled reimbursable cases. If a public defender had no reimbursable cases, then he/she did not need to comply



with Standard J. The county might not be so out of compliance if cases were assigned differently. Tim Lanane asked what happens if one defendant is charged with both a misdemeanor and a felony? Larry Landis said the county only counts the most serious offence on the new case assignment worksheet. Chairman Rutherford asked if there was more discussion. Sarah Dicks, a public defender in Montgomery County wanted the Commission to know that just because the PD's in Montgomery County are not complaining, does not mean they do not feel overworked.

**Jasper County:**

Ed Dumas, Jasper County Public Defender Board Chairman, explained the situation in the county. He began by stating the Jasper County Public Defense Board wants to comply with the Commission's standards and stay in the program. The Board has turned in a 2009 proposed budget to the county council; however, it will not be reviewed until the last week of August. Mr. Dumas further stated that Jasper County has an extraordinary circumstance to bring to the attention of the Commission: Forty to fifty miles of interstate highway (I-65) running through Jasper County is presently targeted by the Federal Drug Enforcement Agency and numerous arrests have occurred. The majority of these drug arrests have resulted in defendants qualifying for a public defender. Mr. Dumas stated these arrests have had a significant effect on Jasper County public defenders' caseloads.

Judge John Potter, Jasper Circuit Court, has talked to the Chief Public Defender, and in order to achieve compliance on caseloads, the county plans to implement a CASA (court appointed special advocate) program. Right now, the public defenders must serve as guardians-ad-litem in CHINS cases. In 2007 they took 63 children as CHINS. That is about twice as many as the previous year. The hope is to have a CASA program in place by January 2009. Judge James Ahler, Jasper Superior Court, described his scheduling system that allows the public defenders to have a set time each week to be at court. This allows the court and public defenders to plan and organize their time best. He sat down with the public defenders at the beginning of the year to create a scheduling plan that would be the most efficient for the court and the public defenders. Each public defense attorney has a 30 minute time slot to do court business every Monday morning. This works extremely well for most cases. The Circuit Court judge has only had three trials since February and only one of those defendants had a public defender. He attributes this to having reasonable prosecutors. The county wants to make us aware that one of the reasons for the large caseload this year was the unsealing of 20-25 indictments from the I-65 drug investigation in February. This has made it very difficult to reach compliance. Deborah Neal thanked Jasper County for bringing this information to our attention because this is an extraordinary circumstance. She noted that unless Jasper County anticipates this investigation continuing, there may not be a need to increase the number of public defenders. The judges believe the section of I-65 in Jasper County is only targeted for 6 months.

Tim Lanane asked staff counsel, Deborah Neal, if the practice of using public defenders as guardian-ad litem ("GAL") in CHINS cases is normal, and if the cessation of this practice will help Jasper County's efforts to reach compliance? Deborah Neal reported that new law implemented last year mandated a GAL for every child in a CHINS case. Ed Dumas said the county would have additional information to submit to the Commission in September and requested that any decision regarding Jasper County be tabled until the September meeting. They plan on submitting a written report to the Commission detailing steps they can take and the action from the County Council before the next meeting.

**Shelby County:**

Jim Lisher, Shelby County Chief Public Defender, reported that after the county received the 90-Day Notice in January 2007, the county council was approached with a request for two additional public defenders. Mr. Lisher stated the increase in public defenders' caseloads at that time was due to a large number of meth labs in the county. The county council granted the request for additional attorneys in the middle of a budget year. The council allowed them to hire a public defense attorney in November 2007 and promised another public defender would be funded for 2008. A public defense attorney was added in 2008. Mr. Lisher stated the public defense budget for 2009 includes a request for an additional paralegal, bringing total staff to two. He also informed the Commission that in researching caseloads after the receipt of the May 30, 2008 letter from staff counsel, they discovered they had been reporting some probation violations incorrectly leading to an overstatement of the caseloads.

Bettye Lou Jerrel advised all county public defender offices to seek out one particular member of the county council who has an interest in public defense and meet with this councilmember and the auditor prior to the budget meeting with the county council. This would be the best time to explain the importance of the public defender program to that council member. In this way you can establish a relationship with one council member before the difficult budget planning process begins.

Jerry Lux said the Shelby County Council has a particular member assigned to attend the majority of the public defender board meetings. The county council keeps informed of the issues and problems facing the public defender board through this particular councilperson.

**Vanderburgh County:**

Steve Owens, Chief Public Defender, reported on the situation in Vanderburgh County. The basic problem in the county is in its juvenile division. In 2007 all juvenile public defenders were handling a mixed caseload. The county rearranged the caseloads and hired two additional public defenders for the juvenile division. One was part time, the other full time. In 2008 the county council approved hiring another full time public defender plus a secretary. The new public defender is a recent law school graduate and is handling a mixed caseload. The secretary position was filled in March 2008. This gives Vanderburgh County 12 full time public defenders, 3 secretaries, two paralegals, one full time investigator and one investigator under contract to help as needed. Steve Owens is requesting the county council approve hiring both an additional paralegal and investigator in his 2009 proposed budget. This will be presented to the county council at its August/September meeting. He is not sure the council will approve his request. He asked how the new full time public defender in the juvenile division should be reported. Is he considered adequate or inadequately staffed? Deborah Neal said until the county has hired an additional paralegal and investigator, only 8 of the full time public defenders can be reported as adequately staffed.

Before voting on the status of each county that received a 90-Day Notice in 2007 regarding continued reimbursements from the Public Defense Fund, Bettye Lou Jerrel requested that staff counsel keep in contact with these counties and keep the Commission members updated with the progress they have made prior to the September meeting. Ms. Jerrel stated it would be helpful to see the results of the county council budget meetings. Mark Rutherford suggested that staff counsel telephone these counties during the quarter and report to the Commission members. Chairman Rutherford said it is apparent

from the reports from the counties present today that they want to stay in the program but much of the progress they want to make to achieve compliance hinges on their county councils.

Deborah Neal restated one-by-one the 2007 90-Day Notice counties' position on coming into compliance.

**Clark County:** Ms. Neal reported that in Mr. Stonebraker's opinion, the county can reach compliance with Standard J if they no longer are responsible for the county's CHINS and TPR cases. Staff council recommends allowing Clark County to remain in the program. Tim Lanane made the motion to allow Clark County to remain in the Public Defender Program contingent upon their compliance with Commission standards. Susan Carpenter seconded the motion.

A question was raised on whether this vote was to keep Clark County in the program for another year or if something else was intended. Deborah Neal responded that this situation has not been before the Commission in the past. She stated that according to statute, if a county does not come back into compliance with Commission standards after receiving a 90 day notice, they are out of the Public Defense Program at the end of the fiscal year. If the Commission votes to keep a county in the program it will be eligible for reimbursements for the next fiscal year. Betty Lou Jerrel asked what happens if a county is unsuccessful in making the changes they have proposed due to county council decisions. Can we make our vote conditional on the county's success at their budget meetings? Chairman Rutherford suggested the Commission deal with that issue if it actually arises. Tim Lanane asked if, from now on, the reimbursements to the 90 day counties are conditional on achieving compliance. Larry Landis said that reimbursements could be suspended until a county comes into compliance. Chairman Rutherford called for a vote on the motion to keep Clark County in the public defense program contingent upon their compliance with Commission standards. Motion unanimously passed.

**Jasper County:** Deborah Neal reiterated to the Commission that Ed Dumas, Jasper County Public Defender Board Chairman, said the county would have additional information to submit to the Commission in September and requested that any decision regarding Jasper County be tabled until the September meeting. The Jasper County public Defender Board plans on submitting a written report to the Commission detailing the plan for compliance and the decision of the county council before the next meeting. Betty Lou Jerrel made the motion that Jasper County be allowed to remain in the Public Defense Program and Susan Carpenter seconded the motion. The motion passed.

**Lake County:** Deborah Neal again informed the Commission Lake County Public Defender Agency's appellate division remains out of compliance due to an unusual heavy assignment of appellate cases in 2008. Tim Lanane made the motion to allow Lake County to remain in the Public Defender Program contingent upon their compliance with Commission standards and Phil Hoy provided the second. The motion passed.

**Madison County:** Jeff Wiese, Staff Counsel, indicated Madison County has made substantial progress toward full compliance. Susan Carpenter made the motion to allow Madison County to remain in the Public Defender Program contingent upon their compliance with Commission standards and Phil Hoy provided the second. The motion passed.

**Marion County:** Jeff Wiese indicated Marion County has made substantial progress toward full compliance. Tim Lanane made the motion to allow Marion County to remain in the Public Defender Program contingent upon their compliance with Commission standards and Bettye Lou Jerrel provided the second. The motion passed.

**Montgomery County:** Bettye Lou made the motion to table any decision on Montgomery County until the September meeting as this will allow the county time to make any adjustments they can to come into compliance. Susan Carpenter seconded the motion to table any decision until September. Larry Landis commented this would allow the county to come up with a plan to achieve compliance that the county council might approve. It is obvious the judges and attorneys want to continue in the program. Chairman Rutherford called for the vote and the motion passed.

**Scott County:** Jennifer Lewis, Scott County's Public Defender Administrator, sent a letter to staff counsels informing the Commission that Scott County hired a new attorney in mid year 2007 and increased their staff from six to ten public defenders in January 2008. She requested additional time to structure the caseloads of these attorneys so that the county can achieve compliance. Staff Counsel recommends that Scott County be allowed to remain in the program. Susan Carpenter made a motion to allow Scott County to remain in the Public Defender program and Judge Diane Boswell provided the second. Chairman Rutherford called for the vote and the motion passed.

**Shelby County:** Susan Carpenter made the motion to allow Shelby County to remain in the public defense program and Tim Lanane made the second. Chairman Rutherford called for the question and the vote. The motion passed.

**Steuben County:** Jeff Wiese reported that Hugh Taylor, Steuben County Public Defender Board Chairman, was in trial today and unable to attend the Commission meeting. Mr. Taylor did send a letter to staff counsel explaining there has been an increase in crime in Steuben County and a downturn of the economy resulting in higher caseloads for the public defenders. Jeff Wiese said Mr. Taylor had called him yesterday to inform the Commission that he has been authorized by the county council to hire an additional public defender in 2009. He requested that staff counsel be present at a meeting with the public defender board, the judges and the public defenders on August 5<sup>th</sup> to review Commission standards and ensure that the county was reporting caseloads correctly. Mr. Taylor requested that no decision be made regarding Steuben County until September when he can attend the Commission meeting. Phil Hoy made the motion to table any decision regarding Steuben County until the September meeting and Tim Lanane seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

**Vanderburgh County:** Peter Nugent made the motion to allow Vanderburgh County to remain in the public defender program and Susan Carpenter provided the second. Chairman Rutherford called for the question and the vote. The motion passed.

**Vigo County:** Jeff Wiese informed the Commission that Vigo County has made substantial progress toward full compliance. Only two attorneys are out of compliance and they are only out compliance by several hundredths. Tim Lanane made the motion to allow Vigo County to remain in the public defender program and Susan Carpenter provided the second. Chairman Rutherford called for the question and the vote. The motion passed.

**Washington County:** Deborah Neal said Washington County is in compliance.

**Whitley County:** Deborah Neal said Whitley County has not responded to the 90-Day Notice and therefore, future reimbursement requests should be terminated. Tim Lanane made the motion to terminate all non-capital reimbursements to Whitley County as of the end of the fiscal year. Susan Carpenter provided the second. Chairman Rutherford called for the question and the vote. The motion passed.

Deborah Neal requested clarification on the motion. Our statute states reimbursements can be terminated at the end of a fiscal year. Due to reporting requirements, the current reimbursements we are voting on at this meeting cover January 1 through March 31. If Whitley County submits a reimbursement request for the second quarter (April 1 through June 30) should the Commission approve it? After discussion, the Commission decided there will be no further reimbursements to Whitley County for non-capital expenditures after June 30, 2008 regardless of when the expense was incurred.

**Report on Counties Receiving 90-Day Notice in 2008.** Deborah Neal informed the Commission that five counties were sent 90 Day Notices in the first week of June, 2008. These counties are Henry, Jennings, Knox, LaPorte, and Kosciusko. Several counties have responded, thanking us for the notice. We will have more information on these counties at the September meeting.

**Financial Status of Public Defense Fund.** The current claims cannot be paid until after July 1<sup>st</sup>. The balance in the Public Defense Fund is \$8,488.55. The July 1, 2008 appropriation is \$7,625,000.00.

The Commission was given a copy of the budget narrative prepared by staff counsel for State Court Administration concerning the Public Defense Fund. This narrative will be presented to the Chief Justice. In addition to details of the Commission's actions for 2006-2008, the report requests an increase in appropriations to the Public Defense Fund so that the Commission can encourage other counties to join the program and end the current pattern of prorating reimbursement requests in the first and third quarters of the fiscal year. Tim Lanane asked if any counties had expressed interest in joining the program. Deborah Neal said there have been serious inquiries from Delaware County. Larry Landis reported on his meeting with Chief Justice Shepard regarding the statewide indigent defense taskforce. The Chief Justice is considering picking up some of the recommendations regarding state funding for probation and public defense from the Kiernan Shepard Report if Governor Daniels wins reelection this fall. He may appoint a task force to investigate how to plan/structure/implement a state wide public defense system. Larry anticipates the Chief Justice asking a Commission member or possibly the whole Commission to be involved in this process. Larry and the Chief Justice also discussed alternatives to a state wide public defense program such as changing the statutes that govern this Commission to provide for a 50% reimbursement for all public defense cases or moving the Chief Public Defenders and Deputy Public Defenders from county employees to state employees. Any of these possibilities would relieve the strained county budgets.

**Requests for 50% Reimbursement in Capital Cases.** Jeff Wiese reported that Vigo County submitted one request in the Walker death penalty case after the 120 day deadline. According to Commission guidelines, this would result in the Commission denying the reimbursement for this claim. The Vigo County Auditor submitted a written explanation of the submission delay. Her clerk who has responsibility for filing the claims had been out of the office due to a family member's death and

involved in the Homestead Rebate process and failed to keep track of this request. Jeff Wiese recommends paying this claim as Vigo County has historically met the submission deadlines. Phil Hoy made the motion to pay the late claim in full and Susan Carpenter seconded his motion. Chairman Rutherford called for the question and the vote. The motion passed.

Peter Nugent requested clarification on what determines the rate paid to capital case attorneys. Deborah Neal said the rate is set according to a formula in Criminal Rule 24. It changes every other year. An attorney is paid according to the rate when the death penalty was filed. This rate does not change during the case unless the case is remanded to the trial court after appeal. The initial hourly rate for the public capital defense attorneys set January 2001 was \$90.00 per hour. The current rate is \$101.00 per hour and it will increase to \$106.00 per hour on January 1, 2009.

Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
June 25, 2008		
COUNTY	DEFENDANT	TOTAL
Lake	Azania 1	\$15,384.77
Marion	Adams 1	\$1,812.49
	Allen 1	\$7,000.10
	Allen 2	\$6,183.14
	Allen 3	\$9,644.38
	Turner 1	\$20,400.14
	Turner 2	\$14,818.89
Posey	Harrison 1	\$1,524.00
	Harrison 2	\$1,330.40
	Harrison 3	\$772.40
	Harrison 4	\$2,297.60
	Harrison 5	\$1,445.30
	Harrison 6	\$743.50
	Harrison 7	\$750.00
	Harrison 8	\$756.80
	Harrison 9	\$622.06
	Harrison 10	\$1,958.06
	Harrison 11	\$585.40
	Harrison 12	\$193.94
	Harrison 13	\$555.00
Spencer	Ward 1	\$8,280.68
Vigo	Walker 1	\$2,052.63
	Walker 2	\$5,301.41
	Walker 3	\$3,014.20

	Walker 4		\$642.10
	Walker 5		\$1,884.70
	Walker 6		\$2,469.70
<b>TOTAL</b>			<b>\$112,423.79</b>

Chairman Rutherford called for a motion on the capital reimbursement requests. Bettye Lou Jerrel made the motion to reimburse all capital reimbursement requests as recommended by staff counsel and Phil Hoy seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

**Requests for 40% Reimbursement in Non-Capital Cases.** Jeff Wiese reported that two counties, Decatur and Vermillion, submitted reimbursement claims after the 45 day deadline. Deborah Neal said this is the first quarter in several years that any county has submitted non-capital reimbursement requests after the deadline. Jeff Wiese stated that Decatur County's request was one day late and Commission Guidelines suggest a 10% reduction in the reimbursement. The county submitted a written explanation for the delay. Evidently, the auditor was unavailable to sign the request. Jeff Wiese recommends paying this claim in full. Bettye Lou Jerrel made the motion to pay Decatur County's request in full. Phil Hoy seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

Jeff Wiese then reported that Vermillion County's request was nineteen days late. In accordance with the Commission's guidelines, Vermillion County would receive a 25% reduction in their 1<sup>st</sup> quarter 2008 reimbursement. Vermillion County Auditor submitted a written explanation to Jeff Wiese which basically said she had surgery and missed the deadline. Staff counsel recommends paying this claim in full. Bettye Lou Jerrel made the motion to pay Vermillion County's request in full. Susan Carpenter seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

The following requests for reimbursement of non-capital expense were submitted this quarter. Deborah Neal said the Public Defense Fund balance will be sufficient to pay these claims after receipt of the July 1<sup>st</sup> appropriation.

INDIANA PUBLIC DEFENDER COMMISSION							
First Quarter (Jan. 1, 2008 - March 31, 2008) Requests for Reimbursements in Non-Capital Cases							
6/25/08 FINAL							
COUNTY	Late Factor	2008 Period Covered	Total Expenditure	Adjustment For Non-Reimbursable	% of Adjstmt	Eligible Expenditure	If 40% Reimbursed
ADAMS	0.00	1/1 - 3/31	\$84,215.80	\$21,368.19	25%	\$62,847.61	\$25,139.04
ALLEN	0.00	1/1 - 3/31	\$752,513.51	\$35,976.25	5%	\$716,537.26	\$286,614.90
BENTON	0.00	1/1 - 3/31	\$7,154.50	\$1,788.63	25%	\$5,365.87	\$2,146.35
BLACKFORD	0.00	1/1 - 3/31	\$26,226.89	\$3,511.40	13%	\$22,715.49	\$9,086.20
CARROLL	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
CLARK	0.00	1/1 - 3/31	\$133,235.69	\$26,779.49	20%	\$106,456.20	\$42,582.48
CRAWFORD	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
DECATUR	0.00	1/1 - 3/31	\$42,657.00	\$14,117.80	33%	\$28,539.20	\$11,415.68
FAYETTE	0.00	1/1 - 3/31	\$157,965.94	\$30,189.05	19%	\$127,776.89	\$51,110.76
FLOYD	0.00	1/1 - 3/31	\$115,396.44	\$25,088.98	22%	\$90,307.46	\$36,122.98

FOUNTAIN	0.00	1/1 - 3/31	\$48,883.25	\$12,220.81	25%	\$36,662.44	\$14,664.98
FULTON	0.00	1/1 - 3/31	\$64,765.60	\$22,314.20	34%	\$42,451.40	\$16,980.56
GRANT	0.00	1/1 - 3/31	\$192,504.00	\$14,944.00	8%	\$177,560.00	\$71,024.00
GREENE	0.00	1/1 - 3/31	\$83,634.59	\$13,321.10	16%	\$70,313.49	\$28,125.40
HANCOCK	0.00	1/1 - 3/31	\$103,762.71	\$27,962.51	27%	\$75,800.20	\$30,320.08
HENRY	0.00	1/1 - 3/31	\$83,254.93	\$9,720.87	12%	\$73,534.06	\$29,413.62
HOWARD	0.00	1/1 - 3/31	\$351,010.02	\$60,567.59	17%	\$290,442.43	\$116,176.97
JASPER	0.00	1/1 - 3/31	\$61,198.67	\$18,194.20	30%	\$43,004.47	\$17,201.79
JAY	0.00	1/1 - 3/31	\$64,289.58	\$6,943.27	11%	\$57,346.31	\$22,938.52
JENNINGS	0.00	1/1 - 3/31	\$55,150.88	\$13,609.39	25%	\$41,541.49	\$16,616.60
KNOX	0.00	1/1 - 3/31	\$131,743.82	\$46,121.69	35%	\$85,622.13	\$34,248.85
KOSCIUSKO	0.00	1/1 - 3/31	\$103,605.57	\$26,893.36	26%	\$76,712.21	\$30,684.88
LAKE	0.00	1/1 - 3/31	\$1,039,752.77	\$0.00	0%	\$1,039,752.77	\$415,901.11
LAPORTE	0.00	1/1 - 3/31	\$126,574.33	\$16,630.20	13%	\$109,944.13	\$43,977.65
MADISON	0.00	1/1 - 3/31	\$424,067.89	\$45,606.82	11%	\$378,461.07	\$151,384.43
MARION	0.00	1/1 - 3/31	\$4,094,922.20	\$868,056.67	21%	\$3,226,865.53	\$1,290,746.21
MARTIN	0.00	1/1 - 3/31	\$18,376.63	\$4,904.07	27%	\$13,472.56	\$5,389.02
MIAMI	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
MONROE	0.00	1/1 - 3/31	\$390,386.27	\$52,505.89	13%	\$337,880.38	\$135,152.15
MONTGOMERY	0.00	1/1 - 3/31	\$91,554.55	\$24,192.87	26%	\$67,361.68	\$26,944.67
NEWTON	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
NOBLE	0.00	1/1 - 3/31	\$95,630.16	\$16,319.44	17%	\$79,310.72	\$31,724.29
OHIO	0.00	1/1 - 3/31	\$17,189.25	\$8,152.75	47%	\$9,036.50	\$3,614.60
ORANGE	0.00	1/1 - 3/31	\$56,984.71	\$13,035.72	23%	\$43,948.99	\$17,579.60
PARKE	0.00	1/1 - 3/31	\$26,951.49	\$7,727.35	29%	\$19,224.14	\$7,689.66
PERRY	0.00	1/1 - 3/31	\$69,124.00	\$18,753.00	27%	\$50,371.00	\$20,148.40
PIKE	0.00	1/1 - 3/31	\$105,477.17	\$41,409.56	39%	\$64,067.61	\$25,627.04
PULASKI	0.00	1/1 - 3/31	\$72,087.91	\$38,944.69	54%	\$33,143.22	\$13,257.29
RUSH	0.00	1/1 - 3/31	\$44,021.43	\$12,472.74	28%	\$31,548.69	\$12,619.48
SCOTT	0.00	1/1 - 3/31	\$60,094.42	\$12,535.03	21%	\$47,559.39	\$19,023.76
SHELBY	0.00	1/1 - 3/31	\$86,798.20	\$10,636.00	12%	\$76,162.20	\$30,464.88
SPENCER	0.00	1/1 - 3/31	\$10,145.74	\$2,521.30	25%	\$7,624.44	\$3,049.78
STEUBEN	0.00	1/1 - 3/31	\$65,620.94	\$14,214.47	22%	\$51,406.47	\$20,562.59
ST. JOSEPH	0.00	1/1 - 3/31	\$505,700.06	\$69,889.83	14%	\$435,810.23	\$174,324.09
SULLIVAN	0.00	1/1 - 3/31	\$37,441.78	\$13,416.95	36%	\$24,024.83	\$9,609.93
SWITZERLAND	0.00	1/1 - 3/31	\$64,507.98	\$33,448.58	52%	\$31,059.40	\$12,423.76
TIPPECANOE	0.00	1/1 - 3/31	\$435,402.37	\$103,164.37	24%	\$332,238.00	\$132,895.20
UNION	0.00	1/1 - 3/31	\$26,931.79	\$9,378.01	35%	\$17,553.78	\$7,021.51
VANDEBURGH	0.00	1/1 - 3/31	\$547,000.06	\$90,493.54	17%	\$456,506.52	\$182,602.61
VERMILLION	0.00	1/1 - 3/31	\$23,101.35	\$8,862.78	38%	\$14,238.57	\$5,695.43
VIGO	0.00	1/1 - 3/31	\$370,864.46	\$79,444.81	21%	\$291,419.65	\$116,567.86
WABASH	0.00	1/1 - 3/31	\$50,787.00	\$8,454.50	17%	\$42,332.50	\$16,933.00
WARREN	0.00	1/1 - 3/31	\$7,237.80	\$3,303.30	46%	\$3,934.50	\$1,573.80
WASHINGTON	0.00	1/1 - 3/31	\$98,267.04	\$15,512.23	16%	\$82,754.81	\$33,101.92
WELLS	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITE	0.00	1/1 - 3/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITLEY	0.00	1/1 - 3/31	\$41,210.37	\$13,736.79	33%	\$27,473.58	\$10,989.43
TOTAL			\$11,767,381.51	\$2,089,357.04	18%	\$9,678,024.47	\$3,871,209.79



Susan Carpenter made a motion to pay the non-capital claims as recommended. Tim Lanane seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

**Other Matters:**

**Counting Appeals Cases; Trial/Sentencing Appeals.** Deborah Neal said an issue has arisen regarding the caseload limit on appeal cases. Currently, this limit is 12 appeals per year, however, this limit does not take into account the difference in time spent on a sentencing appeal compared with a trial appeal. Lake County has completed a time-study of each type of appeal and determined that trial appeals take approximately 1.83% of the time as a sentencing appeal. Deborah Neal used Lake County's research methods and results with Marion County's appeal cases to show what would happen if the Commission split the two types of appeal cases on the caseload worksheet for Marion County. The Commission questioned how the 1.83% was calculated and determined more investigation was needed. This issue is tabled while Larry Landis confers with the county Chief Public Defenders to see if agreement can be reached on the ratio in completion time between trial appeals and sentencing appeals.

**Amending Non-capital guidelines.** There is internal conflict in our guidelines that tell counties how to count consolidated and severed cases. The Commission tabled this matter until the September meeting.

**Indiana Public Defender Council.** (See Larry Landis' report in page 7 of these minutes under Financial Status of Public Defense Fund.)

**Hancock County Amended Comprehensive Plan.** The only amendment to Hancock County's Comprehensive Plan is to the hourly rate paid to public defenders. Susan Carpenter made the motion to accept Hancock County's amended Comprehensive Plan. Bettye Lou Jerrel seconded the motion. Chairman Rutherford called for the question and the vote. The motion passed.

With no further business to discuss, Peter Nugent made a motion to adjourn the meeting and Bettye Lou Jerrel seconded. The motion passed unanimously and Mark Rutherford closed the meeting at 4:10 PM. The next Commission meeting will be held on September 24, 2008 at 2:00 PM.

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Mark Rutherford, Chairman

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Date

## **Indiana Public Defender Commission Meeting Minutes**

September 24, 2008

Chairman Mark Rutherford called the business meeting to order at 2:08 p.m. Commission members in attendance were Susan Carpenter, Bettye Lou Jerrel, Peter D. Nugent, Judge Diane Ross Boswell, Rep. Amos Thomas and David Hensel. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Sen. Joseph Zakas, Sen. Timothy S. Lanane, and Rep. Phil Hoy.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Hon. Thomas K. Milligan, Montgomery Circuit Court, Chief Public Defender Robert Hill, Ann Sutton, Ray Casanova and Matthew Gerber of the Marion County Public Defender Agency, and Stephen Owens, Vanderburgh County Chief Public Defender.

**Proposal Requesting Variance from Standard J's Caseload Maximums.** Marion County Public Defender Agency is requesting a variance from Standard J's caseload maximum for class D felonies in a 12-month period. The current maximum is 150 cases; however, a time study performed by MCPDA showed that the public defenders could handle 225 class D felonies. Robert Hill, Marion County Chief Public Defender, requests that the proposal be added to the agenda for the Commission's December 10<sup>th</sup> meeting and, if enacted by the Commission, that the change be effective January 1, 2009. Chairman Rutherford thanked Robert Hill for his proposal and indicated it would be on the agenda in December. Commissioner David Hensel asked if there would be additional data to examine in December and Robert Hill said yes, they are still conducting the time study. He hopes to have a PowerPoint presentation at the December meeting. David Hensel wanted clarification that the variance was for class D felonies only and Robert Hill said yes.

**Approval of Minutes from 6/25/08 Meeting.** Chairman Rutherford presented the minutes from the June 25, 2008 meeting for approval. Peter Nugent moved for approval of the minutes as presented. Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

**Annual Report 2007-2008.** Staff counsel Deborah Neal stated the annual report is ready to be published and asked if there were any questions. The Commission distributed more than \$13 million dollars for non-capital reimbursements and \$755 thousand for capital reimbursements for the period. All but \$13,000 of the Public Defense fund was used. Mark Rutherford asked for a motion to accept and publish the annual report. Peter Nugent made the motion and Judge Boswell seconded. The motion passed.

**Approval of Thirteenth Annual Federal Habeas Corpus Seminar for CR24.** Ms. Neal explained that Paula Sites, Assistant Executive Director of the Indiana Public Defender Council, had sent the Commission the information regarding this seminar. In Ms. Sites' opinion the seminar should qualify for twelve hours of specialized training on the defense of capital cases. Larry Landis explained that Ms. Sites was very qualified to judge the merits of a death penalty CLE. Amos Thomas made a motion to approve this seminar sponsored by the Administrative Office of the United States Courts for purposes of capital attorney qualification under CR24. David Hensel seconded the motion. The motion passed.

**Report on Counties Receiving 90-Day Notice in 2007.** Deborah Neal reminded the Commission that county councils' appropriated increases for public defense 2009 budgets, to cure non-compliance with Commission Standards, will be reflected in the 1<sup>st</sup> quarter requests for reimbursement submitted at the June 2009 meeting. Staff counsel will keep close watch on all 90-Day counties to make sure that any promises a county makes to the Commission are kept. The Commission has the authority to suspend reimbursements for non-capital expenditures for any county that is out of compliance.

**Clark County:** Ms. Neal reported that the Clark County Public Defense Board and Chief Public Defender are working with their county council to come into compliance with Commission Standards. Clark County Council has approved the request from Judge Carmichael for additional monies for her budget to compensate counsel who agree to represent CHINs and individuals involved in termination of parental rights cases in her court. This means the public defender office will no longer need to provide counsel for these cases and this should reduce caseloads. They expect to be in compliance after this change takes effect. If you examine their current caseloads, assuming nothing else changes, removing the CHINS and TPR cases from the public defender agency should bring the county into compliance. It is staff counsels' opinion that, since the county has a plan for achieving compliance and has approval from the county council to put the plan into effect, Clark County be reimbursed this quarter.

Peter Nugent commented that the Commission has discussed Clark County at every meeting since he was appointed to the Commission. All counties are having money difficulties now. When does the Commission draw the line? We know the 90-Day counties are trying to achieve compliance but when do we say enough is enough? Bettye Lou Jerrel said if you examine the public defenders' stats, they are not that far out of compliance. It is apparent that they are making an effort. Clark County's public defender agency is very small and there is little they can do. Judge Boswell asked "So are we then saying that we will consider a county to be in compliance if they are only a little over our standard?" Mark Rutherford reminded the Commission that the commentary to Standard J states the Commission used the language "should generally not be assigned" when it promulgated Standard J to avoid the situation where a county forfeits reimbursement merely because one public defender was assigned a case or two in excess of the maximum. Larry Landis said the standard is based on a rolling twelve months so being a little over the standard for one quarter does not mean the county will be out of compliance for the 12 months. You can tell Clark County's stats are trending in the right direction. Taking the CHINs cases away from the agency should take care of the problem. Mark Rutherford said he tended to agree with Peter Nugent; The Commission does not want to send the wrong message to those counties that are in compliance by rewarding those counties that are not in compliance.

Bettye Lou Jerrel made the motion to approve reimbursing Clark Count for its 2<sup>nd</sup> quarter non-capital expenses provided staff counsel sends them a letter highlighting the Commission's concern with its continued non-compliance. This motion was seconded by Susan Carpenter. The motion passed. Peter Nugent voted against.

**Jasper County.** Ms. Neal reminded the Commission that Jasper County was dealing with an increase in felony drug cases and related CHINs cases resulting from a federal drug sting operation concentrating on the stretch of I-65 that runs through Jasper County. Both judges and the Jasper County Public Defender Board chairman came to the June meeting and reported on their request to the county council for an additional four part-time public defenders for felony cases and two part-time public defenders for non-reimbursable cases. The council will not make a decision until late September. The

public defenders' case stats have increased. Bettye Lou Jerrel said the county needs to know they must solve their problem prior to the end of the year. Ms. Neal stated Jasper County and the other 90-Day counties had received the 90-Day Notice in 2007 and have had 21 months to come into compliance but due to a growing number of defendants qualifying for a public defender, the counties have been unable to do so. Peter Nugent said if the Commission considers 1.1 FTE to be a gray area, then the caseload stats show two of Jasper County's five public defenders were well over 1.1 FTE before the drug cases hit.

Mark Rutherford asked for questions, comments or motions regarding Jasper County. Bettye Lou Jerrel wondered why staff counsel had not called the county auditor to ask what happened at the council meeting. Jeff Wiese said he had spoken to Ed Dumas, Chairman of the Jasper Public Defender Board and had been told the county council was not going to act on his request until after our Commission meeting so even if he called today, there would be no decision to report. Ms. Jerrel said they are playing games with us and suggested maybe we should not provide reimbursement until we know that the county council is willing to fund their public defense program. She commented that this was a very serious time for all counties due to the property tax issue and that county councils are saying "no" to everyone who is asking for more money. Ms. Jerrel asked whether the Commission could suspend reimbursements and see what happens. Chairman Rutherford stated the Commission could certainly entertain a motion to provide reimbursement contingent on a county council taking a certain action. David Hensel asked staff council what counties they felt were working with the Commission in good faith. Deborah Neal said she has reservations about Steuben County's commitment to the program. She visited the county this quarter and met with several public defenders, the auditor, chairman of the public defender board, a council member and two judges, and left with no firm commitment from the group that something would be done to bring the county into compliance. After that visit, Hugh Taylor, board chairman, spoke to Jeff Wiese and reported that he had been authorized to hire a new public defender.

Jeff Wiese offered his opinion that the Commission may not want to distinguish between counties that are working in good faith with the Commission and those that are not. If there is no decision from a county council to further fund public defense expenses, he believes the Commission should make all reimbursements for 90-Day counties contingent on adequate steps being taken by the county council. The Commission can always pay a county's suspended quarterly request for reimbursement later. Mr. Wiese realized this is a hard line to take but this would send the message that the Commission is serious about compliance with its standards and that enough time has passed to reach compliance.

Deborah Neal said regarding Steuben County the Commission may want to suspend reimbursements until the Commission receives in writing that they have been given the authority to hire this additional PD. Ms. Neal is also concerned about Henry County. This county just received the 90-Day Notice in July 2008 for being out of compliance on caseload standards and the chief public defender's salary. They have never paid the chief public defender 90% of the county prosecutor's salary which is required by Commission standards. To be in compliance, Henry County would have to increase the chief public defender's salary approximately \$30,000. Seven or eight years ago when this Commission mandated that a chief public defender should be paid 90% of a county prosecutor's salary, it allowed program counties time to phase in this salary increase. Henry County was in the program at that time. When she visited Henry County this month, Deborah Neal was asked if the county could

phase in the salary increase. Ms. Neal told them she did not know if that option was still available. In the response to the 90-Day Notice, Mark Stamper, Henry County Chief Public Defender, reported that the county council stated it did not have the money to pay this salary increase. They might find it in November but could not promise anything. To summarize, in staff counsels opinion, Henry and Steuben Counties should have their 2<sup>nd</sup> quarter requests for reimbursement suspended.

Mark Rutherford asked if in staff counsel's opinion that the other 90-Day counties were making progress toward compliance. Deborah Neal said these counties have had in most cases at least eighteen months to come into compliance. The Commission allowed them this time because when the notice was initially sent, the county was in the middle of a budget year, so any changes would not take place until the first quarter of the following year. The 1<sup>st</sup> quarter reports from the counties are not due until the June meeting of the Commission. For that June 2008 meeting, eight counties were asked to attend and explain why they were still not in compliance. The Commission needs to decide if it wants to do the same thing again (have the counties explain why they are not in compliance and present a plan for achieving compliance) but then the Commission will be in the same position of not knowing if any changes employed by a county actually has an effect on curing the non-compliance issues until June 2009 when the Commission receives the 1<sup>st</sup> quarter requests for reimbursement.

Bettye Lou Jerrel said in her experience, county councils tend to be influenced more by what they hear from county residents rather than any political group. Judge Boswell stated it is not politically expedient to say we're not going to pay for attorneys for the indigent. Politicians may like to say they are going to cut spending on public defense but they cannot do that. Judge Boswell stated it appears like counties are daring the Commission to make a decision before the county council decides what to do. It might be best to hold the money and give it to the counties after the council takes action.

David Hensel made the motion that Jasper County not be reimbursed for its 2<sup>nd</sup> quarter non-capital expenditures and that the county be invited to the December Commission meeting to show the results of any county council decision regarding public defense; that if a satisfactory decision made by the Jasper County Council will bring the county into compliance, the Commission will consider paying its 2<sup>nd</sup> quarter claims. Peter Nugent seconded this motion. Larry Landis requested clarification on whether the motion meant 2<sup>nd</sup> quarter claims would be denied. Mark Rutherford stated the motion would allow the Commission to pay the 2<sup>nd</sup> quarter claims in December if the county makes a satisfactory showing to the Commission. Peter Nugent clarified that the motion would not mandate the Commission to pay the 2<sup>nd</sup> quarter claims, but it would allow them to be paid. Peter Nugent said it might make a difference on when the county council makes their decision. If a council makes a decision to increase funding for public defense the day before the Commission's December meeting, in his opinion, it shows lack of interest for the 2<sup>nd</sup> quarter reimbursement on the part of the county. Chairman Rutherford called for a vote on the motion. The motion passed unanimously.

**Montgomery County.** Judge Thomas Milligan thanked Larry Landis for his help with the issues Montgomery County is facing. He then reported that he had proposed adding these positions in October: a part time public defender and a public defense administrator who will keep track of appointments and keep better records regarding assignment of cases. This will help separate the reimbursable cases from the non-reimbursable cases. In addition, he proposed adding an additional two part-time public defenders in January. This will bring the number of public defenders up to nine. These proposals were made to the Montgomery County Council. The Judge expects some decision at the

council's next meeting on September 30<sup>th</sup>. The additional public defender they hope to add in October will not bring the county into full compliance but the additional public defenders who start in January should allow the county to comply with the Commission's Standards.

Peter Nugent asked the Commission about putting Montgomery County in the same position as Jasper County because neither has received a decision from its county council on funding a plan for achieving compliance. Mr. Nugent said to be consistent any motion regarding Montgomery County should say "if you do this—the Commission will consider paying the 2<sup>nd</sup> quarter reimbursements in December." Jeff Wiese said in his opinion consistency is important. Although the Montgomery County Judge and certain public defenders have worked hard to get approval of their plan, the county council has not passed a budget that would fund the necessary additions. Mr. Wiese further stated that suspending reimbursements this quarter could send the message to the county council that the Commission is serious about compliance with its Standards. Judge Milligan said the council could respond by telling the Commission to just keep its money. Larry Landis said it is important to remember that the Commission's reimbursements are really leverage money to coerce a county to commit money for public defense which is not a politically popular program. The Commission needs to be careful with a county like Montgomery that it knows is close to throwing in the towel but has some individuals really trying to sell the public defense program. Larry Landis recommends approving reimbursement with the condition that Montgomery County Council does provide the additional money needed to fund the public defense program. Susan Carpenter said it is important to remember they have a plan and are actively trying to implement it. David Hensel said he is worried that suspending reimbursements to Montgomery County would cut the legs out from under Judge Milligan. Judge Boswell asked what will happen in the county if we suspend reimbursements. Judge Milligan said he is not sure how it will affect the proposed plan. The county would continue to provide public defenders. It would definitely affect the 2009 contract negotiations with the public defenders.

Susan Carpenter made the motion to authorize staff counsel to reimburse Montgomery County for its 2<sup>nd</sup> quarter non-capital expenditures once the county shows the Commission written proof that they have hired an additional public defender who will start October 1 plus two additional public defenders who will start January 1, 2009. Bettye Lou Jerrel seconded the motion. Deborah Neal asked if this motion gave staff counsel authority to pay Montgomery County's 2<sup>nd</sup> quarter claims once proof is received or should the proof be brought to the December Commission meeting. Mark Rutherford said in his opinion staff counsel could easily interpret any county resolution regarding additional public defenders, so in this instance staff counsel could reimburse Montgomery County once satisfactory proof was received. The motion passed.

**Scott County.** Deborah Neal explained Scott County has already said that they had hired additional attorneys in January 2008 and requested additional time to spread out the cases to come into compliance. The stats show that progress has been made. Only two attorneys are still out of compliance; that is down from six attorneys out of compliance in June. It is staff counsel's opinion that, in light of the effort being made without additional public defenders, Scott County should be reimbursed for its 2<sup>nd</sup> quarter non-capital expenditures. Bettye Lou Jerrel made the motion to reimburse Scott County for its 2<sup>nd</sup> quarter non-capital request for reimbursement. David Hensel seconded the motion and it passed.

**Shelby County.** Deborah Neal said Shelby County's public defense program has improved from having five public defenders out of compliance in the 1<sup>st</sup> quarter to three this quarter. The three attorneys showing FTEs above 1.000 have improved their caseload stats. Jim Lisher, Shelby County Chief Public Defender, has been in contact with staff counsel and informs us that the county council is not approving a 2009 budget until late November. Bettye Lou Jerrel asked if staff counsel would find out when counties had to have their budgets ready. Staff counsel agreed to do this. Bettye Lou Jerrel said Shelby County has improved without any additional appropriations from the county council and she made the motion to reimburse Shelby County for its 2<sup>nd</sup> quarter non-capital expenditures. Susan Carpenter seconded this motion and it passed. Peter Nugent abstained from the Shelby County vote.

**Steuben County.** Hugh Taylor, Shelby County's Public Defender Board chairman, has informed Jeff Wiese that the county council has authorized him to add a public defender in January 2009. Mark Rutherford said the county caseload stats are still a little high. Susan Carpenter asked if one additional public defender would bring the county into compliance. Staff counsel was able to show that if nothing else changes, one additional PD would bring them into compliance. Larry Landis said for the Commission to be consistent with its decisions about the 90-Day counties, it should authorize reimbursement to Steuben County if it provides proof that they have authority to add this public defender. Bettye Lou Jerrel made a motion to reimburse Steuben County for its 2<sup>nd</sup> quarter non-capital expenditures contingent on Steuben County providing the Commission with proof that they have hired and funded an additional public defender. Deborah Neal asked for clarification on whether staff counsel could issue reimbursement or if the Commission would want to see any proof submitted by Steuben County at the December meeting. The motion was amended to authorize staff counsel to reimburse Steuben County for its 2<sup>nd</sup> quarter non-capital expenditures once the county shows satisfactory written proof that the hiring of an additional public defender has been approved and funded. Susan Carpenter seconded this motion and it passed.

**Vanderburgh County.** Stephen Owens, Vanderburgh County's Chief Public Defender, reported that the county council did not approve his plan to add a paralegal and investigator. This plan would have allowed the county to have more public defenders that were adequately staffed. Mark Rutherford thanked Stephen Owens for coming to the meeting. Deborah Neal distributed to the Commission members Mr. Owens's copies of the 3<sup>rd</sup> quarter 2008 caseloads which show that all of the public defenders are in compliance with the exception of one, Mr. Reisz, who is only slightly out of compliance. David Hensel made the motion to reimburse Vanderburgh for its 2<sup>nd</sup> quarter non-capital expenditures. Susan Carpenter seconded this motion and it passed.

**Report on Counties Receiving 90-Day Notices in 2008.** Deborah Neal explained five counties were sent 90-Day Notices in July 2008. They are Henry, Jennings, Knox, Kosciusko and LaPorte.

**Henry County.** Deborah Neal said she has already explained her concern with Henry County's response to the 90-Day Notice. Judge Boswell made a motion to suspend Henry County's 2<sup>nd</sup> quarter reimbursement for non-capital expenditures. Peter Nugent seconded this motion. The motion passed.

**Jennings County.** Judge Webster has been in contact with Deborah Neal and he said Jennings County is aware of the need for additional public defenders (one of their current PDs is quite elderly) but are having trouble recruiting experienced public defenders. Judge Webster said some of the inexperienced public defenders should be able to start handling major felonies and the stats should

improve. If the numbers don't he will try to recruit another public defender. Staff counsel recommends that they be reimbursed this quarter and we review them again in December. Amos Thomas made the motion to reimburse Jennings County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Susan Carpenter seconded the motion. The motion passed.

**Knox County.** Deborah Neal has visited Knox County several times over the past year. They are making an effort to comply with the Standards. Knox County has 12 public defenders. Three are currently out of compliance and their numbers are increasing. Deborah Neal said she has pointed out to Knox County that there needs to be better supervision on who is assigned a case. They may not need any additional public defenders; they may simply need to spread out the caseload more evenly. Susan Carpenter made the motion to reimburse Knox County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Bettye Lou Jerrel seconded the motion. The motion passed.

**Kosciusko County.** Deborah Neal said since they received the 90-Day Notice, Kosciusko County public defender's caseload FTEs have decreased. One of the problems Kosciusko has faced is a public defender on maternity leave. She has returned to work so this should ease the problem. She recommends paying their 2<sup>nd</sup> quarter claims. Susan Carpenter made the motion to reimburse Kosciusko County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Judge Boswell seconded the motion. The motion passed.

**LaPorte County.** Deborah Neal said she has explained to the chief public defender how cases are weighted and the importance of spreading out the caseload more fairly. In addition, LaPorte County has submitted a plan for coming into compliance which includes adding two additional public defenders. David Hensel made the motion to reimburse LaPorte County for its 2<sup>nd</sup> quarter non-capital expenditures subject to review in December. Bettye Lou Jerrel seconded the motion. The motion passed.

**Requests for 40% Reimbursement in Non-capital cases.** Robert Hill, Marion County Chief Public Defender, explained that he discovered that the prior administration had been engaged in a practice of only reporting the maximum number of class D felony cases in a quarter, regardless of what had actually been assigned. If the number of class D felony cases assigned in that quarter exceeded the amount permitted by the Commission's Standard J, the additional appointed cases were held over for reporting in the next quarter. In this way it appeared that the class D felony public defenders were always in compliance. He immediately discontinued the practice and Marion County is now reporting all class D felony cases in the quarter in which they are assigned. Class D felonies were reassigned wherever possible to lower the D felony public defender's caseloads.

The Commission addressed the following counties' 2<sup>nd</sup> quarter requests for reimbursement of non-capital expenses. Deborah Neal said the Public Defense Fund balance was not sufficient to reimburse the claims at 40%. The claims were pro rated at 34%. If, in December, any of those counties who have had their 2<sup>nd</sup> quarter claims suspended, qualify to have the 2<sup>nd</sup> quarter claims paid, they will be paid at the 34% prorated amount. Bettye Lou Jerrel made the motion to pay all program county's 2<sup>nd</sup> quarter non-capital claims except for Henry, Jasper, Montgomery and Steuben which have had their claims suspended, and if Henry, Jasper, Montgomery or Steuben fulfill the Commission's requirements and qualify to have their 2<sup>nd</sup> quarter claims paid, such payments will be at the 34% prorated amount. Susan Carpenter seconded this motion and the motion passed.



## INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter (April 1, 2008 - June 30, 2008) Requests for Reimbursements in Non-Capital Cases

**9/24/2008 AMENDED**

COUNTY	Total Expenditure	Adjust Non-Reimbrsble	% Adj	Eligible Expenditure	If 40% Reimbursed	Pro Rata at 34%
ADAMS	\$74,373.59	\$19,832.96	27%	\$54,540.63	\$21,816.25	\$18,543.81
ALLEN	\$734,490.39	\$36,752.19	5%	\$697,738.20	\$279,095.28	\$237,230.99
BENTON	\$17,394.65	\$5,398.34	31%	\$11,996.31	\$4,798.52	\$4,078.75
BLACKFORD	\$27,256.78	\$2,586.50	9%	\$24,670.28	\$9,868.11	\$8,387.90
CARROLL	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
CLARK	\$126,239.37	\$23,068.83	18%	\$103,170.54	\$41,268.22	\$35,077.98
CRAWFORD	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
DECATUR	\$21,475.00	\$7,870.93	37%	\$13,604.07	\$5,441.63	\$4,625.38
FAYETTE	\$135,579.91	\$32,131.65	24%	\$103,448.26	\$41,379.30	\$35,172.41
FLOYD	\$115,188.74	\$22,154.06	19%	\$93,034.68	\$37,213.87	\$31,631.79
FOUNTAIN	\$28,179.39	\$6,929.36	25%	\$21,250.03	\$8,500.01	\$7,225.01
FULTON	\$62,562.08	\$21,160.70	34%	\$41,401.38	\$16,560.55	\$14,076.47
GRANT	\$181,953.00	\$19,426.72	11%	\$162,526.28	\$65,010.51	\$55,258.94
GREENE	\$65,406.41	\$11,353.80	17%	\$54,052.61	\$21,621.04	\$18,377.89
HANCOCK	\$107,301.11	\$29,163.00	27%	\$78,138.11	\$31,255.24	\$26,566.96
HENRY	\$90,503.61	\$12,430.19	14%	\$78,073.42	\$31,229.37	\$0.00
HOWARD	\$368,115.33	\$68,965.63	19%	\$299,149.70	\$119,659.88	\$101,710.90
JASPER	\$51,833.85	\$14,495.91	28%	\$37,337.94	\$14,935.18	\$0.00
JAY	\$57,086.52	\$9,133.84	16%	\$47,952.68	\$19,181.07	\$16,303.91
JENNINGS	\$57,637.13	\$14,532.56	25%	\$43,104.57	\$17,241.83	\$14,655.55
KNOX	\$135,402.42	\$44,720.13	33%	\$90,682.29	\$36,272.92	\$30,831.98
KOSCIUSKO	\$127,710.49	\$38,109.51	30%	\$89,600.98	\$35,840.39	\$30,464.33
LAKE	\$831,517.58	\$1,189.58	0%	\$830,328.00	\$332,131.20	\$282,311.52
LAPORTE	\$138,166.74	\$22,284.96	16%	\$115,881.78	\$46,352.71	\$39,399.81
MADISON	\$375,392.30	\$33,209.42	9%	\$342,182.88	\$136,873.15	\$116,342.18
MARION	\$4,658,059.14	\$929,000.00	20%	\$3,729,059.14	\$1,491,623.66	\$1,267,880.11
MARTIN	\$26,803.97	\$13,420.28	50%	\$13,383.69	\$5,353.48	\$4,550.45
MIAMI	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
MONROE	\$335,460.01	\$55,559.63	17%	\$279,900.38	\$111,960.15	\$95,166.13
MNTGOMRY	\$90,222.30	\$25,055.55	28%	\$65,166.75	\$26,066.70	\$0.00
NEWTON	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
NOBLE	\$90,020.48	\$15,065.06	17%	\$74,955.42	\$29,982.17	\$25,484.84
OHIO	\$14,877.75	\$4,947.00	33%	\$9,930.75	\$3,972.30	\$3,376.46
ORANGE	\$44,643.84	\$13,781.29	31%	\$30,862.55	\$12,345.02	\$10,493.27
PARKE	\$17,366.50	\$3,427.60	20%	\$13,938.90	\$5,575.56	\$4,739.23
PERRY	\$56,441.00	\$14,782.56	26%	\$41,658.44	\$16,663.38	\$14,163.87
PIKE	\$53,026.75	\$14,886.08	28%	\$38,140.67	\$15,256.27	\$12,967.83
PULASKI	\$40,923.58	\$7,005.70	17%	\$33,917.88	\$13,567.15	\$11,532.08
RUSH	\$47,135.01	\$19,766.29	42%	\$27,368.72	\$10,947.49	\$9,305.36
ST. JOSEPH	\$531,360.00	\$70,938.24	13%	\$460,421.76	\$184,168.70	\$156,543.40
SCOTT	\$88,535.11	\$16,415.32	19%	\$72,119.79	\$28,847.92	\$24,520.73
SHELBY	\$83,153.37	\$10,859.93	13%	\$72,293.44	\$28,917.38	\$24,579.77

SPENCER	\$22,895.60	\$3,911.25	17%	\$18,984.35	\$7,593.74	\$6,454.68
STEUBEN	\$58,798.80	\$11,474.52	20%	\$47,324.28	\$18,929.71	\$0.00
SULLIVAN	\$30,183.98	\$10,646.74	35%	\$19,537.24	\$7,814.90	\$6,642.66
SWITZERLND	\$64,649.30	\$23,176.16	36%	\$41,473.14	\$16,589.26	\$14,100.87
TIPPECANOE	\$367,438.05	\$79,931.72	22%	\$287,506.33	\$115,002.53	\$97,752.15
UNION	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
VANDRBRGH	\$610,786.82	\$105,931.43	17%	\$504,855.39	\$201,942.16	\$171,650.83
VERMILLION	\$26,547.43	\$10,972.94	41%	\$15,574.49	\$6,229.80	\$5,295.33
VIGO	\$419,084.72	\$82,636.42	20%	\$336,448.30	\$134,579.32	\$114,392.42
WABASH	\$50,287.00	\$8,536.15	17%	\$41,750.85	\$16,700.34	\$14,195.29
WARREN	\$4,334.00	\$2,022.00	47%	\$2,312.00	\$924.80	\$786.08
WASHINGTON	\$103,031.56	\$21,552.00	21%	\$81,479.56	\$32,591.82	\$27,703.05
WELLS	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
WHITE	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
WHITLEY	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
<b>TOTAL</b>	<b>\$11,866,832.46</b>	<b>\$2,072,602.63</b>	<b>17%</b>	<b>\$9,794,229.83</b>	<b>\$3,917,691.93</b>	<b>\$3,252,551.33</b>
<b>NOTE:</b>	Counties with 2nd quarter request for reimbursement suspended until providing proof from funding source that authority has been given to increase public defense budget to achieve compliance are Henry, Jasper, Montgomery, and Steuben County.					

**Requests for 50% Reimbursement in Capital Cases.** In *State v. Davis*, a Marion County capital case, Jeff Wiese explained that one of the two capital defense attorneys was not qualified under Criminal Rule 24 in January 2008 when appointed; the attorney became CR24 qualified in March 2008. In the opinion of staff counsel, the Commission has three options: First, approve payment of all claims regardless of whether the attorneys were CR 24 qualified; second, refuse to pay any claims in the capital case because the attorneys were not CR 24 qualified when appointed; or third, refuse payment of claims during any period of time in which both lead and co-counsel were not in compliance with CR 24. Susan Carpenter said she believed that the Commission has only denied reimbursement for those claims that occurred during the times both attorneys were not in compliance with CR 24. Larry Landis also believes this is the case. Robert Hill said he has some knowledge of how this situation arose although it happened prior to his assumption of the position of chief public defender. The attorney in question was appointed to defend Ronald Davis prior to the death penalty request being filed and had developed a relationship with Mr. Davis. Robert Hill said it is his policy not to appoint any attorney to a capital case that is not in compliance with CR 24. Deborah Neal said the amount of this claim is not included in the claims the Commission is reviewing at the current meeting because staff counsel needed this question answered prior to processing the claim for the 3<sup>rd</sup> quarter. Susan Carpenter said it is critically important that the capital defense appointments be in compliance with CR 24 from the moment the death penalty request is filed and the Commission needs to emphasize that principal. Susan Carpenter made the motion to deny all claims in the *Davis* capital case during the period of time in which both attorneys were not in full compliance with CR 24. Peter Nugent seconded the motion and it passed.

Deborah Neal said the total capital reimbursement claims were \$219,534.82 for this quarter. One claim was disallowed due to being submitted 64 days after the 120 day deadline. Also one claim was reduced by \$229.12 due to an expenditure unrelated to public defense. David Hensel made the motion to pay the 2<sup>nd</sup> quarter capital claims totaling \$219,534.82. Judge Boswell seconded his motion and the motion passed.

Reimbursement Requests in Capital Cases		
September 24, 2008		
COUNTY	DEFENDANT	TOTAL
Lake	Azania 1	\$18,909.55
Marion	Adams 1	\$255.50
	Turner 1	\$10,295.36
	Turner 2	\$20,212.23
	Turner 3	\$7,677.39
Parke	Cottrell 1	\$4,559.98
	Cottrell 2	\$12,147.23
	Cottrell 3*	\$28,120.52
	Cottrell 4**	\$0.00
	Cottrell 5	\$27,046.62
Spencer	Ward 1	\$1,702.19
Vanderburgh	Wilkes 1	\$80,567.55
	Wilkes 2	\$1,771.20
Vigo	Walker 1	\$3,327.35
	Walker 2	\$2,942.15
<b>TOTAL</b>		<b>\$219,534.82</b>
<b>Notes:</b>		
*Cottrell 3 was reduced	\$229.12 due to an expenditure unrelated to defense.	
**Cottrell 4 was reduced	\$994.50 due to expenditures submitted 64 days after	the 120 day deadline.

**Counting Appeal Cases.** Deborah Neal requested the Commission examine Standard J's maximum caseload for appeals. The counties of Allen, Howard, Lake, Marion and St. Joseph have supplied staff counsel with information that indicates the time spent on guilty plea appeals and trial appeals is 2:1. Susan Carpenter remembers that when Standard J was written guilty plea appeals were not available. At that time, challenging sentences was done via PCR. Deborah Neal said if the Commission changes this standard, an additional category of cases would be added to the quarterly new case assignment worksheet. Currently, the caseload guideline for appeals is:

Attorney	Maximum Number of Appeals
Full Time with adequate support	25
Part Time with adequate support	12
Full Time with inadequate support	20
Part Time with inadequate support	10

If Standard J is amended to add an additional category of appeals, the caseload guideline would be:

Attorney	Maximum Number of Trial Appeals	Maximum Number of Guilty Plea Appeals
Full Time with adequate support	25	50
Part Time with adequate support	12	24
Full Time with inadequate support	20	40
Part Time with inadequate support	10	20

Larry Landis said this issue has been discussed at the chief public defender meetings and the consensus is that a guilty plea appeal takes only half the time of a trial appeal. Susan Carpenter made a motion to amend Standard J’s caseload standard for appeals cases by adding an additional case category to be called guilty plea appeals and having the caseload guideline for guilty plea appeals be twice that of the current appeal case category. Judge Boswell seconded this motion. The motion passed.

[The issue regarding amending the guidelines for Standard G to clarify compensation of public defenders was tabled until December.]

**Contradictory Language in Non-Capital Guidelines for Standard J.** Deborah Neal explained that currently the guideline for how to count cases that are joined or severed dated 6/8/1995 contradicts the guideline dated 12/16/2004. She suggests simply deleting the 6/8/1995 guideline and removing the following language from the 12/16/2004 guideline fourth: *If cases with separate cause numbers are consolidated for the purposes of docketing in the same court, each case is counted as a separate case.* Susan Carpenter made the motion to amend the Commission Guidelines Related to Non-Capital Cases by removing the Standard J guideline dated 6/8/1995 and deleting the sentence stating “If cases with separate cause numbers are consolidated for the purpose of docketing in the same court, each case is counted as a separate case” from the Standard J guideline dated 12/16/2004. This motion was seconded by David Hensel. The motion passed.

**Update from the Public Defender Council.** Larry Landis stated the Council is proposing legislation that chief public defenders and deputy chief public defenders become state paid employees like county prosecutors and deputy prosecutors.

**Adjournment.** With no further business to discuss, Susan Carpenter made the motion to adjourn the meeting. Bettye Lou Jerrel seconded the motion. The motion passed. Meeting adjourned at 4:36 p.m.

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Mark Rutherford, Chairman

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Date

# Indiana Public Defender Commission Meeting Minutes

December 10, 2008

Chairman Mark Rutherford called the business meeting to order at 2:05 p.m. Commission members in attendance were Susan Carpenter, Bettye Lou Jerrel, Peter D. Nugent, and David Hensel. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Hon Diane Ross Boswell, Sen. Joseph Zakas, Sen. Timothy S. Lanane, and Rep. Vernon Smith.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis; Chief Public Defender Robert Hill, Ann Sutton, Ray Casanova and Matthew Gerber of the Marion County Public Defender Agency; Hon. John D. Potter, Jasper Circuit Court, Hon. James R. Ahler, Jasper Superior Court, Edward Dumas, Chair, Jasper County Public Defender Board; David Happe, Madison County; and David King of Indianapolis.

**Approval of Minutes from 9/24/08 Meeting.** Chairman Rutherford presented the minutes from the September 24, 2008 meeting for approval. Bettye Lou Jerrel moved for approval of the minutes as presented. Susan Carpenter seconded the motion. The vote was unanimous in favor of approval.

**Term of Chairmanship and Election.** The statute that created the Indiana Public Defender Commission calls for the election of a chairman; it does not provide any guidance for term limits, or election provisions. Bettye Lou Jerrel stated that as one of the longest serving members of the Commission, she felt the term of the chairman should be no less than four years as so often the initiatives the Commission attempts take several years to see to fruition. Susan Carpenter is comfortable with Bettye Lou Jerrel's suggestion. Mark Rutherford said the Commission does not need to make any decision today but he does think this issue needs to be decided. Peter Nugent said a two year term might be best as a chairman may not want to serve for four years. He does want to make sure that there are no provisions preventing re-election of an able and willing chairman. David Hensel said a four year term could be problematic as all Commissioners serve a four year term. If the chairman serves for four years, a new Commission member would not be eligible to serve as chairman unless he/she was appointed for a second term. A four year term could also be problematic as some members of the Commission are appointed by the state legislature and as elected officials may choose not to run for re-election or be defeated. A two year term would allow a Commission member time to gain experience with the Commission before deciding if he/she wanted to serve as chairman. Peter Nugent suggested the issue be tabled until March. The Commission agreed this should be added to the agenda for the next meeting and a decision will be made at that time.

**Amended Budget Calendar for Indiana Counties Dated 8/1/08.** This year the budget calendar setting dates for notice and adoption of county budgets was revised by the state. Commission members received a copy of the revised state budget calendar which changed the last date for budget adoption from September 30<sup>th</sup> to December 1, 2008.

**Jasper County.** The 2<sup>nd</sup> quarter non-capital reimbursements for Jasper County were suspended at the September 24, 2008 Commission meeting. Edward Dumas, Chair of the Jasper County Public Defender Board stated he had received funds in the 2009 county budget for additional attorneys - four felony and

two misdemeanor public defenders. Judge John Potter reported that he calculated a need for three attorneys and had asked the county council for an additional public defender in the event of caseload increases. He stated that Jasper County has submitted the necessary paperwork to start a certified CASA program which will alleviate the need to assign a public defender to act as guardian-ad-litem. Staff Counsel recommended that Jasper County be reimbursed for their 2<sup>nd</sup> and 3<sup>rd</sup> quarter requests. Susan Carpenter made the motion to reimburse Jasper County for its second quarter public defense expenditures which had been held and for its third quarter expenditures. David Hensel seconded the motion and it passed unanimously. In addition, the Commission members thanked Judge Potter, Judge Ahler and Ed Dumas for coming to the meeting and supporting the Public Defender Program in Jasper County.

**Proposal to Change Standard J's Caseload Maximums.** Marion County Public Defender Agency ("MCPDA") is requesting a variance from Standard J's caseload maximum for class D felonies in a 12-month period. The current maximum is 150 cases for full-time/inadequately staffed attorneys. Robert Hill, Marion County Chief Public Defender, detailed for the Commission the results of a time study he conducted with his class D felony public defenders. He reported that in the Marion County Superior Court system there are specialized courts for class D felonies only, and MCPDA has a division of attorneys that accept only class D felony cases. This leads to efficiencies in case management and gives MCPDA a pool of full-time class D felony attorneys that share their experience with each other. In addition, Marion County has an in-house deposition unit and a local rule that allows for no continuances. The results of the time study show that it takes a public defender approximately 1.67 hours to handle a class D felony drug case and 2.73 hours to handle a non-drug class D felony. Robert Hill pointed to all of these factors when he requested a variance for Marion County only that would allow a full-time, inadequately staffed public defender to handle 225 class D felonies in a rolling 12-month period. Deborah Neal, staff counsel, expressed concern about creating a rule that only affects Marion County. She stated there is a feeling in many counties that the whole public defender program is skewed toward benefitting Marion County. Ms. Neal put together caseload worksheets using the rolling 12-month case stats for 30 of the public defender counties to see how the proposed change would affect their compliance status and found that an increase in the class D felony maximum caseload standard would solve compliance issues. She noted there may be a problem with contract public defenders feeling they were forced to take on more cases for the same yearly contract amount. Susan Carpenter expressed her concern that by increasing the class D felony caseload limit, we are merely institutionalizing the system. For many people, a class D felony is their entry into the criminal justice system. The Commission must be more concerned with providing adequate representation, not pushing cases through the system. Robert Hill commented that even at 225 cases per year, there is more than enough time to provide adequate representation. A quality control check was performed by Matthew Gerber, MCPDA supervisor, and Robert Hill by randomly checking case files for client contacts, motions filed and other actions taken to represent class D felony cases. Robert Hill reported that he is very satisfied with the performance of his class D felony attorneys. Larry Landis said Robert Hill makes a compelling case for Marion County but he hopes the Commission would allow other counties to weigh in on this decision before changing the caseload statewide. David Hensel suggested the Commission could require other counties to perform their own time study. Susan Carpenter said in her opinion, the caseload limits for class A and class B felonies are too high. Robert Hill said he would be happy to do this study for any other case type the Commission wanted as long as the Commission realized that he could only force Marion County's salaried public defenders to participate. He would ask all contract public defenders to submit data to a time study but he could not guarantee their participation. David Hensel asked if Marion

County would continue their class D felony study after the change is made, if it is made, so the Commission can observe the results over a longer time period. David Hensel asked if the Commission could make this change for a trial period. Robert Hill said he needs a firm rule to base budgets on that would allow him to decrease his class D felony attorney staff and distribute the unused salaries among the remaining class D felony attorneys. This would give them a raise and bring their salaries more in line with other attorneys.

Peter Nugent made the motion to add to Standard J a paragraph titled - Caseloads for Counsel Assigned Solely to Class-D-Felony-Only Courts Without Adequate Support Staff- that states salaried, contract or assigned counsel that do not have support staff consistent with Table 2 should generally not be assigned more than the number of cases in Table 4 in a 12-month period. Table 4 should be added to Standard J allowing a maximum of 225 class D felony cases in a 12-month period for full-time public defenders without adequate support and 110 class D felonies cases in a 12-month period for part-time public defenders without adequate support. Bettye Lou Jerrel seconded the motion. David Hensel asked Robert Hill to continue the time study and report back to the Commission. Mark Rutherford suggested the Commission begin thinking about a new Standard that would deal with quality representation. Susan Carpenter said the issue of quality representation is huge especially if we want funding for statewide public defense. Chairman Rutherford called for a vote on the motion and the motion passed unanimously.

As further direction to MCPDA, Susan Carpenter made this motion: In consideration of statewide funding and the changes to Standard J and the enlightening time study Marion County has conducted, the Commission directs MCPDA to expand its time study to include TPR/CHINs, major felonies and appeals cases of their full-time public defenders. Bettye Lou Jerrel seconded this motion and the motion passed. Staff was directed to communicate the change to Standard J to all program counties giving them the opportunity to take advantage of changes in maximum caseloads for class-D-felony-only-courts, after submitting supporting time studies and quality control reports.

**Request for Interpretation from the Commission on Criminal Rule 24.** Robert Hill requests that the Commission examine Criminal Rule 24(B)(1)(c) and determine if, in its opinion, experience handling post conviction relief (“PCR”) in a death penalty case would qualify as prior experience to qualify as lead counsel. CR 24(B)(1)(c) states, “have prior experience as lead or co-counsel in at least one (1) case in which the death penalty was sought;”... . The lead and co-counsel in *Davis* have been replaced with the court appointing Robert Hill as lead counsel, and Ray Casanova as co-counsel. Mr. Hill wants to have public defense attorney Dave Shircliff designated as a full-time capital public defender to replace Bob Hill as lead counsel in *Davis*. Mr. Hill has already approached the trial judge in *Davis*, Mark Stoner, regarding a substitution of counsel and Judge Stoner has granted Mr. Hill thirty days to get the CR 24 question answered. Chairman Rutherford said the real issue here is whether the Commission would deny reimbursement to Marion County for the *Davis* case if this change was made. Susan Carpenter asked if Dave Shircliff has ever served as co-counsel on a capital case. Robert Hill said no, he was merely an additional attorney, but that Shircliff has experience in death penalty post conviction relief cases. Mark Rutherford asked if appointing a non CR 24 qualified public defender to a capital case becomes an appealable issue. Susan Carpenter said yes and it may cause a disgorgement issue too. In her opinion post conviction relief is not a trial, it is a remedy. One major difference is there is no jury in a PCR. The Commission denied Marion County’s request.

**Proposed Changes to Standard E.** Deborah Neal submitted for approval changes to Standard E. She explained that Standard E, paragraph 4, lists the qualifications for appointment of defense counsel in juvenile delinquency cases. As written, Standard E(4) does not allow for the hiring and training of new attorneys in juvenile delinquency cases. With the changes, specifically to (4)(c), new attorneys may be hired as juvenile delinquency defense counsel and receive the experience necessary to qualify under Standard E through supervision by an attorney qualified to litigate such cases.

Additionally, Standard E(5) pertains to misdemeanor and class D felonies. As written, this paragraph does not allow for the hiring and training of new attorneys in criminal defense because it requires prior experience. It is recommended that paragraph (5) be eliminated.

The proposed changes to Standard E are as follows:

4. **Juvenile Delinquency.** To be eligible to serve as lead counsel in a case where a juvenile is alleged to be delinquent, counsel shall possess the following qualifications:

a. Where a child is charged with what would be murder if committed by an adult or in any situation where waiver to adult court is sought, an attorney shall be an experienced and active criminal or juvenile law practitioner with at least three (3) years of criminal or juvenile ~~litigation~~ *delinquency* experience; and have prior experience as lead or co-counsel in no fewer than three (3) felony jury trials that were Class C felonies or higher which were tried to completion, or *prior experience as lead or co-counsel in no fewer than* three (3) juvenile trials, that would have been Class C felonies or higher if committed by an adult, which were tried to completion.

b. Where a child is charged with what would be a Class A or B felony if committed by an adult, an attorney shall be an experienced and active criminal or juvenile law practitioner with at least two (2) years of criminal or juvenile ~~litigation~~ *delinquency* experience; and have prior experience as lead or co-counsel in no fewer than two (2) felony jury trials which were tried to completion, or two (2) juvenile trials, that would have been felonies if committed by an adult, which were tried to completion.

c. To be eligible to serve as lead counsel in other juvenile delinquency cases (*Class C felonies and below, all misdemeanors, infractions and status cases*), an attorney shall: ~~have tried to completion a comparable case in adult court, or have at least one (1) year of experience in juvenile delinquency proceedings~~ *have prior experience as lead or co-counsel in at least one(1) case of the same class or higher which was tried to completion in either adult or juvenile court; or, one (1) year of experience in juvenile delinquency proceedings; or experience in two comparable cases tried to completion in juvenile court under the supervision of an attorney qualified to litigate such cases.*

5. ~~**Other criminal cases.** To be eligible to serve as lead counsel in other criminal cases, an attorney shall have prior experience as lead or co-counsel in at least one (1) case of the same class or higher which was tried to completion.~~

Susan Carpenter made the motion to approve the proposed changes as submitted, and David Hensel seconded the motion. The motion passed unanimously.

**Guideline for Counting CHINS/TPR Cases.** In Children In Need of Services (CHINS) and Termination of Parental Rights (TPR) cases a public defender is frequently appointed to represent a parent. This parent may be the defendant under one or more cause numbers, due to the number of children involved. Counties in the public defense program have been counting these cases according to



cause number, where each child of the parent is given a separate cause number, even though the cases typically involve the same facts.

Due to the high volume of CHINS and TPR cases filed in Indiana, it is recommended that the Commission develop a guideline that allows public defense attorneys to count the representation of a parent in multiple CHINS and TPR cases as one case. Judge Crowley, Knox Superior Court I, and Paul Ledford, Chairman of the Knox County Public Defense Board have written letters in support of this recommendation.

Since these types of cases can be so variable and complex, staff counsel, Jeff Wiese, included in the proposed guideline several examples that hopefully will help explain this change to the program counties. Following are proposed changes to the Non-Capital Guidelines:

9/24/08 For purpose of determining compliance under Standard J, cases, *other than Termination of Parental Rights and CHINs cases*, should be counted as follows:

1. Each cause number counts as one case regardless of the number of charges or counts.
2. Each count or charge that is severed under the trial rules counts as a separate case.
3. Separate counts or charges joined under the trial rules count as one case.

12/10/08 *For the purpose of determining compliance under Standard J, Termination of Parental Rights and CHINs cases, where a public defender is appointed to the parent(s) determined to be indigent, should be counted as follows:*

1. *A mother has multiple (i.e. five) children by two different fathers and only the mother qualifies as indigent. The court will count this situation as five cases but the Commission considers this to be one case because only one public defender will be assigned. Only one TPR/CHINs case should be reported to the Commission.*
2. *A mother has multiple (i.e. five) children by two different fathers and all the parents are indigent. Although the court will count this situation as five cases with five different cause numbers, the Commission considers this to be three cases because three different public defenders will be assigned, one to each of the parents. Only three TPR/CHINs cases should be reported to the Commission.*
3. *A mother has multiple children, no father has been identified but there are two putative fathers, the mother and the putative fathers all qualify as indigent. The Commission considers this to be three cases because a public defender will be assigned to the mother and to each putative father. Three TPR/CHINs cases should be reported to the Commission.*
4. *A mother has multiple children (i.e. five) children and is pregnant with her sixth. The five children have the same father. Both mother and father qualify as indigent. The Commission considers this to be two cases because two public defenders will be assigned. Two TPR/CHINs cases should be reported to the Commission.*
5. *Same situation as paragraph 4 but now the sixth child has been born. This child has the same father as the other children. The original case is still open. The Commission would not consider this to be a new case because no*

*new public defender will be assigned. No new TPR/CHINs cases should be reported to the Commission.*

- 6. Same situation as paragraph 5 but the new child has a father different from the other children's father. The original case is still open. The Commission would consider this to be a new case because the new father would be assigned a public defender. One new TPR/CHINs case should be reported to the Commission.*
- 7. Same situation as paragraph 6 however the original TPR/CHINs cases for the other children were closed before the new child was born. The Commission would consider this to be two new cases if a public defender is assigned to the mother and to the new child's father. Two new TPR/CHINs cases should be reported to the Commission.*

David Hensel made the motion to adopt the proposed changes of the Guidelines to Standard J. Susan Carpenter seconded the motion and the motion passed unanimously.

**Report on Counties Receiving 90-Day Notice in 2007.** Deborah Neal reminded the Commission that payment of the 2<sup>nd</sup> quarter requests of Montgomery and Steuben Counties was suspended until the counties submitted proof that their county councils' 2009 budgets provided for the hiring and funding of additional public defense staff to bring the county into compliance with Commission Standards. Ms. Neal reported that Montgomery and Steuben counties have provided proof that their county councils have approved an increase in public defense spending for 2009. Peter Nugent made a motion to pay Montgomery and Steuben Counties the amount of their 2<sup>nd</sup> quarter reimbursement which had been held and to approve paying them their 3<sup>rd</sup> quarter reimbursement. Bettye Lou Jerrel seconded this motion. The motion passed unanimously.

**Report on Counties Receiving 90-Day Notice in 2008.** Deborah Neal reported that she spoke with the Henry County Auditor regarding the 2009 budget for the county's public defense program. The Auditor said Henry County chose not to increase funding for public defense that would allow Henry County to come into compliance with Standard J. In fact, the 2009 budget for public defense had been reduced from the 2008 allotment. Peter Nugent made a motion to not reimburse Henry County for its 2<sup>nd</sup> or 3<sup>rd</sup> quarter non-capital expenditures because of its habitual non compliance with Standard J. David Hensel seconded the motion. Staff counsel requested and received clarification that the motion does not mean the Commission is just holding the 2<sup>nd</sup> and 3<sup>rd</sup> quarter reimbursements. The motion means no matter what steps Henry County takes, it will not receive reimbursement for these two quarters. If Henry County wishes future reimbursements, it must take whatever steps are necessary to comply with the Commission's Standards. Chairman Rutherford called for a vote on the motion. The motion passed unanimously.

Deborah Neal reported that Jennings County has four attorneys out of compliance with Standard J, however, two of them are only slightly out of compliance and the other two attorneys' FTE numbers have actually come down. This is the county that has a shortage of attorneys qualified to do public defense available to take cases.

Knox County's has three attorneys out of compliance, however, two have reduced their caseload this quarter. The Knox County PD Board expects to be in compliance by 1/1/09.

Six public defense attorneys in Kosciusko County are out of compliance this quarter. That is two more than in the 2<sup>nd</sup> quarter. One attorney has brought his caseload down slightly, however, his FTE is still 2.540. This means he is carrying the caseload of over 2 ½ part time public defenders.

LaPorte County reports three attorneys out of compliance. Peter Nugent made a motion to hold the 3<sup>rd</sup> quarter reimbursements for Jennings, Knox and Kosciusko counties due to non-compliance with Standard J and pay LaPorte County its 3<sup>rd</sup> quarter reimbursement. David Hensel seconded the motion. Peter Nugent said he would pay LaPorte because the highest FTE number they reported is 1.160. The other three counties highest FTE numbers range from 1.468 to 2.540. Susan Carpenter reminded the Commission that Jennings County has a plan for achieving compliance and Knox County will benefit from the new guideline for counting CHINs and TPR cases and LaPorte County just isn't that far from compliance. Staff counsel Jeff Wiese pulled Kosciusko County's caseload worksheet for public defense attorney Barrett to see if the new CHINs guideline would help his stats. It would not. Chairman Rutherford called for a vote on the motion to suspend 3<sup>rd</sup> quarter reimbursements to Jennings, Knox and Kosciusko counties. Hensel and Nugent voted in favor of the motion and Carpenter and Jerrel voted against. Chairman Rutherford broke the tie by voting against the motion. The motion did not pass. The Commission continued discussing the 90-Day Notice counties. Susan Carpenter made a motion to hold Kosciusko's 3<sup>rd</sup> quarter reimbursement and check on the progress of the county's compliance at the March Commission meeting. David Hensel seconded the motion. The motion passed unanimously. Bettye Lou Jerrel requested staff counsel inform each of the 90 day counties of the decisions made at the meeting and the actions necessary for each county to continue receiving reimbursements. Susan Carpenter made the motion to pay the 3<sup>rd</sup> quarter reimbursement request by Jennings County. Bettye Lou Jerrel seconded the motion. The motion passed unanimously. Bettye Lou Jerrel made the motion to pay the 3<sup>rd</sup> quarter reimbursement requested by Knox County. Susan Carpenter seconded the motion. The motion passed unanimously. Susan Carpenter made the motion to pay the 3<sup>rd</sup> quarter reimbursement requested by La Porte County. Bettye Lou Jerrel seconded the motion. The motion passed unanimously. The counties are to be reimbursed as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>					
2 <sup>nd</sup> Qtr. (4/1/08-6/30/08) Requests for Reimbursement for Non-Capital Cases					
Suspended 2Qtr. 2008 Non-Capital Reimbursements					
COUNTY	TOTAL EXPENSES	ADJUSTMENT FOR NON-REIMBURSBL	% OF ADJUSTMENT	ELIGIBLE EXPENSES	REQUESTS PRO RATED AT 34%
Henry	\$90,503.61	12,430.19	14%	\$78,073.42	\$0
Jasper	\$51,833.85	\$14,495.91	28%	\$37,337.94	\$12,694.90
Montgomery	\$90,222.30	\$25,055.55	28%	\$65,166.75	\$22,156.70
Steuben	\$58,798.80	\$11,474.52	20%	\$47324.28	\$16,090.26
<b>TOTAL</b>	<b>\$291,358.56</b>	<b>\$63,456.17</b>	<b>22%</b>	<b>\$227,902.39</b>	<b>\$77,486.82</b>

**Financial Status of Public Defense Fund.** The Commission reviewed the financial statement. The 3<sup>rd</sup> quarter reimbursements will be paid after the January 1st appropriation to the Public Defense Fund.

There is no need to prorate this quarter however the Commission anticipates prorating non-capital expenditures in the 4<sup>th</sup> quarter.

**Requests for 50% Reimbursement in Capital Cases.** Jeff Wiese reported that the total reimbursement for capital cases is \$135,305.35. Three of Marion County’s reimbursement requests in the *Davis* case were reduced due to charges incurred prior to 3/8/08, the date co-counsel came into compliance with CR 24. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
December 10, 2008		
COUNTY	DEFENDANT	TOTAL
Lake	Azania 1	\$30,355.05
Marion	Allen, K. 1	\$9,317.40
	Davis 1*	\$1,752.00
	Davis 2**	\$10,920.23
	Davis 3	\$3,653.96
	Davis 4***	\$91.25
	Davis 5	\$5,745.68
	Turner 1	\$14,728.47
Parke	Cottrell 1	\$12,211.37
	Cottrell 2	\$3,978.83
Vanderburgh	Wilkes 1	\$11,419.46
	Wilkes 2	\$19,931.80
Vigo	Walker 1	\$1,616.43
	Walker 2	\$1,256.98
	Walker 3	\$8,326.44
<b>TOTAL</b>		<b>\$135,305.35</b>
<b>Notes:</b>		
* Davis 1 reduced by \$5,721.50 for charges incurred prior to 3/8/08 when McShane was not in compliance with the CLE requirements of CR 24.		
** Davis 2 reduced by \$3,891.14 for charges incurred prior to 3/8/08 when McShane was not in compliance with the CLE requirements of CR 24.		
*** Davis 4 reduced by \$210.00 for charges incurred prior to 3/8/08 when McShane was not in compliance with the CLE requirements of CR 24.		

Betty Lou Jerrel made the motion to pay the \$135,305.35 in capital case reimbursements. David Hensel seconded the motion. The motion passed unanimously.

**Requests for 40% Reimbursement in Non-Capital Cases.** The following requests for reimbursement of non-capital expenses were submitted this quarter. Deborah Neal said the Public Defense Fund will have the money to pay these claims after the January 2009 appropriation is distributed.

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>						
<b>Third Quarter (July 1, 2008 - September 30, 2008)</b>						
<b>Requests for Reimbursements in Non-Capital Cases</b>						
<b>12/10/2008 – FINAL</b>						
<b>COUNTY</b>	<b>2008 Period Covered</b>	<b>Total Expenditure</b>	<b>Adjustment For Non-Reimbursable</b>	<b>%</b>	<b>Eligible Expenditure</b>	<b>40% Reimbursed</b>
ADAMS	7/1 - 9/30	\$101,778.56	\$28,330.11	28%	\$73,448.45	\$29,379.38
ALLEN	7/1 - 9/30	\$788,284.15	\$34,748.89	4%	\$753,535.26	\$301,414.10
BENTON	7/1 - 9/30	\$8,778.35	\$1,526.67	17%	\$7,251.68	\$2,900.67
BLACKFORD	7/1 - 9/30	\$24,199.24	\$7,335.50	30%	\$16,863.74	\$6,745.50
CARROLL	7/1 - 9/30	\$0.00	\$0.00		\$0.00	\$0.00
CLARK	7/1 - 9/30	\$131,316.99	\$20,800.16	16%	\$110,516.83	\$44,206.73
CRAWFORD	7/1 - 9/30	\$0.00	\$0.00		\$0.00	\$0.00
DECATUR	7/1 - 9/30	\$43,644.00	\$16,124.63	37%	\$27,519.37	\$11,007.75
FAYETTE	7/1 - 9/30	\$88,098.20	\$10,898.75	12%	\$77,199.45	\$30,879.78
FLOYD	7/1 - 9/30	\$129,044.41	\$25,708.59	20%	\$103,335.82	\$41,334.33
FOUNTAIN	7/1 - 9/30	\$52,451.84	\$15,894.50	30%	\$36,557.34	\$14,622.94
FULTON	7/1 - 9/30	\$59,486.75	\$22,032.13	37%	\$37,454.62	\$14,981.85
GRANT	7/1 - 9/30	\$150,250.00	\$17,035.96	11%	\$133,214.04	\$53,285.62
GREENE	7/1 - 9/30	\$87,397.25	\$13,246.10	15%	\$74,151.15	\$29,660.46
HANCOCK	7/1 - 9/30	\$86,781.20	\$23,761.40	27%	\$63,019.80	\$25,207.92
HENRY	7/1 - 9/30	\$79,871.77	\$10,074.44	13%	\$69,797.33	\$0.00
HOWARD	7/1 - 9/30	\$356,000.66	\$59,665.77	17%	\$296,334.89	\$118,533.96
JASPER	7/1 - 9/30	\$71,403.70	\$19,267.67	27%	\$52,136.03	\$20,854.41
JAY	7/1 - 9/30	\$48,665.75	\$9,246.49	19%	\$39,419.26	\$15,767.70
JENNINGS	7/1 - 9/30	\$56,680.03	\$13,878.27	24%	\$42,801.76	\$17,120.70
KNOX	7/1 - 9/30	\$120,339.23	\$52,462.53	44%	\$67,876.70	\$27,150.68
KOSCIUSKO	7/1 - 9/30	\$128,179.89	\$45,613.56	36%	\$82,566.33	\$0.00
LAKE	7/1 - 9/30	\$918,427.56	\$0.00	0%	\$918,427.56	\$367,371.02
LAPORTE	7/1 - 9/30	\$130,537.49	\$20,588.84	16%	\$109,948.65	\$43,979.46
MADISON	7/1 - 9/30	\$401,191.98	\$25,993.84	6%	\$375,198.14	\$150,079.26
MARION	7/1 - 9/30	\$3,977,565.09	\$929,637.39	23%	\$3,047,927.70	\$1,219,171.08

MARTIN	7/1 - 9/30	\$8,004.88	\$3,849.62	48%	\$4,155.26	\$1,662.10
MIAMI	7/1 - 9/30	\$0.00	\$0.00		\$0.00	\$0.00
MONROE	7/1 - 9/30	\$397,180.30	\$67,169.10	17%	\$330,011.20	\$132,004.48
MONTGOMERY	7/1 - 9/30	\$84,529.23	\$24,574.93	29%	\$59,954.30	\$23,981.72
NEWTON	7/1 - 9/30	\$0.00	\$0.00		\$0.00	\$0.00
NOBLE	7/1 - 9/30	\$100,267.07	\$15,006.33	15%	\$85,260.74	\$34,104.30
OHIO	7/1 - 9/30	\$16,465.70	\$4,242.95	26%	\$12,222.75	\$4,889.10
ORANGE	7/1 - 9/30	\$56,849.03	\$9,540.16	17%	\$47,308.87	\$18,923.55
PARKE	7/1 - 9/30	\$32,039.37	\$8,772.68	27%	\$23,266.69	\$9,306.68
PERRY	7/1 - 9/30	\$64,980.00	\$13,856.00	21%	\$51,124.00	\$20,449.60
PIKE	7/1 - 9/30	\$84,506.47	\$24,483.18	29%	\$60,023.29	\$24,009.32
PULASKI	7/1 - 9/30	\$37,683.70	\$7,274.50	19%	\$30,409.20	\$12,163.68
RUSH	7/1 - 9/30	\$49,577.68	\$24,527.90	49%	\$25,049.78	\$10,019.91
SAINT JOSEPH	7/1 - 9/30	\$527,780.41	\$70,938.24	13%	\$456,842.17	\$182,736.87
SCOTT	7/1 - 9/30	\$88,515.63	\$19,158.18	22%	\$69,357.45	\$27,742.98
SHELBY	7/1 - 9/30	\$83,534.82	\$10,275.47	12%	\$73,259.35	\$29,303.74
SPENCER	7/1 - 9/30	\$32,351.33	\$1,965.25	6%	\$30,386.08	\$12,154.43
STEUBEN	7/1 - 9/30	\$73,360.01	\$17,779.60	24%	\$55,580.41	\$22,232.16
SULLIVAN	7/1 - 9/30	\$23,463.06	\$6,841.67	29%	\$16,621.39	\$6,648.56
SWITZERLAND	7/1 - 9/30	\$54,724.98	\$23,793.47	43%	\$30,931.51	\$12,372.60
TIPPECANOE	7/1 - 9/30	\$411,535.78	\$90,131.32	22%	\$321,404.46	\$128,561.78
UNION	7/1 - 9/30	\$20,612.93	\$3,864.92	19%	\$16,748.01	\$6,699.20
VANDEBURGH	7/1 - 9/30	\$579,253.75	\$94,998.90	16%	\$484,254.85	\$193,701.94
VERMILLION	7/1 - 9/30	\$28,394.88	\$11,589.75	41%	\$16,805.13	\$6,722.05
VIGO	7/1 - 9/30	\$435,351.21	\$82,199.18	19%	\$353,152.03	\$141,260.81
WABASH	7/1 - 9/30	\$50,787.00	\$7,647.30	15%	\$43,139.70	\$17,255.88
WARREN	7/1 - 9/30	\$7,240.50	\$3,061.00	42%	\$4,179.50	\$1,671.80
WASHINGTON	7/1 - 9/30	\$95,458.64	\$12,338.76	13%	\$83,119.88	\$33,247.95
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	\$0.00	\$0.00		\$0.00	\$0.00
<b>TOTAL</b>		<b>\$11,484,822.45</b>	<b>\$2,083,752.55</b>	<b>18%</b>	<b>\$9,401,069.90</b>	<b>\$3,699,482.50</b>
<b>NOTES:</b>	Kosciusko County's 3Q reimbursement has been held due to noncompliance with Standard J. Commission may release these funds to Kosciusko County provided it submits proof of compliance or a plan to reach compliance.					
	Henry County's 3Q reimbursement has been suspended due to continued noncompliance with Standard J.					

Jeff Wiese reported that two counties submitted reimbursement requests after the cutoff date. According to Commission guidelines, this results in an automatic reduction of the reimbursement amount based on how late the request is submitted. Fountain County's quarterly request for reimbursement was 19 days late, which should result in a reduced payment of 25% from \$14,622.94 to \$10,967.20. Staff counsel received a letter from the Fountain County Auditor explaining she had been out of the office for a total of seven weeks due to a death in her family and surgery. Switzerland County's request was seven days late, which should result in a reduced payment of 10% from \$12,372.60 to \$11,135.34. The quarterly request was sent to our previous address. This was the third time Switzerland County had used the wrong address and they had been notified each time to change the address.

Peter Nugent made the motion to penalize Fountain and Switzerland Counties according to the Commission's guidelines, and David Hensel seconded the motion. Chairman Rutherford called for a vote on the motion. The motion failed, 2 yeas to 2 nay votes, with Chairman Rutherford reluctantly voting against the motion. The Commission will not enforce its penalty against Fountain and Switzerland County. The Commission requested staff counsel to keep a record of those counties that submit reimbursement requests late so that in the future, if a request is received after the deadline, the Commission can base its decision on whether to penalize the county on the county's past behavior.

Jeff Wiese reported that after deducting Henry County's reimbursement request, which will not be paid, and Kosciusko County's suspended reimbursement request, the total for non-capital expenditures is \$3,699,482.50. Peter Nugent made the motion to pay non-capital expenditures of \$3,699,482.50 and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Mark Rutherford directed staff counsel to prepare a letter to all counties in the public defense program informing them that the Commission will be enforcing its standards and guidelines more rigorously than in the past.

**Other Matters.** Ohio County submitted proposed amendments to its comprehensive plan. After review by staff counsel, Deborah Neal suggested changes which clarified language in the plan and updated the Commission's Standards which were incorporated by reference. The county agreed to these changes and presents the plan to the Commission for approval. Susan Carpenter made the motion to approve Ohio County's Amended Comprehensive Plan and Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Larry Landis, Executive Director of the Indiana Public Defender Council, reported that he met with Chief Justice Shepard regarding a statewide public defender system. The CJ said Indiana's financial situation would make it difficult to put a statewide program in place this year but he is considering appointing a group to design a five-year phase-in plan to develop a state public defense system.

**Adjournment.** With no further business to discuss, Susan Carpenter made the motion to adjourn the meeting. Bettye Lou Jerrel seconded the motion. The motion passed. Meeting adjourned at 5:15 p.m.

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Mark Rutherford, Chairman

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Date