

Indiana Public Defender Commission Meeting Minutes

March 25, 2009

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, David Hensel, Sen. Brent Steele, Rep. Greg Steuerwald, and Rep. Vernon Smith. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Judge Diane Ross Boswell and Sen. Timothy S. Lanane.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis; Hon. Joe V. Sutton, Kosciusko Superior Court Judge; and Ray Casanova and Laura Pitts of the Marion County Public Defender Agency.

Approval of Minutes from 12/10/08 Meeting. Chairman Rutherford presented the minutes from the December 10, 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.

Kosciusko County. Deborah Neal reviewed the situation in Kosciusko County. At the 12/10/08 Commission meeting, the Commission voted to hold Kosciusko County's third quarter non-capital reimbursement due to non-compliance with Standard J for several quarters. Staff counsel sent a letter to the county requiring them to address the excessive caseloads issue and provide a plan to achieve compliance. Judge Sutton sent a letter outlining the steps the county will take to achieve compliance. Hon. Joe V. Sutton, Kosciusko Superior Court Judge was present at the meeting and gave a summary of how the problems arose in Kosciusko County. He said the county has four courts and all are run slightly differently. Two of the courts have a contract with a large law firm to provide indigent defense. Judge Sutton's court has a contract with attorney John Barrett. The other court uses a list of attorneys willing to take public cases. When the county was informed of its non-compliance problems in 2008, the large firm pulled its attorneys from the two smaller courts. This put the two larger major felony courts in compliance. Judge Sutton had already bid out his public defense contract for 2008 and felt locked in by the contract provisions. He knew this issue must be addressed for 2009 and so he solicited help from the county bar association and he now has six attorneys willing to take his public cases in addition to John Barrett. John Barrett will stop taking major felony cases to decrease his caseload. In addition, Mr. Barrett is paid almost exactly 90% of the county deputy prosecutor's salary which qualifies him to report his caseload as a "full-time/inadequately staffed" worksheet and significantly increases the caseload maximums allowed over a 12-month period. Although this change alone will not bring John Barrett's caseload into compliance, it does reduce it from over 2.00 FTE to 1.4 FTE (1.00 is the maximum allowable FTE). Judge Sutton believes these changes needed to achieve compliance with Standard J will raise his public defense costs by a substantial amount but the County Administrator is willing to go along with this recommendation once the Commission gives their approval to the plan. Kosciusko County is willing to spend the additional money to stay in the public defender program. He made a point of saying Deborah Neal had been extremely helpful in explaining the problem and helping him find a workable solution. Deborah Neal asked when the proposed changes would happen. Judge Sutton said as soon as he gets the approval from the Commission. Deborah Neal explained the reason for asking is to determine when the Commission could expect to see the results of these changes. If the changes are made now, the Commission should see caseload reductions at the September 2009 meeting.

Susan Carpenter made a motion to reimburse Kosciusko County for its third and fourth quarter non-capital expenditures. David Hensel seconded the motion. The motion passed unanimously.

Term of Chairmanship and Election. Mark Rutherford summarized the discussion from the 12/10/08 meeting on this issue. Chapter 5 of Indiana Code 33-40 establishing the Public Defender Commission, under section 3 titled Chairperson; term of office; vacancies; reimbursement of expenses; salary; meetings, is silent on the term of its chairman. The Commission wishes to establish the term of office for the chairperson, and set regular elections. Chairman Rutherford stated that one suggestion was a four year term. Bettye Lou Jerrel said when she suggested a four year term it was due to her feeling that it takes a long time to learn what the Commission does but she does not intend to push for a four year term if there are objections. Mark Rutherford asked staff counsel for recommendations. Deborah Neal stated she favors a two year chairmanship without terms limits. Peter Nugent made a motion to institute a two year chairmanship without terms limits beginning with an election in March of 2010. David Hensel seconded the motion. It passed unanimously.

Proposed Guidelines:

a. Defining “substantially in compliance” of caseload maximums;

In a recent discussion Deborah Neal had with Marion County there was disagreement on what was meant by “substantial compliance” with the caseload limits in Standard J. The county felt 1.200 was substantial compliance (20% over the Standard J caseload limit); staff counsel felt 1.05 was substantial compliance (5% over the Standard J caseload limit). Deborah Neal and Jeff Wiese are requesting the Commission to provide a definition of substantial compliance. David Hensel asked if this term has ever been defined before. Deborah Neal said no, it has always been defined by staff counsel. David Hensel felt it might be best not to set a specific amount as this would mean once a county exceeded the amount a notice of non-compliance must be sent. Without providing a specific amount gives staff counsel the flexibility to decide whether a non-compliance notice is warranted based on the facts that led to a county’s non-compliance. Mark Rutherford asked if counties are asking questions about what substantial compliance means. Deborah Neal said whatever is decided there is the risk that counties will run up their caseloads to the limit. The Commission decided to take no action on a definition of substantial compliance at this time, and would leave that determination to the discretion of staff counsels.

b. County with intermittent request for reimbursement;

Staff counsel is suggesting an addition to the Commission’s Guidelines, under Miscellaneous, as follows:

If a county decides not to submit a request for reimbursement for non-capital expenditures in a particular quarter or quarters, the Commission will still consider the county eligible to participate in the public defense program provided the county is in compliance with the Commission’s Standards. When the county decides to begin requesting reimbursements for non-capital expenditures, it must provide the public defender caseloads for all quarters in which it did not request reimbursement unless more than twelve months have passed since the county’s last request for reimbursement.

Bettye Lou Jerrel made the motion to add this requirement to the Commission's Guidelines. Peter Nugent seconded the motion. The motion passed unanimously.

Report on Counties Receiving 90-Day Notice and Warning Memorandum. The counties that have received a 90-Day Notice of non-compliance are Clark, Howard, Jasper, Jennings, Knox, LaPorte, Montgomery, Shelby and Steuben. Deborah Neal reported that all of these counties have provided the Commission with actions they are taking to achieve compliance. All of the actions were dependent upon funding in their 2009 budgets. Staff counsel has confirmed that the counties have taken the promised actions. The Commission understands that it will not see the results of these actions until first quarter caseloads are reported in May and discussed at the Commission's June 2009 meeting

Two counties, Henry and Kosciusko, had their third quarter non-capital reimbursements suspended. The Commission has already discussed Kosciusko County. Deborah Neal reminded the Commission that Henry County Council cut its public defense funding for 2009 knowing it was already out of compliance in 2008 and she recommended that the fourth quarter non-capital reimbursement request from Henry County be suspended. Susan Carpenter made a motion to suspend Henry County's fourth quarter non-capital reimbursement. David Hensel seconded the motion. The motion passed unanimously.

Warning letters (not 90-Day Notices) sent this quarter. Staff counsel sent out warning letters to counties having attorneys out of compliance with caseload maximums for one or more quarters pursuant to the Commission's request at the 12/10/08 meeting. Counties were also warned of non-compliance with their ordinance establishing a county public defender board by failing to have the required number of board members and failing to contract with public defenders in violation of their comprehensive plan. The Commission discussed reasons for reviewing public defender contracts and whether the Commission's standards and guidelines actually help ensure quality representation from public defenders. There is a realization that the Commission's standards and guidelines have an effect however, by themselves they do not ensure each indigent defendant will receive quality representation. Larry Landis said the Commission has discussed implementing quality standards many times however due to insufficient funding the Commission is unable to be staffed in such a way that will allow monitoring quality standards. The following counties received warning letters:

Fountain. The county received a warning because all three of the county's public defenders were out of compliance with Standard J for the second consecutive quarter, the county public defender board only has two members, and the county had not submitted a copy of their 2009 contract at staff counsel's request. Fountain Circuit Court Judge Susan Orr Henderson addressed these issues by letter and enclosed a copy of the current contract. She appointed a third person to the county public defender board and promised the county would work hard toward reaching compliance.

Fulton. Two of the county's public defenders have been out of compliance for three consecutive quarters. Karin Fowler responded via email and said this was due to a significant increase in indigent defendants. Ms. Fowler stated that reallocating caseloads would help solve the non-compliance problem and such action would begin immediately.

Jay. On 3/10/09 staff counsel discovered there was only one member on the county's public defender board. The new chief public defender, Tom Diller, stated to staff counsel that he needed to hire additional public defenders but there were not enough public defender board members to approve such hiring. On 3/24/09 Tom Diller informed staff

that a new member had been appointed to the public defense board and the county judges are aware they must appoint another member.

Martin. Martin County had reported a public defender substantially out of compliance for the last four quarters (Thomas Dysart 1.360, 1.554, 1.641, and 1.503). On March 17, 2009, Jeff Wiese spoke with Judge Howell and discovered that one law office handles a large portion of the county's indigent cases. Mr. Dysart is one of three public defenders working in the law office, and that mistakenly all the cases handled by the attorneys have been reported under Mr. Dysart's name. Jeff Wiese had the county send us corrected caseload worksheets for the 4th quarter and instructed them on how to report future appointments.

Perry. One of the public defenders has been out of compliance for two quarters and the county failed to submit a copy of a 2009 contract for review. Judge Goffinet informed staff that a new public defender was hired in January to alleviate the caseload problem and also sent us a copy of the 2009 public defender contract.

Scott. Staff counsel received notice from attorney Jennifer Lewis, Scott County Public Defender Administrator, that the county council cut the public defense funding for 2009 to such an extent that they would only be able to keep six of their ten public defenders. She stated Scott County would no longer seek reimbursement from the Public Defender Commission after the 4th quarter of 2008.

St. Joseph. Five of the county's public defenders have been out of compliance for two quarters. Jeff Wiese spoke with Neil Weisman on March 16, 2009. They agreed that three of these attorneys were not seriously out of compliance and Mr. Weisman said he would closely track their caseloads. The other two public defenders handle juvenile cases. Their non-compliance has arisen due to how these cases are assigned. Neil Weisman reported that the public defender board, Judge Gotsch and the juvenile public defenders were already aware of this problem prior to our letter and believed they have reached a solution that more evenly distributes cases among the juvenile defense attorneys.

Spencer. Two of the county's public defenders have been out of compliance for two quarters and the county had not submitted a copy of their 2009 public defender contract. Jeff Wiese spoke with Judge Dartt, who is aware of the problem and has been trying to resolve it. The two attorneys who are out of compliance are the only attorneys in Spencer County that are willing to take public cases. Judge Dartt is looking outside the county for public defense attorneys and will inform us in writing how the non-compliance problem will be corrected.

Sullivan. Sullivan County has reported two public defenders out of compliance for the past four quarters. On March 16, 2009, the Sullivan County judges responded to the warning letter. They reported that problems with excessive caseloads arose due to an insufficient amount of attorneys in the county willing to take public cases. The judges have contacted three attorneys who are willing to handle the overload of indigent defense appointments.

Switzerland. Three of Switzerland County's public defenders have been out of compliance for four quarters. Deborah Neal spoke with Judge Coy. He just took office in January and is working to overhaul the county public defense system. He expects changes in three to six months.

Wabash. Jeff Wiese has been in contact with the Wabash County judges, public defense

board and public defense attorneys to correct the non-compliance issue. Caseload stats should improve in the first quarter of 2009.

Financial Status of Public Defense Fund. The Commission reviewed the financial statement. After payment of the fourth quarter capital reimbursement requests, the non-capital reimbursements must be prorated at 33.9% due to insufficient money in the public defense fund. The fund received \$15,250,000 in FY08-09 and with the payment of claims approved at this meeting, \$15,243,580 has been distributed to the counties as reimbursement for defense costs.

Requests for 50% Reimbursement in Capital Cases. Jeff Wiese reported that the total reimbursement for capital cases is \$195,537.33. One of Vigo County's reimbursement requests in the *Katron Walker* case was reduced due to charges not related to public defense. Bettye Lou Jerrel made a motion to pay the \$195,537.33 in capital case reimbursements. Susan Carpenter seconded this motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
March 25, 2009		
COUNTY	DEFENDANT	TOTAL
Lake	Azania	\$64,988.88
Marion	Adams, J.	\$598.71
	Allen, K. 1	\$4,097.88
	Allen, K. 2	\$6,922.08
	Allen, K. 3	\$10,435.78
	Davis 1	\$8,859.77
	Davis 2	\$12,928.01
	Turner 1	\$11,454.37
	Turner 2	\$24,660.11
Parke	Cottrell 1	\$7,246.65
	Cottrell 2	\$19,092.63
	Cottrell 3	\$8,607.34
Vigo	Walker 1	\$2,657.48
	Walker 2*	\$4,802.04
	Walker 3	\$8,185.60
TOTAL		\$195,537.33
Notes:		
* Reduced by \$1,331.90 for expenses not related to indigent defense		

Requests for 40% Reimbursement in Non-Capital Cases. Jeff Wiese reported that Fountain County again submitted a late reimbursement request and in accordance with the Commission's guidelines, a 10% reduction is warranted. This is the third quarter that Fountain County has submitted their request for reimbursement past the deadline. Peter Nugent made a motion to enforce the 10% penalty reducing Fountain County's reimbursement from \$14,724.51 to \$13,252.06, prorated to \$11,231.11. Sen. Greg Steuerwald seconded the motion. The motion passed unanimously.

Jeff Wiese reported that after adding the unpaid 3rd quarter request for Kosciusko County, deducting Henry County's reimbursement request and reducing Fountain County's request, the total non-capital requests prorated at 33.9% is \$3,537,429.20. Susan Carpenter made the motion to pay non-capital expenditures of \$3,537,429.20. Brent Steele seconded the motion. The motion passed unanimously. Requests submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION								
Fourth Quarter Requests for Reimbursements in Non-Capital Cases								
3/25/2009 FINAL								
COUNTY	Late	2008 Period Coverd	Total Expenditure	Adjustment For Non-Reimbrsbl	% Adjstd	Eligible Expenditure	If 40% Reimbursed	33.9% Pro Rated
ADAMS	0.00	10/1 - 12/31	\$97,454.20	\$25,265.90	26%	\$72,188.30	\$28,875.32	\$24,471.83
ALLEN	0.00	10/1 - 12/31	\$695,833.64	\$35,690.60	5%	\$660,143.04	\$264,057.22	\$223,788.49
BENTON	0.00	10/1 - 12/31	\$17,406.79	\$4,234.08	24%	\$13,172.71	\$5,269.08	\$4,465.55
BLACKFORD	0.00	10/1 - 12/31	\$40,894.89	\$8,748.50	21%	\$32,146.39	\$12,858.56	\$10,897.63
CARROLL	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
CLARK	0.00	10/1 - 12/31	\$139,307.60	\$11,683.48	8%	\$127,624.12	\$51,049.65	\$43,264.58
CRAWFORD	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
DECATUR	0.00	10/1 - 12/31	\$33,176.65	\$12,112.11	37%	\$21,064.54	\$8,425.82	\$7,140.88
FAYETTE	0.00	10/1 - 12/31	\$129,567.21	\$36,710.71	28%	\$92,856.50	\$37,142.60	\$31,478.35
FLOYD	0.00	10/1 - 12/31	\$136,609.65	\$23,451.88	17%	\$113,157.77	\$45,263.11	\$38,360.48
FOUNTAIN	0.10	10/1 - 12/31	\$46,890.56	\$10,079.28	21%	\$36,811.28	\$13,252.06	\$11,231.11
FULTON	0.00	10/1 - 12/31	\$57,698.57	\$23,413.91	41%	\$34,284.66	\$13,713.86	\$11,622.50
GRANT	0.00	10/1 - 12/31	\$160,737.51	\$21,343.09	13%	\$139,394.42	\$55,757.77	\$47,254.71
GREENE	0.00	10/1 - 12/31	\$90,376.94	\$11,353.80	13%	\$79,023.14	\$31,609.26	\$26,788.84
HANCOCK	0.00	10/1 - 12/31	\$125,159.25	\$38,584.28	31%	\$86,574.97	\$34,629.99	\$29,348.91
HENRY	0.00	10/1 - 12/31	\$89,402.16	\$12,634.26	14%	\$76,767.90	\$30,707.16	\$0.00
HOWARD	0.00	10/1 - 12/31	\$373,595.50	\$66,651.84	18%	\$306,943.66	\$122,777.46	\$104,053.90
JASPER	0.00	10/1 - 12/31	\$78,820.80	\$27,094.65	34%	\$51,726.15	\$20,690.46	\$17,535.16
JAY	0.00	10/1 - 12/31	\$50,642.21	\$8,386.17	17%	\$42,256.04	\$16,902.42	\$14,324.80
JENNINGS	0.00	10/1 - 12/31	\$64,214.94	\$15,591.72	24%	\$48,623.22	\$19,449.29	\$16,483.27
KNOX	0.00	10/1 - 12/31	\$39,009.90	\$17,110.10	44%	\$21,899.80	\$8,759.92	\$7,424.03
KOSCIUSKO	0.00	10/1 - 12/31	\$123,861.48	\$33,310.01	27%	\$90,551.47	\$36,220.59	\$63,723.48
LAKE	0.00	10/1 - 12/31	\$778,885.89	\$0.00	0%	\$778,885.89	\$311,554.36	\$264,042.32
LAPORTE	0.00	10/1 - 12/31	\$133,483.97	\$26,696.79	20%	\$106,787.18	\$42,714.87	\$36,200.85
MADISON	0.00	10/1 - 12/31	\$368,390.19	\$38,410.45	10%	\$329,979.74	\$131,991.90	\$111,863.13

COUNTY	Late	2008 Period Coverd	Total Expenditure	Adjustment For Non- Reimbrsbl	% Adjstd	Eligible Expenditure	If 40% Reimbursed	33.9% Pro Rated
MARION	0.00	10/1 - 12/31	\$4,620,573.00	\$529,824.71	11%	\$4,090,748.29	\$1,636,299.32	\$1,386,763.67
MARTIN	0.00	10/1 - 12/31	\$25,123.86	\$6,660.48	27%	\$18,463.38	\$7,385.35	\$6,259.09
MIAMI	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
MONROE	0.00	10/1 - 12/31	\$364,948.66	\$65,298.17	18%	\$299,650.49	\$119,860.20	\$101,581.52
MONTGOMERY	0.00	10/1 - 12/31	\$125,713.93	\$45,439.54	36%	\$80,274.39	\$32,109.76	\$27,213.02
NEWTON	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
NOBLE	0.00	10/1 - 12/31	\$88,905.25	\$15,991.15	18%	\$72,914.10	\$29,165.64	\$24,717.88
OHIO	0.00	10/1 - 12/31	\$10,920.40	\$2,013.00	18%	\$8,907.40	\$3,562.96	\$3,019.61
ORANGE	0.00	10/1 - 12/31	\$40,855.84	\$8,171.17	20%	\$32,684.67	\$13,073.87	\$11,080.10
PARKE	0.00	10/1 - 12/31	\$24,738.90	\$9,223.46	37%	\$15,515.44	\$6,206.18	\$5,259.73
PERRY	0.00	10/1 - 12/31	\$52,368.36	\$15,904.46	30%	\$36,463.90	\$14,585.56	\$12,361.26
PIKE	0.00	10/1 - 12/31	\$65,928.47	\$22,821.39	35%	\$43,107.08	\$17,242.83	\$14,613.30
PULASKI	0.00	10/1 - 12/31	\$54,640.97	\$6,955.50	13%	\$47,685.47	\$19,074.19	\$16,165.37
RUSH	0.00	10/1 - 12/31	\$53,907.17	\$13,579.67	25%	\$40,327.50	\$16,131.00	\$13,671.02
SAINT JOSEPH	0.00	10/1 - 12/31	\$523,187.50	\$70,938.24	14%	\$452,249.26	\$180,899.70	\$153,312.50
SCOTT	0.00	10/1 - 12/31	\$131,797.55	\$31,813.20	24%	\$99,984.35	\$39,993.74	\$33,894.69
SHELBY	0.00	10/1 - 12/31	\$75,612.08	\$8,630.85	11%	\$66,981.23	\$26,792.49	\$22,706.64
SPENCER	0.00	10/1 - 12/31	\$21,787.40	\$2,573.10	12%	\$19,214.30	\$7,685.72	\$6,513.65
STEUBEN	0.00	10/1 - 12/31	\$59,954.66	\$13,182.74	22%	\$46,771.92	\$18,708.77	\$15,855.68
SULLIVAN	0.00	10/1 - 12/31	\$31,382.44	\$9,817.69	31%	\$21,564.75	\$8,625.90	\$7,310.45
SWITZERLAND	0.00	10/1 - 12/31	\$89,258.21	\$32,132.96	36%	\$57,125.25	\$22,850.10	\$19,365.46
TIPPECANOE	0.00	10/1 - 12/31	\$515,860.80	\$112,387.97	22%	\$403,472.83	\$161,389.13	\$136,777.29
UNION	0.00	10/1 - 12/31	\$24,245.79	\$2,020.48	8%	\$22,225.31	\$8,890.12	\$7,534.38
VANDEBURGH	0.00	10/1 - 12/31	\$696,925.07	\$127,324.84	18%	\$569,600.23	\$227,840.09	\$193,094.48
VERMILLION	0.00	10/1 - 12/31	\$30,490.06	\$14,967.85	49%	\$15,522.21	\$6,208.88	\$5,262.03
VIGO	0.00	10/1 - 12/31	\$440,270.79	\$88,281.98	20%	\$351,988.81	\$140,795.52	\$119,324.21
WABASH	0.00	10/1 - 12/31	\$48,593.00	\$8,032.49	17%	\$40,560.51	\$16,224.20	\$13,750.01
WARREN	0.00	10/1 - 12/31	\$10,588.50	\$5,232.00	49%	\$5,356.50	\$2,142.60	\$1,815.85
WASHINGTON	0.00	10/1 - 12/31	\$112,784.93	\$17,087.32	15%	\$95,697.61	\$38,279.04	\$32,441.49
WELLS	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
WHITE	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
WHITLEY	0.00	10/1 - 12/31	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00
TOTAL			\$12,212,784.09	\$1,794,864.02	15%	\$10,417,920.07	\$4,165,695.58	\$3,537,429.20

NOTES: Kosciusko County's 3Q reimbursement was held due to noncompliance with Standard J. Commission released the \$33,026.53. Added to 4Q \$30,696.95 for \$63,723.48 in reimbursements.

Henry County's 3Q reimbursement was suspended due to continued noncompliance with Standard J.								
Fountain County's 4Q report was 3 days late. The 3Q report was late 19 days and Commission did not enforce penalty.								
A 10% penalty has been applied.								

Other Matters. Deborah Neal informed the Commission that all of the Madison County’s public defense board members and the public defense administrator resigned effective 12/31/08. Since that time, two people have been appointed to the public defense board. The court administrator has taken over the duties of the public defense administrator until one is appointed. This administrator is not an attorney. Brent Steele asked if we knew what was causing the turmoil in Madison County. Deborah Neal said there seems to be a dispute between the judges and the public defense board regarding control of the public defense system in Madison County. Greg Steuerwald asked staff counsel to closely monitor the situation and ensure the county is given adequate notice before any action is taken.

David Hensel asked Ray Casanova of Marion County Public Defender Agency if there is any data to report regarding the attorney time study being conducted by their agency. Mr. Casanova said there is not at this time as the study just began in January 2009.

Deborah Neal reported that Pulaski County has not been contracting with attorneys for public defense services, even though the Pulaski County Comprehensive Plan calls for contract counsel as its primary form of providing a public defense program. She informed the county council, public defense board, and the county judges of the duties of the board to contract with attorneys, and was assured that this will be done in the future.

Adjournment. With no further business to discuss, Greg Steuerwald made the motion to adjourn and David Hensel seconded the motion. The motion passed and the meeting adjourned at 3:40 pm.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

June 24, 2009

Chairman Mark Rutherford called the business meeting to order at 2:00 p.m. Commission members in attendance were Susan Carpenter, Bettye Lou Jerrel, David Hensel, Sen. Brent Steele and Sen. Timothy S. Lanane. Also in attendance were staff counsels, Deborah Neal and Jeffrey S. Wiese. Commission members unable to attend were Peter Nugent, Judge Diane Ross Boswell, Rep. Greg Steuerwald, and Rep. Vernon Smith.

Other guests present at the meeting were Executive Director of the Indiana Public Defender Council, Larry Landis, Tom Hamer, Madison County Public Defender Board, Geoffrey Yelton, Madison County Chief Administrative Public Defender, Hon. G. George Pancol, Madison Superior 2, Jim Hunter, Madison County Court Administrator, Dave Surratt, Madison County Public Defender Board, and Ray Casanova, Marion County Public Defender Agency.

Approval of Minutes from 03/25/09 Meeting. Chairman Rutherford presented the minutes from the March 25, 2009 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.

Update on Budget for FY09-10. Deborah Neal reported that the Public Defense Fund has been given an increase in appropriations in both the House and Senate proposed budgets. The House budget would provide the Public Defense Fund with a total of 18.7 million for FY09-10. The Senate would give the fund a total of 18.25 million for FYs 09-10 and 10-11. Larry Landis said the Commission would be thankful for the increase which may allow the Commission to pay non-capital claims without prorating. The counties have spent their scarce funds meeting our standards and we hope to provide them with the promised 40% reimbursement.

Report from Madison County. Deborah Neal reported meeting in Anderson with the Madison County Public Defender Board, the Court Administrator, and three Madison County judges to address the six public defenders out of compliance with Standard J, a public defender board with only two members, and no Chief Administrative Public Defender as required by the Madison County comprehensive plan. At the meeting the county said it believed it had a solution to all of these problems. Ms. Neal stated that two additional problems need to be brought to the Commission's attention. First, Madison County does not report misdemeanor cases to the Commission. All misdemeanors are handled in the city and town courts (Anderson, Alexandria, Elwood, etc.). Even though the Commission cannot offer reimbursement for misdemeanors, all counties are required to report all public cases to the Commission. Tim Lanane asked if other counties are required to report misdemeanors. Deborah Neal said yes, all counties are required to report all cases. In addition, all county courts are also required to report all public cases to State Court Administration so this information should be available to report to the Commission. Second, Madison County does not have a separate budget for public defense. All expenditures come from the courts' budgets. For a county that spends yearly over \$1.6 million on public defense, the board may want to consider a separate budget for the Madison County program.

Mark Rutherford invited the visitors from Madison County to speak. Tom Hamer said there are three areas where we have been called to task. First, the county public defender board now has three members as required by the comprehensive plan. Second, the county has hired Geoffrey Yelton as Chief Administrative Public Defender. Mr. Yelton had been serving as interim judge for Madison Superior Court IV. Mr. Hamer said the Board is confident in Geoff Yelton's ability to do the job of administering the public defense program in Madison County.

Mr. Hamer also reported that the Madison County Public Defense Board is committed to forming a separate budget for all county public defense in the near future.

Judge George Pancol reported on the six juvenile defense attorneys that are out of compliance with Standard J. He stated that in addition to hiring new attorneys, changing how cases are assigned in juvenile court is necessary to bring the defense attorneys' caseloads into compliance. Judge Pancol distributed material listing second quarter caseloads for the six public defenders handling juvenile cases. The information indicates that compliance will be achieved by the end of the quarter. Judge Pancol asked if hourly defense attorneys can be reported in the full-time/inadequately staffed category if yearly they are paid at least 90% of a full time county deputy prosecutor. Larry Landis said it sounds like there is confusion between hourly rate and salary. There is a commission standard that mandates paying hourly public defenders \$65/hour, but if you are paying a salary to public defenders this rate does not apply. Instead, the standard says, a county must pay the public defender a salary that is substantially comparable to the county prosecutors. Larry asked if the Commission ever defined substantial compliance for anyone other than a Chief Public Defender. Deborah Neal said no, substantial compliance has not been defined for any other position. Tim Lanane asked if a part time public defender's compensation needs to be in parity with a part time county prosecutor. Larry Landis said yes but you need to figure in office overhead and other items if you are comparing a part time public defender's compensation to a deputy prosecutor's. Mark Rutherford said the Commission has hesitated to define substantial compliance because there can be so much difference between counties. Larry Landis said the important thing is for Madison County to show the Commission its plan. If it is reasonable, the Commission will approve it.

Mark Rutherford asked if all the Commission's questions have been addressed and if staff counsel has a recommendation for the Commission regarding Madison County. Deborah Neal recommended that Madison County's 1st quarter request for reimbursement be paid since the county has a plan for compliance and a desire to remain in the reimbursement program. Susan Carpenter made a motion to reimburse Madison County's non-capital public defense expenditures this quarter. Brent Steele seconded this motion. The motion passed.

Report on Counties Receiving 90-Day Notice and Warning Memorandum.

Scott County: Jeff Wiese reported that Scott County had received a 90 Day notice of non-compliance in February 2007. The Scott County Council reduced the appropriation for public defense in the 2009 budget, signaling the county is unable to support a public defense program that meets the Indiana Public Defender Commission's Standards.

Henry County: Deborah Neal reported that four of the nine public defenders in Henry County have been out of compliance for more than a year. Also, Henry County pays its chief public defender \$30 thousand less than required by Commission's Standards; a chief public defender's salary should be 90% of the county prosecutor's salary. The Henry County Council reduced the appropriation for public defense in the 2009 budget, signaling the county is unable to support a public defense program that meets the Indiana Public Defender Commission's Standards.

Brent Steele asked what would happen if a county has no attorneys willing to take public cases. Deborah Neal said the county would have to seek counsel from outside the county, or they could contact the state public defender agency and pay a state public defender \$60/hour. Susan Carpenter said but the state agency would have to refuse to take the case. Bettye Lou Jerrel said we want to make it clear that it was not our choice to terminate reimbursements. Dave Hensel said in his opinion, this is not a matter of placing blame. Counties know they must comply with Commission standards. Brent Steele said perhaps it is best to say the Commission is terminating reimbursements to Henry and Scott counties for failure to meet statutory requirements. Jeff Wiese read a draft of the letter to be sent to Scott and Henry Counties if the Commission decides to terminate non-capital reimbursements. David Hensel made the motion to terminate non-capital reimbursements to Henry County and Scott County at the end of the fiscal year, June 30, 2009, for failure to comply with Commission standards. Bettye Lou Jerrel seconded the motion. The motion passed unanimously.

Kosciusko County: The Commission was reminded by staff counsel that the Kosciusko County judges attended the Commission's March meeting and were given until the September meeting to achieve compliance.

Clark County: Deborah Neal reported that the Clark County public defense program went from five public defenders out of compliance to only one out of compliance. They have done an excellent job addressing this situation.

Howard County: Staff counsel reported that Howard County's public defense program has until September 2009 to achieve compliance.

Jasper County: Deborah Neal met with the county judges to investigate why five of the six public defense attorneys were still out of compliance with Commission Standards regarding their caseloads. The meeting resulted in a finding that new caseload assignments had been reported to the Commission incorrectly. The judges stated they would work with the county auditor to prepare and submit an amended caseload worksheet. Ms. Neal also discovered that the county public defense attorneys were receiving compensation that equaled 65% of the compensation for the full-time deputy prosecutor. She advised the judges to report the public defense attorney's new assignments on a "full-time/inadequately staffed" caseload worksheet, with a maximum FTE over a 12-month period of 0.650.

Jennings County: Deborah Neal met with the judges in Jennings County and discovered that the county public defense attorneys were receiving compensation that equaled 65% of the compensation for the full-time deputy prosecutor. She advised the judges to report the public defense attorney's new assignments on a "full-time/inadequately staffed" caseload worksheet,

with a maximum FTE over a 12-month period of 0.650. This will bring Jennings County into compliance with Commission Standards.

Knox County: Deborah Neal reported that Knox County is now in compliance with Commission Standards.

LaPorte County: Deborah Neal reported that LaPorte County is now in substantial compliance with Commission Standards.

Montgomery County: Deborah Neal and Jeff Wiese met with the Montgomery County judges, public defense board members, a public defender and the auditor. Staff Counsel reported at the meeting that if Montgomery County increased the salary of the public defense attorneys by approximately \$2,000 per year, the public defense attorneys could be reported on a full-time/inadequately staffed new caseload worksheet, which would bring the county into compliance. Since the county already executed 2009 contracts for public defense, the county was leaning toward hiring more public defenders to cover the excess case assignments. The FTE figures of Montgomery County public defense attorneys should be lower for the 2nd quarter of 2009.

Shelby County: Deborah Neal reported that Shelby County is now in substantial compliance with Commission Standards.

Steuben County: Deborah Neal reported that Steuben County hired another public defender to take the misdemeanor cases only. Staff recommends giving the county until the second quarter to see if this helped.

Fountain County: Deborah Neal reported that Fountain County is willing to hire another public defender and control the assignment of new cases to achieve compliance with Commission's Standards. The first quarter FTE figures for each Fountain County public defense attorney were below 0.250.

Fulton County: Christine Wells has an FTE of 1.351 as a part-time/inadequately staffed public defense attorney. Her salary is 90% of the corresponding deputy prosecutor's salary. Staff Counsel recommended that her new assignments be reported on a full-time/inadequately staffed worksheet, which would show her FTE at 0.676. Fulton County's public defense program is close to compliance.

Jay County: Jeff Wiese reported the county has corrected its problem with the public defense board by appointing a third member. Mr. Wiese also reported that the chief public defender is still assigned too many cases; the county knows it must distribute the new case assignments to the other public defense attorneys.

Martin County: Jeff Wiese reported the county has two public defenders out of compliance this quarter. Judge Howell was informed the new case assignments must be distributed more evenly. Also, Judge Howell said the county prosecutor has had a long-standing practice of charging

related crimes as individual cases which inflated the number of new public case assignments. Judge Howell has succeeded in stopping this practice.

Perry County: Deborah Neal reported that the one public defense attorney that is out of compliance had a quarterly FTE of only 0.220. Full compliance should be achieved by the 2nd quarter.

St. Joseph County: The County has one attorney who takes non-reimbursable cases only. This quarter she took several reimbursable cases (a mixed caseload). Staff spoke with Neil Weisman, Chief Deputy Public Defender and told him if she continues to take a mixed caseload, the Commission must show her out of compliance. Mr. Weisman said this will not happen again.

Spencer County: Two of the county's four public defenders are out of compliance. Jeff Wiese spoke with Judge Darrt. The county paid one of these public defenders over \$77 thousand over the last four quarters. Based on this compensation amount and what the county pays its deputy prosecutor, this public defender qualifies to be reported on a full-time/inadequately staffed caseload worksheet. Once this change is made, this public defender would be in compliance with Standard J. The other public defender remains out of compliance. Judge Darrt is working with the local bar to find another attorney willing to take public cases.

Switzerland County: Judge Coy, who took the bench January 1st, is working to overhaul the county's public defense system. He hopes to change the delivery system from hourly to contract public defenders and he expects to see changes in three to six months.

Sullivan and Wabash Counties: Both counties are still out of compliance. Staff counsel plans a visit to each county to assist in finding solutions to the problems plaguing their public defense programs.

Financial Status of Public Defense Fund. Staff counsel reported that \$3.9 million in reimbursements have been requested for the first quarter of 2009. If the Indiana General Assembly does not increase the general fund appropriation to the Public Defense Fund for FY09-10, then there would only be 3.6 million available for the second quarter causing the Commission to pro rate the reimbursements. The Public Defense Fund is a non-reverting fund. There was a balance of \$59,781 in the fund after the reimbursements were paid for the fourth quarter 2008 which was put into a "closing center" account by the state budget agency. In May, the State Budget Office charged the Public Defense Funds' dedicated amounts a "cost allocation" and withdrew \$22,386.64 from the fund leaving it with a negative balance. Deborah Neal convinced the budget office to take the \$22,384.64 from the public defense funds in the "closing center" which would bring the Public Defense Fund out of the red. Mark Rutherford said maybe this should be investigated further. Tim Lanane asked if this cost allocation was done each year. Deborah Neal said this was the first time it has been done since she has been on staff. Susan Carpenter said a cost allocation is considered overhead for using state services.

Requests for 50% Reimbursement in Capital Cases. Jeff Wiese said requests were made for \$191,873.98 in capital case expenditures. Two of the requests were reduced due to expenditures unrelated to public defense. Tim Lanane made a motion to pay the \$191,873.98 in capital case

reimbursements. Bettye Lou Jerrel seconded this motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
June 24, 2009		
COUNTY	DEFENDANT	TOTAL
Marion	Allen, K. 1	\$1,744.46
	Davis 1	\$16,391.74
	Turner 1	\$25,845.89
Parke	Cottrell 1	\$17,122.93
	Cottrell 2	\$30,037.18
	Cottrell 3	\$25,179.94
	Cottrell 4	\$41,464.90
	Cottrell 5	\$7,538.77
Putnam	Stevens 1	\$5,231.10
	Stevens 2	\$1,724.83
Vanderburgh	Wilkes	\$15,227.25
Vigo	Walker 1	\$4,364.99
TOTAL		\$191,873.98
Notes:		
* Reduced by \$10,000.00 for expenditure unrelated to public defense		
** Reduced by \$4,500.00 for expenditure unrelated to public defense		

Requests for 40% Reimbursement in Non-Capital Cases. Jeff Wiese reported a total of \$3,751,673.69 was requested in non-capital expenditures. Brent Steele made the motion to approve \$3,751,673.69 in non-capital reimbursements for the first quarter 2009. Susan Carpenter seconded this motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
First Quarter (January 1, 2009 - March 31, 2009) Requests for Reimbursements in Non-Capital Cases						
6/24/2009						
COUNTY	2009 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	If 40% Reimbursed
ADAMS	01/01 - 03/31	\$68,254.82	\$26,913.95	39%	\$41,340.87	\$16,536.35
ALLEN	01/01 - 03/31	\$805,243.40	\$33,412.90	4%	\$771,830.50	\$308,732.20

BENTON	01/01 - 03/31	\$3,631.50	\$838.04	23%	\$2,793.46	\$1,117.38
BLACKFORD	01/01 - 03/31	\$31,238.92	\$7,682.50	25%	\$23,556.42	\$9,422.57
CARROLL	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
CLARK	01/01 - 03/31	\$133,538.16	\$16,592.62	12%	\$116,945.54	\$46,778.22
CRAWFORD	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
DECATUR	01/01 - 03/31	\$43,459.93	\$12,199.28	28%	\$31,260.65	\$12,504.26
FAYETTE	01/01 - 03/31	\$103,963.89	\$23,991.67	23%	\$79,972.22	\$31,988.89
FLOYD	01/01 - 03/31	\$114,247.25	\$22,281.57	20%	\$91,965.68	\$36,786.27
FOUNTAIN	01/01 - 03/31	\$33,354.46	\$8,479.95	25%	\$24,874.51	\$9,949.80
FULTON	01/01 - 03/31	\$57,101.76	\$18,032.13	32%	\$39,069.63	\$15,627.85
GRANT	01/01 - 03/31	\$183,698.75	\$12,737.86	7%	\$170,960.89	\$68,384.36
GREENE	01/01 - 03/31	\$92,361.86	\$13,380.64	14%	\$78,981.22	\$31,592.49
HANCOCK	01/01 - 03/31	\$117,738.10	\$31,295.38	27%	\$86,442.72	\$34,577.09
HENRY	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
HOWARD	01/01 - 03/31	\$318,722.47	\$55,466.04	17%	\$263,256.43	\$105,302.57
JASPER	01/01 - 03/31	\$46,903.29	\$14,165.42	30%	\$32,737.87	\$13,095.15
JAY	01/01 - 03/31	\$70,888.38	\$8,908.02	13%	\$61,980.36	\$24,792.14
JENNINGS	01/01 - 03/31	\$35,416.67	\$10,034.64	28%	\$25,382.03	\$10,152.81
KNOX	01/01 - 03/31	\$237,968.38	\$96,740.32	41%	\$141,228.06	\$56,491.22
KOSCIUSKO	01/01 - 03/31	\$151,647.72	\$54,901.82	36%	\$96,745.90	\$38,698.36
LAKE	01/01 - 03/31	\$1,017,424.63	\$1,443.16	0%	\$1,015,981.47	\$406,392.59
LAPORTE	01/01 - 03/31	\$143,315.57	\$25,950.14	18%	\$117,365.43	\$46,946.17
MADISON	01/01 - 03/31	\$389,138.72	\$54,359.04	14%	\$334,779.68	\$133,911.87
MARION	01/01 - 03/31	\$4,138,939.05	\$1,055,914.56	26%	\$3,083,024.49	\$1,233,209.80
MARTIN	01/01 - 03/31	\$19,516.42	\$3,954.20	20%	\$15,562.22	\$6,224.89
MIAMI	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
MONROE	01/01 - 03/31	\$441,524.51	\$69,581.23	16%	\$371,943.28	\$148,777.31
MONTGOMERY	01/01 - 03/31	\$116,281.56	\$49,124.45	42%	\$67,157.11	\$26,862.84
NEWTON	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
NOBLE	01/01 - 03/31	\$96,714.12	\$17,907.64	19%	\$78,806.48	\$31,522.59
OHIO	01/01 - 03/31	\$28,698.63	\$7,584.56	26%	\$21,114.07	\$8,445.63
ORANGE	01/01 - 03/31	\$58,360.13	\$14,964.14	26%	\$43,395.99	\$17,358.40
PARKE	01/01 - 03/31	\$28,494.23	\$9,320.54	33%	\$19,173.69	\$7,669.48
PERRY	01/01 - 03/31	\$82,148.89	\$19,041.13	23%	\$63,107.76	\$25,243.10
PIKE	01/01 - 03/31	\$80,754.92	\$24,924.36	31%	\$55,830.56	\$22,332.22
PULASKI	01/01 - 03/31	\$30,446.14	\$3,385.20	11%	\$27,060.94	\$10,824.38
RUSH	01/01 - 03/31	\$54,896.55	\$18,625.62	34%	\$36,270.93	\$14,508.37
SAINT JOSEPH	01/01 - 03/31	\$473,596.31	\$68,365.71	14%	\$405,230.60	\$162,092.24

SCOTT	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
SHELBY	01/01 - 03/31	\$82,459.61	\$12,096.00	15%	\$70,363.61	\$28,145.44
SPENCER	01/01 - 03/31	\$39,212.61	\$1,548.00	4%	\$37,664.61	\$15,065.84
STEUBEN	01/01 - 03/31	\$73,937.50	\$17,379.90	24%	\$56,557.60	\$22,623.04
SULLIVAN	01/01 - 03/31	\$44,206.20	\$14,321.00	32%	\$29,885.20	\$11,954.08
SWITZERLAND	01/01 - 03/31	\$42,666.67	\$9,275.36	22%	\$33,391.31	\$13,356.52
TIPPECANOE	01/01 - 03/31	\$424,223.57	\$151,485.92	36%	\$272,737.65	\$109,095.06
UNION	01/01 - 03/31	\$19,930.20	\$999.99	5%	\$18,930.21	\$7,572.08
VANDEBURGH	01/01 - 03/31	\$559,778.38	\$87,322.80	16%	\$472,455.58	\$188,982.23
VERMILLION	01/01 - 03/31	\$25,667.86	\$14,667.35	57%	\$11,000.51	\$4,400.20
VIGO	01/01 - 03/31	\$394,822.23	\$100,361.15	25%	\$294,461.08	\$117,784.43
WABASH	01/01 - 03/31	\$55,894.27	\$7,681.45	14%	\$48,212.82	\$19,285.13
WARREN	01/01 - 03/31	\$7,344.30	\$1,402.50	19%	\$5,941.80	\$2,376.72
WASHINGTON	01/01 - 03/31	\$113,927.85	\$23,475.27	21%	\$90,452.58	\$36,181.03
WELLS	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITE	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITLEY	01/01 - 03/31	\$0.00	\$0.00	0%	\$0.00	\$0.00
TOTAL		\$11,733,701.34	\$2,354,517.12	20%	\$9,379,184.22	\$3,751,673.69

Seminars on Capital Defense Requesting Approval for CR24 Purposes. According to Criminal Rule 24, a public defender must have 12 hours of training in capital cases in courses approved by the Public Defender Commission before he/she can be appointed to a capital case. Jeff Wiese updated the list of public defenders qualified to take a capital case this quarter and discovered some public defenders not up to date on legal education courses. These attorneys were notified in writing and several responded saying they had taken courses that they thought were approved. Mr. Wiese discussed the courses with Paula Sites at the Indiana Public Defender Council and she recommends these courses be approved for capital case training. The Commission’s website has been updated to provide instructions on achieving and maintaining eligibility to take capital cases. Tim Lanane made the motion to approve the following courses for capital case training credit: Clarence Darrow Death Penalty College, DePaul University School of Law, Bryan Schechmeister Death Penalty College at Santa Clara University School of Law, National Association of Criminal Defense Lawyers and Southern Center for Human Rights “Making the Case for Life,” National Association of Criminal Defense Lawyers “Capital Voir Dire Training,” and Trial Lawyers College of Dubois, Wyoming “Death Penalty Defense.” David Hensel seconded this motion. The motion passed unanimously.

Other Matters: Indiana Public Defender Council – Larry Landis. Larry Landis stated he is concerned about staff advising counties that compensation paid to a public defender is considered substantially comparable to a prosecutor’s salary without including the benefits a county prosecutor receives. Larry Landis said the Commission needs to develop a formula to compare public defender and prosecutor compensation to determine what substantial compliance really is. Tim Lanane asked how you would do this. Larry Landis said the public defender must

tell the Commission what his/her office overhead is and what percentage of this is attributable to public cases. Mark Rutherford said there will be a big difference between what Marion County provides and other counties. Larry Landis said he could ask his Public Defender Council members for an estimate so the Commission could have some data. Tim Lanane and Mark Rutherford said it would be interesting to see the data. David Hensel asked what would be included. Suggestions made were malpractice insurance, secretarial/paralegal help, rent, utilities, office supplies, health insurance and PERF. Larry Landis said the Public Defender Council can gather data and see what the Commission wants to do. Mark Rutherford asked for volunteers to take the lead on this task and cautioned that the Commission really needs to think this through before making any decision. Larry Landis said when this Commission was formed most counties were paying public defenders hourly on a case by case basis. The Commission recommended counties go to a contract system to save money which actually institutionalized the underpayment of public defenders. Larry Landis said initially the Commission focused on reimbursements and caseloads and thought it saw an increase in the quality of representation but this has changed. The institutionalization of underpaying public defenders has actually driven the more experienced attorneys out of public practice. Tim Lanane asked if the Commission was thinking about a sub-committee. Mark Rutherford answered no, but I don't want us to act in ignorance. Susan Carpenter and Tim Lanane agreed to lead the Commission on this task. David Hensel asked if there was a particular county that wanted us to investigate this. Larry Landis said you would have a completely different point of view from a county and a public defender. Mark Rutherford said he will stay in contact with Tim Lanane and Susan Carpenter about this. Larry Landis said he will try to gather data and share it with Tim, Susan, Deborah and Jeff.

Adjournment. With no further business to discuss, David Hensel made the motion to adjourn and Bettye Lou Jerrel seconded the motion. The motion passed and the meeting adjourned at 3:21 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

September 23, 2009

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

Guest present at the meeting was Executive Director of the Indiana Public Defender Council, Larry Landis.

Approval of Minutes from 06/24/09 Meeting. Chairman Rutherford presented the minutes from the June 24, 2009 meeting for approval. Sen. Tim Lanane moved for approval of the minutes as presented. Bettye Lou Jerrel seconded the motion. The vote was unanimous in favor of approval.

2010 Meeting Dates. The suggested meeting dates for 2010 are 3/24, 6/23, 9/22 and 12/15 with all meetings to begin at 2:00 p.m. David Hensel made a motion to accept these meeting dates for 2010. His motion was seconded by Susan Carpenter. The motion passed. These meeting dates will be listed on the Public Defender Commission website.

Cost Allocation. Deborah Neal researched the State Budget Agency's (SBA) appropriation of \$22,386.64 from the Public Defense Fund as a "cost allocation." The SBA is statutorily authorized to deduct a cost allocation from all dedicated funds. According to I.C. 4-12-1-13.5, the cost allocation is defined as the operating cost of the offices of the auditor, attorney general, treasurer, department of administration, state budget agency and any other state agency that the budget director determines is attributable to the operations of other state agencies. The amount of this cost allocation is determined by a formula created by the SBA. What this means to the Commission is the SBA can take money from our dedicated funds (court fines and costs) each year.

Deborah Neal reported that at the end of each fiscal year, any balance in the Public Defense Fund, by statute, cannot revert to the General Fund, so the SBA puts this ending balance in a "closing account." The Commission's closing account built up a balance of approximately \$60,000 at the end of FY08-09. When the SBA charged the Public Defense Fund with the most recent cost allocation, Deborah Neal convinced the SBA to deduct the cost allocation from the closing account. Bettye Lou Jerrel asked if these funds in the closing account might be lost if they are not used. The answer is no, even funds in the closing account are non-reverting. Rep. Vernon Smith asked what would happen to the Public Defense Fund if the governor mandated an across the board cut? Normally this type of cut affects the executive branch of government only; the Public Defense Fund is under the judicial branch and would not be affected unless the Chief Justice ordered the judicial branch to follow the same cost cut.

Report on Counties Receiving 90-Day Notice and Warning Memorandum.

90-Day Notice counties – Deborah Neal announced that several counties who had received the 90-Day Notices are now back in compliance. These counties include Clark, Jasper, Jennings, and Vanderburgh. After the meeting, they will be sent letters thanking them for their efforts in achieving compliance. Kosciusko, LaPorte, Madison, Montgomery Shelby and Steuben counties' caseload numbers are improving, however, they remain out of compliance.

Counties out of compliance that have not yet been issued a 90-Day Notice. Fulton and Perry Counties are back in compliance. Howard, Fountain, Jay, Martin, Saint Joseph, and Spencer Counties have made some progress toward compliance and staff counsel feels these counties should be reviewed after another quarter. Tippecanoe County had been allowed five years to have all of its courts in compliance which ended this quarter. Although all courts are not yet in compliance, staff counsel feels their progress should be reviewed after another quarter to determine if a 90-Day notice should be issued. Montgomery, Sullivan, Switzerland and Wabash Counties have been substantially out of compliance for at least four quarters and are not making progress toward compliance. There was discussion of suspending non-capital reimbursements for Montgomery, Sullivan, Switzerland and Wabash counties this quarter. Rep. Vernon Smith made a motion to send a letter to these four counties asking them to attend the December Commission meeting and report on the county's plan to achieve compliance. This letter should include language stating that suspension of their second quarter non-capital reimbursement was considered but tabled until the December meeting. Susan Carpenter seconded this motion. The motion passed. Staff counsel will prepare these letters. Deborah Neal said staff will visit these counties to offer assistance in reaching compliance.

Bettye Lou Jerrel asked staff to include a summary of how the out of compliance counties are progressing and highlights of any other important issues that will be discussed at the next meeting with the meeting packets. This will allow Commission members time to think about each county and each issue and consider what action should be taken prior to the meeting.

Financial Status of Public Defense Fund. Deborah Neal reported that after payment of the 40% reimbursement on non-capital claims and the 50% reimbursement on capital claims, the Public Defense Fund has a balance of \$1,063,006 to cover claims and expenses to December 31, 2009.

Requests for 50% Reimbursement in Capital Cases. Jeff Wiese reported capital claims totaled \$218,780.31 this quarter. Several claims were reduced due to mathematical errors, expenses incurred after sentencing and expenses unrelated to public defense. The county auditor and judge received notice of the reduced reimbursement, informing them that if they disputed the reduction they should send a written response detailing the reasons the claim should be paid as submitted or they should attend the Commission meeting and present their reasons in person. Susan Carpenter made a motion to pay the capital claims of \$218,780.31. Rep. Vernon Smith seconded her motion and the motion passed. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
September 23, 2009		
COUNTY	DEFENDANT	TOTAL
Marion	Allen, K. 1	\$14,377.71
	Allen, K. 2	\$24,111.72
	Ben-Yisrayl 1	\$8,166.50
	Davis, R. 1 *	\$23,967.05
	Davis, R. 2 **	\$10,186.63
	Turner 1	\$20,815.42
	Turner 2	\$20,827.50
	Cottrell 1 ***	\$50,963.33
Parke	Cottrell 2 ****	\$14,684.66
	Ward	\$1,872.57
Vanderburgh	Wilkes	\$9,993.85
Vigo	Walker 1	\$1,545.76
	Walker 2	\$2,535.09
	Walker 3 *****	\$8,966.61
	Walker 4	\$5,765.91
TOTAL		\$218,780.31
Notes:		
*	Reduced by \$1,000.00 due to mathematical error	
**	Increased by \$238.20 due to mathematical error	
***	Reduced by \$233.46 for expenses incurred after sentencing	
****	Reduced by \$120.00 for expenses incurred after sentencing	
*****	Reduced by \$42.45 for expense unrelated to public defense	

Requests for 40% Reimbursement in Non-Capital Cases. Jeff Wiese reported that Decatur County submitted its reimbursement request after the deadline. A penalty of ten percent was automatically applied and written notice of the penalty was sent to the chairman of the county public defender board and the county auditor explaining that they should send us a written explanation of the late submission and the Commission would decide whether to enforce the penalty. No letter has been received. Decatur County missed the deadline in the first quarter 2008. At that time, the Commission chose not to enforce the penalty. Total requested reimbursements in non-capital cases are \$3,811,925.15. David Hensel made the motion to pay \$3,811,925.15 in non-capital reimbursements. Susan Carpenter seconded the motion and the motion passed. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION

Second Quarter Requests for Reimbursements in Non-Capital Cases

9/23/2009

COUNTY	Late Factor	2009 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	04/01 - 06/30	\$76,635.74	\$10,330.07	13%	\$66,305.67	\$26,522.27
ALLEN	0.00	04/01 - 06/30	\$702,590.84	\$31,017.85	4%	\$671,572.99	\$268,629.20
BENTON	0.00	04/01 - 06/30	\$7,300.37	\$4,101.89	56%	\$3,198.48	\$1,279.39
BLACKFORD	0.00	04/01 - 06/30	\$34,533.07	\$11,252.50	33%	\$23,280.57	\$9,312.23
CARROLL	0.00	04/01 - 06/30	\$31,063.64	\$8,834.06	28%	\$22,229.58	\$8,891.83
CLARK	0.00	04/01 - 06/30	\$140,246.05	\$19,645.41	14%	\$120,600.64	\$48,240.26
CRAWFORD	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
DECATUR	0.10	04/01 - 06/30	\$41,897.04	\$14,211.77	34%	\$27,685.27	\$9,966.70
FAYETTE	0.00	04/01 - 06/30	\$94,637.88	\$10,605.97	11%	\$84,031.91	\$33,612.76
FLOYD	0.00	01/01 - 03/31	\$125,107.26	\$21,467.12	17%	\$103,640.14	\$41,456.06
FOUNTAIN	0.00	04/01 - 06/30	\$55,252.82	\$16,194.79	29%	\$39,058.03	\$15,623.21
FULTON	0.00	04/01 - 06/30	\$57,606.81	\$19,750.91	34%	\$37,855.90	\$15,142.36
GRANT	0.00	04/01 - 06/30	\$262,127.16	\$22,988.55	9%	\$239,138.61	\$95,655.44
GREENE	0.00	04/01 - 06/30	\$72,327.18	\$11,469.12	16%	\$60,858.06	\$24,343.22
HANCOCK	0.00	04/01 - 06/30	\$140,507.72	\$49,771.04	35%	\$90,736.68	\$36,294.67
HENRY	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
HOWARD	0.00	04/01 - 06/30	\$338,146.69	\$51,213.22	15%	\$286,933.47	\$114,773.39
JASPER	0.00	04/01 - 06/30	\$72,648.49	\$23,999.95	33%	\$48,648.54	\$19,459.42
JAY	0.00	04/01 - 06/30	\$74,033.58	\$9,487.35	13%	\$64,546.23	\$25,818.49
JENNINGS	0.00	04/01 - 06/30	\$47,719.47	\$17,371.41	36%	\$30,348.06	\$12,139.22
KNOX	0.00	04/01 - 06/30	\$175,133.25	\$65,681.26	38%	\$109,451.99	\$43,780.80
KOSCIUSKO	0.00	04/01 - 06/30	\$147,846.65	\$44,714.60	30%	\$103,132.05	\$41,252.82
LAKE	0.00	04/01 - 06/30	\$881,415.17	\$2,421.47	0%	\$878,993.70	\$351,597.48
LAPORTE	0.00	04/01 - 06/30	\$141,002.12	\$29,375.44	21%	\$111,626.68	\$44,650.67
MADISON	0.00	04/01 - 06/30	\$403,292.16	\$20,250.37	5%	\$383,041.79	\$153,216.72
MARION	0.00	04/01 - 06/30	\$4,160,626.11	\$958,489.29	23%	\$3,202,136.82	\$1,280,854.73
MARTIN	0.00	04/01 - 06/30	\$24,830.30	\$9,270.09	37%	\$15,560.21	\$6,224.08
MIAMI	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
MONROE	0.00	04/01 - 06/30	\$392,120.96	\$66,102.22	17%	\$326,018.74	\$130,407.50
MONTGOMERY	0.00	04/01 - 06/30	\$113,071.62	\$48,469.43	43%	\$64,602.19	\$25,840.88
NEWTON	0.00	04/01 - 06/30			0%	\$0.00	\$0.00

NOBLE	0.00	04/01 - 06/30	\$86,968.39	\$14,414.07	17%	\$72,554.32	\$29,021.73
OHIO	0.00	04/01 - 06/30	\$22,068.31	\$3,720.32	17%	\$18,347.99	\$7,339.20
ORANGE	0.00	04/01 - 06/30	\$66,226.51	\$16,941.67	26%	\$49,284.84	\$19,713.94
PARKE	0.00	04/01 - 06/30	\$25,776.00	\$7,249.50	28%	\$18,526.50	\$7,410.60
PERRY	0.00	04/01 - 06/30	\$82,044.82	\$23,761.61	29%	\$58,283.21	\$23,313.28
PIKE	0.00	04/01 - 06/30	\$99,754.58	\$22,525.23	23%	\$77,229.35	\$30,891.74
PULASKI	0.00	04/01 - 06/30	\$33,948.39	\$4,775.11	14%	\$29,173.28	\$11,669.31
RUSH	0.00	04/01 - 06/30	\$60,060.66	\$18,157.87	30%	\$41,902.79	\$16,761.12
SAINT JOSEPH	0.00	04/01 - 06/30	\$481,552.61	\$68,365.71	14%	\$413,186.90	\$165,274.76
SCOTT	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
SHELBY	0.00	04/01 - 06/30	\$77,527.94	\$10,003.15	13%	\$67,524.79	\$27,009.92
SPENCER	0.00	04/01 - 06/30	\$20,221.95	\$2,556.00	13%	\$17,665.95	\$7,066.38
STEUBEN	0.00	04/01 - 06/30	\$67,554.91	\$14,141.08	21%	\$53,413.83	\$21,365.53
SULLIVAN	0.00	04/01 - 06/30	\$26,072.53	\$11,200.42	43%	\$14,872.11	\$5,948.84
SWITZERLAND	0.00	04/01 - 06/30	\$46,980.78	\$8,153.69	17%	\$38,827.09	\$15,530.84
TIPPECANOE	0.00	04/01 - 06/30	\$467,772.17	\$173,761.52	37%	\$294,010.65	\$117,604.26
UNION	0.00	04/01 - 06/30	\$30,023.52	\$1,323.75	4%	\$28,699.77	\$11,479.91
VANDERBRGH	0.00	04/01 - 06/30	\$623,923.51	\$100,060.10	16%	\$523,863.41	\$209,545.36
VERMILLION	0.00	04/01 - 06/30	\$29,088.22	\$16,762.70	58%	\$12,325.52	\$4,930.21
VIGO	0.00	04/01 - 06/30	\$455,176.65	\$111,242.72	24%	\$343,933.93	\$137,573.57
WABASH	0.00	04/01 - 06/30	\$55,894.27	\$17,022.68	30%	\$38,871.59	\$15,548.64
WARREN	0.00	04/01 - 06/30	\$8,441.50	\$3,580.50	42%	\$4,861.00	\$1,944.40
WASHINGTON	0.00	04/01 - 06/30	\$128,371.75	\$28,382.17	22%	\$99,989.58	\$39,995.83
WELLS	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
WHITE	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
WHITLEY	0.00	04/01 - 06/30			0%	\$0.00	\$0.00
TOTAL			\$11,809,170.12	\$2,276,588.72	19%	\$9,532,581.40	\$3,811,925.15
NOTES:		Decatur's request was received 5 days after the deadline. In the first quarter 2008 the request was also received late.					
		At that time, the Commission chose not to enforce the penalty.					

Guideline for Standard F – Non-Capital Appellate Practice. Standard F requires a public defender wishing to take non-capital murder, Class A or B felony appeals to take at least six hours of training in appellate practice in a course approved by the Commission. There is no record in the minutes that the Commission has ever approved any course for non-capital appellate training. Attorney Paula Sites at the Indiana Public Defender Council was consulted and she reports that all courses in appellate training sponsored by the IPDC or the Indiana Continuing Legal Education Forum should qualify. Jeff Wiese recommended adopting a Guideline to Standard F explaining which courses qualify. David Hensel made a motion to adopt

a guideline to Standard F which states “All appellate training courses sponsored by the Indiana Public Defender Council or the Indiana Continuing Legal Education Forum are approved by the Indiana Public Defender Commission for continuing legal education to qualify attorneys to handle non-capital appeals.” Susan Carpenter seconded this motion and the motion passed. Mark Rutherford asked what the Commission would do if an attorney wanted to take a course sponsored by a company like NBI. The consensus is the Commission would request the attorney to send us information regarding the course, including a syllabus and list of presenters if possible, in advance of taking such a course and the Commission would discuss it at a regular meeting.

Other Matters: Larry Landis reported there are twelve chief public defenders researching time and overhead of attorneys doing public defense cases to determine how to include these items in a compensation package for a public defender that is substantially similar to a county prosecutor.

Adjournment. The next Commission meeting is scheduled for December 16, 2009 at 2:00 p.m. With no further business to discuss, Susan Carpenter made the motion to adjourn and Bettye Lou Jerrel seconded the motion. The motion passed and the meeting adjourned at 2:40 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

December 16, 2009

Chairman Mark Rutherford called the business meeting to order at 2:05 p.m. Commission members in attendance were Susan Carpenter, Peter Nugent, Rep. Vernon Smith, and Rep. Greg Steuerwald. David Hensel participated in the meeting via conference call. Also in attendance were staff counsels, Deborah Neal and Jeffrey Wiese. Commission members unable to attend were Bettye Lou Jerrel, Judge Diane Ross Boswell, Sen. Brent Steele and Sen. Timothy S. Lanane.

Guests present at the meeting were Ann Smith Mischler, Magistrate of Sullivan County and Executive Director of the Indiana Public Defender Council, Larry Landis.

Approval of Minutes from 09/23/09 Meeting. Chairman Rutherford presented the minutes from the September 23, 2009 meeting for approval. Susan Carpenter moved for approval of the minutes as presented. Rep. Greg Steuerwald seconded the motion. The vote was unanimous in favor of approval.

Staff Counsel Memoranda. Deborah Neal detailed her contact with the counties during the quarter, as follows:

Allen County: The Allen County Public Defender Agency does not report attorney-assigned Children-in-need-of-services (“CHINS”) cases on their quarterly report to the Commission. After investigation it was discovered that Allen County public defenders are accepting appointments to CHINS cases as part of their private practice, are paid hourly by the court, and do not report these cases on the quarterly caseload worksheet. Since the Commission does not currently reimburse for CHINS cases, staff counsel wants direction from the Commission on the practice of public defenders taking public case assignments by a court as part of their private inventory of cases and whether these cases should be counted toward the maximum caseload allowed under Standard J for compliance purposes.

Vernon Smith asked if in a CHINS case, a parent requires a public defender. Deborah Neal said yes, if there is an indigent parent, representation by a county paid public defender is required. Peter Nugent said the court is paying these cases out of a budget separate from the budget for the Allen County Public Defender Office. Greg Steuerwald asked if this non-reporting of CHINS cases affected Allen County’s reimbursement requests or reporting. Staff answered it affects reporting of caseloads but has a net-zero affect on reimbursement amounts since any expenditure reported for a CHINS case would be deducted when calculating the reimbursable amount. Deborah Neal said the Commission must remember caseload limits cannot be exceeded and also that the Commission does not reimburse for CHINS cases. Susan Carpenter said while we do not reimburse for misdemeanor and CHINS cases, taking them does affect the public defender’s time available to spend on each case. These are public cases, not private cases and should be reported. Not reporting these cases may make a public defender seem to be in compliance with Standard J when if all public cases had been reported, he/she actually is out of compliance.

Larry Landis said we are confusing two issues. When Standard J was originally adopted, it was not meant to cover public defenders paid on an hourly basis; only salaried and contract public defenders. Standard J was meant to solve the problem of public defenders with a fixed compensation amount but caseloads with no limit. Even though we did not reimburse for misdemeanors, the county had to report these cases as a way for the Commission to keep track of reasonable caseloads for attorneys with capped compensation. Being paid by the case, outside of any contract, is a different situation. Larry stated he did not see why, since these cases are outside of their contract for public cases, that public defenders cannot take these cases as part of their private caseload. These attorneys are not being overloaded under their contract. There is still the capped caseload for their contract. If they are being paid \$60/hour for a public case, in my opinion, they could sell part of their private practice time to the court and say "I can take that CHINS case as part of my private practice". Mark Rutherford asked if this could also be done with misdemeanor cases. Larry Landis said as long as it is outside of their contracted caseload and they are being paid by the case, yes. Mark Rutherford stated but if they are being paid \$35k per year and they are getting all these misdemeanor and CHINS cases, they cannot all come from the same pot of money which is our reimbursement money, is that what this is about? Greg Steuerwald said I do not want to over-simplify this but if it does not affect what we are doing, why do we care? Deborah Neal responded, yes, it affects how to interpret Standard J. Standard J sets out the maximum public caseloads that should be handled in a 12-month period. The Commission needs to decide if it will allow a public defender to take their maximum caseload according to Standard J and then take additional public cases as he/she wants as long as they are being paid by the hour. Greg Steuerwald said that using Larry Landis's comment as a barometer, what is the problem if the cases are part of the public defender's private inventory of cases. Jeff Wiese said we also have to think about the representation they give to the client. While the public defender may be eligible to take hourly cases in addition to the contract cases, is the attorney adequately representing his clients' interest? Vernon Smith stated that is done all the time. Jeff Wiese asked if that is one of the reasons we have caseload maximums?

Larry Landis said the caseload maximums in Standard J were never meant to apply to public defenders paid by the hour; only to salaried and contract public defenders. Deborah Neal stated if that is correct, if the county only uses hourly public defenders, they can take as many cases as they want and never be out of compliance? Larry Landis said yes but public defenders have the ethical obligation to say no to new cases if they are overloaded. Mark Rutherford said it seems like we have this discussion about once each year. Deborah Neal said part of the problem is we have never asked about a public defender's private practice before but these are public cases taken as part of a private practice and we wanted to check with the Commission before investigating further. She asked are you going to go so far as to say that any assigned counsel is not controlled by Standard J's caseload maximums. If so, I want that as part of a guideline that we publish because you are turning our auditing process completely on its head. That is totally not what we have ever done. Vernon Smith stated he believes that the indigent client must have quality representation; based on my experience, the quality of service is not there. Deborah Neal said a good example is Sullivan County which was just represented by Magistrate Mischler; the county pays public defense attorneys by the hour, so why are we telling them to abide by Standard J if the interpretation is attorneys can take as many cases as they want because they are being paid \$60/hour. Larry Landis said he wonders why we are even talking to Sullivan County

about caseload limits. They pay \$60/hour and Followell and the other attorneys do not take anywhere near the maximum number of cases. I think what we are missing is the abuse that was addressed by Standard J which was fixed compensation with potentially unlimited caseloads. The standard is only designed to affect those public defenders with fixed compensation such as salaried and contracted. The standard was designed to prevent overload. Public defenders paid hourly must self-monitor their own caseloads and have the responsibility to refuse cases if they become overloaded. As long as the attorney is paid hourly, one case at a time, that attorney has the professional obligation to refuse a case unless he has the time to take that additional case. That has always been the only safeguard. Mark Rutherford stated so our safeguard is the minimum hourly rate of \$60 which we set, right? If Sullivan County public defenders want to do 2000 hours of public cases per year that is fine but what is the Commission's obligation to reimburse for that? Susan Carpenter said we reimburse for any hours spent on reimbursable cases. Deborah Neal stated so all Sullivan County would need to do is turn in their request for reimbursement without reporting caseloads right? We wouldn't need to know caseloads if the public defenders are paid hourly.

Peter Nugent asked what prevents a public defender from saying to a judge, I'm at my maximum caseload limit but then the court offers to pay the case by the hour. Is it acceptable that the attorney takes more cases as long as the attorney self monitors? Is an attorney much more likely to say I cannot take this as a public defender case but if you pay me by the hour, I can? I do not think there is a good answer for this situation. We do not want to tell part time public defenders that we could potentially limit your private practice. So to get part time public defenders you tell them we are not going to ask about your private practice. The end around bothers me a little.

Larry Landis asked if the public defender is willing to sell part of their private practice to the county and is self-monitoring, why does that bother you? Peter Nugent said because if our concern is for quality representation no matter how many cases I have, there are only so many hours in a day. Now, having done this for 20 years, there are some cases that require much less time than others but the quality representation issue comes in because there are only so many hours in a day and whether you are paying me by contract or by the hour, I still have the case to handle. There is just no easy answer. Larry Landis stated when a county contracts with a public defender for 50% of his/her time, the remaining time is the attorney's. If the county wants to buy part of that additional time, why shouldn't they be able to? Peter Nugent said I agree with that in theory but I'm concerned about self monitoring.

Vernon Smith asked if the Commission had ever conducted a quality-of-representation study regarding plea agreements. In his experience, there seems to be an unusually high number of pleas entered, perhaps because the client does not understand the situation or the public defender does not have time to adequately prepare a case. Mark Rutherford said a study would be difficult because whether to accept a plea is up to the defendant. Larry Landis stated that State Court Administration keeps details on pleas. He believes the percentages are around 1% of cases decided by jury trial, 3% by bench trial and the remainder is guilty pleas.

Deborah Neal said when the legislature allowed the Commission to start reimbursing non-capital cases, part of the spirit of the Commission when enacting the Standards was to improve the quality of representation and the only way to do this was to raise compensation for public

defenders while lowering their caseloads. I have always felt that we were following this spirit in our auditing practices when we agree to work with the counties and not always insisting on strict compliance with each word from the Standard but always agreeing that the spirit of the Standards be followed because our purpose is to improve the quality of representation. However, when I encounter a county like Whitley that had one attorney doing the caseload of four and judges were proud of the fact that they had not held a trial in two years, I am wondering if the indigent clients in Whitley County were as happy and proud of the public defense system as the judges. And, if the Commission had interpreted Standard J as it is proposing now, I would never have recommended suspending Whitley County from the reimbursement program because as long as Whitley County paid the attorney by the hour, he could do the work of four attorneys. In almost every response to a warning notice we send out a judge or county official will say, but our system really works for us. What is important to a judge is time. As long as the public defender gets along with the prosecutor and the cases keep moving, the system works, regardless of how the client is represented. Susan Carpenter pointed out that the client has no choice of public defender. He can complain to the judge if he does not like his public defender or the job his public defender is doing and will be told “that is the lawyer you got”.

Greg Steuerwald said I struggle with this; the Commission never looks at private cases so a public defender could have an unlimited number of estate planning clients and still be in compliance with our Standards. Have you ever heard the saying “if you want something done, give it to a busy person”? I have an associate in my firm that is a public defender who is as busy as he can be but I would love him to take me on as a client. I do not know how to quantify these things. The goal is a good goal but even with our Standards, we cannot guarantee quality representation.

Vernon Smith said we are using public money and we are providing representation to people who cannot pick their own attorney so we have a higher level of responsibility.

Larry Landis said I see the problem as counting these cases a public defender takes in addition to the contracted number of cases, locks the public defender into the maximum caseload of a part time public defender regardless of whether he has the time to take additional cases. Are we actually defeating our goal of quality representation if we ignore the capacity these experienced public defenders may have? In the past, we have allowed public defenders to report these additional cases on a second caseload worksheet so they can take up to an additional part time maximum. There is only a problem if they exceed the maximum on both caseloads. Deborah Neal said a difference in this situation is Allen County is already reporting these public defenders as full time. If Allen County reported its public defenders as part time, we would suggest the two-caseload worksheet solution.

Mark Rutherford said the Commission needs more information to see if this is really a problem. Susan Carpenter asked what about the public defenders that are full time in one county, part time in another and maintains a private practice? Deborah Neal said let me give you an example. In Sullivan County, Shepler (one of the two public defenders out of compliance) is a part time public defender. You are saying that as long as she is paid \$60/hour she can take unlimited cases. She is also part time in Vigo County with a caseload maximum of 0.800. We could put her cases from Sullivan and Vigo Counties on one caseload worksheet and her numbers would

be off the chart. Larry Landis said that is a separate issue. You can't handle two part time contracts and take additional cases as assigned counsel too. Deborah Neal said she believes Vigo County would be upset if they had to give up a public defender and Shepler had to choose between counties in which to accept public defense cases. Neal further stated she did not understand the attitude that a public defender can take 4,000 cases at \$60/hour as long as they are in one county but the public defender cannot do the same thing by crossing county lines. Larry Landis said ethically that is a whole different thing. A public defender cannot take two part time contracts in two counties and still maintain they are a part time public defender. Mark Rutherford suggests this discussion be continued at another time because the Commission is scheduled for a conference call with David Hensel.

Switzerland County: Deborah Neal visited Switzerland County and realized the public defenders were taking CHINS cases as assigned hourly cases in addition to their contracted public cases. The solution which brought the county back into compliance was to continue reporting the public defender's contracted cases on a part time worksheet with a maximum of 1.000 FTE and allowing the public defender to report the additional hourly cases on a separate worksheet with a maximum of 0.750 FTE. This ensures the public defender is not handling a full time caseload. Once the cases were transferred to the proper sheets, all public defenders were in compliance with Standard J.

Montgomery County: Deborah Neal met with Judge Milligan and John Wyatt, the chairman of the county public defender board, and solved the non-compliance problem by basing the maximum caseloads for public defenders on the compensation paid to county prosecutors. Montgomery County pays its prosecutors at two different salary levels, \$60,000 and \$48,000. The public defenders taking Class D felonies and misdemeanors earn 80% of the prosecutors making \$48,000 and the public defenders taking major felonies were making 65% of the prosecutors being paid \$60,000. These public defenders will now be allowed to be reported on a full time worksheet with a maximum FTE of 0.800 and 0.650 respectively. When this is accomplished, all public defenders are actually in compliance with Standard J.

Sullivan County – Ann Smith Mischler, Sullivan County Magistrate, appeared on behalf of the county. Staff counsel sent Sullivan County a 90-Day Notice this quarter due to continued non-compliance with Standard J. The judicial officers and chairman of the Sullivan County Public Defender Board met with Jeff Wiese to devise a plan to address the problem. Two of Sullivan County's public defenders have been out of compliance with Standard J for a number of quarters. Staff counsel proposed designating these two attorneys as full time public defenders with inadequate support staff based upon comparable compensation with a full-time prosecutor. This would allow the two attorneys to carry a maximum caseload of 0.600 on a full time/inadequately staffed caseload worksheet. Under this plan, all Sullivan County public defenders would be in compliance with Standard J. Jeff Wiese reported the county realizes that caseloads must be monitored closely during a quarter. The plans calls for monthly caseload reports distributed to all judicial officers so that if a public defender is out of compliance, the courts will discontinue appointing them to cases for the quarter to ensure compliance. Vernon Smith made the motion to accept Sullivan County's plan to achieve compliance and authorized reimbursement of its 3rd quarter non-capital public defense expenditures. Greg Steuerwald seconded this motion. The motion passed unanimously.

Wabash County: Judges Robert McCallen, III and Christopher Goff joined the meeting via conference call. Wabash County received a 90-Day Notice this quarter due to continued non-compliance with Standard J. Wabash County has historically had public defenders contract for a portion of the public cases in a specific court. This practice has resulted in the public defenders in the superior court exceeding caseload maximums while public defenders in the circuit court having capacity to take additional cases. The county proposes changing the way it assigns cases in Superior Court. Attorney caseloads will be closely monitored monthly to prevent over-assigning of public cases. Peter Nugent asked Jeff Wiese if he believed this would bring the county into compliance. Jeff Wiese said in his opinion it is a good plan and should work barring an increase in the number of public cases in Wabash County. Judge Goff said the 90-Day Notice served as a wakeup call for the county. He stated the county has seven attorneys between Circuit and Superior Court who take public cases and all have agreed to take assignments in either court if it is necessary to keep within the caseload maximums. Vernon Smith made the motion to accept Wabash County's plan to achieve compliance and authorized reimbursements of its 3rd quarter non-capital public defense expenditures. Susan Carpenter seconded this motion. The motion passed unanimously.

Tippecanoe County: Tippecanoe County received a warning letter this quarter due to non-compliance with Standard J. Deborah Neal distributed the response from the county. The county entered the public defender program in 2000. The Commission gave Tippecanoe County five years, to April 2009, to reach full compliance with Commission standards. Tippecanoe County is taking steps to reach compliance including review of case counting and hiring additional public defenders. Deborah Neal will closely monitor the quarterly case loads to ensure the numbers are headed in the right direction. Tippecanoe County expects to achieve full compliance after the first quarter of 2010. Ms. Neal recommends reimbursing Tippecanoe County's non-capital public defense expenditures and allow them until 1Q 2010 to reach compliance. Mark Rutherford asked how often part-time public defenders receive benefit packages comparable to county prosecutors. Deborah Neal said it is offered in many counties as a way to keep experienced attorneys taking public cases at such low rates. Greg Steuerwald made the motion to accept Tippecanoe County's explanation and approve reimbursement of Tippecanoe County's 3rd quarter non-capital public defense expenditures. Susan Carpenter seconded this motion. The motion passed unanimously.

Notice of Non-Compliance: Warning letters (not 90-Day Notices) were sent to the following counties due to non-compliance with Standard J caseload limits. These letters were meant as notification of the Commission's ability to suspend reimbursements if the caseload limits continue to be exceeded. For now, staff counsel will closely monitor each county and will issue 90-Day Notices if caseloads do not decrease:

- a. Blackford County
- b. Decatur County
- c. Fayette County
- d. Jay County
- e. Martin County
- f. Parke County
- g. Rush County

Status Per County of Compliance with Standard J Caseloads: Deborah Neal presented the Commission with a chart showing the status of all program counties regarding Standard J. This spreadsheet is a good overview of all counties. Larry Landis asked if he could distribute this at the upcoming Chief Public Defender meeting and was given permission to do so. Larry Landis also said staff should be commended for reaching out to counties in trouble and helping them solve compliance problems. Mark Rutherford said it is his observation that the compliance problems are far fewer than they were when he was first appointed to the Commission several years ago. Peter Nugent said the Commission needs to be careful not to over-regulate counties because that would cause some counties to leave the program and un-do the good we have achieved. Mark Rutherford said while we need to be concerned about losing counties we also need to keep in mind that the Commission has limited funds and the counties that actively try to meet our Standards should be rewarded. Losing a county that is not making a good-faith effort to meet our standards does not really concern me. He also said that using the carrot and stick method seems to work and although we have lost a few counties in the past two years, he feels those counties would not have achieved compliance no matter how much latitude was given them regarding compliance. Some counties were just looking for free money.

Peter Nugent said he is still concerned that the minute the Commission starts examining private practices, taking cases in more than one county or limiting hourly assignments we are going to start losing attorneys willing to take public cases. While that may not hurt large counties, it will hurt the smaller counties that already have problems finding experienced criminal attorneys willing to take indigent cases. Susan Carpenter agreed that the Commission must walk a fine line. We don't want to be sitting here reimbursing public defenders that take eight times the allowable caseloads. Once one instance of a public defender making an inordinate amount of money occurs the Commission will no longer be credible. Mark Rutherford said we have good eyes and ears and can identify where the potential abuses are and resolve them without over regulating. Larry Landis agreed and said we need to investigate those attorneys taking more than one contract. You cannot have three part time contracts. Deborah Neal said staff could provide information on public defenders crossing county lines immediately, however, she reminded the Commission we would only have information on counties in the program.

Financial Status of Public Defense Fund: Deborah Neal reported that if 3rd quarter claims were paid immediately, the Public Defense Fund would have a negative balance of \$2,886,657.50. The claims will not be paid until the semi-annual allotment is paid into the fund on January 1, 2010. This will allow claims to be paid in full, with no pro-rationing. Deborah Neal also included a projection for the next 4 years. Based on current claims, the Commission may be able to cease paying current quarter claims with future allotments by 2013.

Deborah Neal also reported that LaGrange County plans on entering the Public Defense Program in 2010. The county hopes to present a Comprehensive Plan to the Commission in March. She believes the county will be in compliance with all Standards upon entry.

Requests for 50% Reimbursement in Capital Cases: Jeff Wiese reported capital claims totaled \$52,773.60 for this quarter. Susan Carpenter made a motion to approve payment of capital claims in the amount of \$52,773.60. Peter Nugent seconded the motion. Motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
December 16, 2009		
COUNTY	DEFENDANT	TOTAL
Marion	Turner 1	\$21,560.30
Parke	Cottrell 1	\$13,674.08
Putnam	Stevens 1	\$3,024.50
Putnam	Stevens 2	\$3,119.28
Vigo	Walker 1	\$11,395.44
TOTAL		\$52,773.60

Requests for 40% Reimbursement in Non-Capital Cases: Jeff Wiese reported requested reimbursements in non-capital cases totaled \$3,896,890.40. Susan Carpenter made a motion to approve payment of non-capital claims in the amount of \$3,896,890.40. Peter Nugent seconded the motion. Motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
Third Quarter (July 1, 2009 - September 30, 2009) Requests for Reimbursements in Non-Capital Cases					
12/16/2009					
COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$98,327.87	\$24,904.11	25%	\$73,423.76	\$29,369.50
ALLEN	\$844,136.82	\$111,296.12	13%	\$732,840.70	\$293,136.28
BENTON	\$6,358.00	\$1,816.57	29%	\$4,541.43	\$1,816.57
BLACKFORD	\$34,721.00	\$11,936.00	34%	\$22,785.00	\$9,114.00
CARROLL	\$37,027.24	\$7,925.57	21%	\$29,101.67	\$11,640.67
CLARK	\$142,970.59	\$11,516.08	8%	\$131,454.51	\$52,581.80
CRAWFORD	\$0.00	\$0.00	0%	\$0.00	\$0.00
DECATUR	\$43,146.77	\$12,354.80	29%	\$30,791.97	\$12,316.79
FAYETTE	\$234,048.22	\$38,160.04	16%	\$195,888.18	\$78,355.27
FLOYD	\$136,501.08	\$30,606.72	22%	\$105,894.36	\$42,357.74
FOUNTAIN	\$39,637.79	\$10,126.44	26%	\$29,511.35	\$11,804.54
FULTON	\$64,926.67	\$19,226.80	30%	\$45,699.87	\$18,279.95
GRANT	\$189,723.32	\$22,292.28	12%	\$167,431.04	\$66,972.42
GREENE	\$89,784.28	\$13,380.64	15%	\$76,403.64	\$30,561.46
HANCOCK	\$152,634.18	\$48,437.31	32%	\$104,196.87	\$41,678.75
HENRY	\$0.00	\$0.00	0%	\$0.00	\$0.00

HOWARD	\$379,094.42	\$60,823.05	16%	\$318,271.37	\$127,308.55
JASPER	\$66,155.65	\$23,685.36	36%	\$42,470.29	\$16,988.12
JAY	\$73,592.83	\$15,997.26	22%	\$57,595.57	\$23,038.23
JENNINGS	\$46,765.03	\$10,615.62	23%	\$36,149.41	\$14,459.76
KNOX	\$181,123.58	\$70,534.64	39%	\$110,588.94	\$44,235.58
KOSCIUSKO	\$149,189.87	\$70,008.19	47%	\$79,181.68	\$31,672.67
LAKE	\$935,776.77	\$13,027.05	1%	\$922,749.72	\$369,099.89
LAPORTE	\$141,541.82	\$25,004.96	18%	\$116,536.86	\$46,614.74
MADISON	\$367,649.75	\$27,763.92	8%	\$339,885.83	\$135,954.33
MARION	\$4,127,739.97	\$805,206.08	20%	\$3,322,533.89	\$1,329,013.56
MARTIN	\$19,960.67	\$14,168.10	71%	\$5,792.57	\$2,317.03
MIAMI	\$0.00	\$0.00	0%	\$0.00	\$0.00
MONROE	\$406,692.75	\$70,756.89	17%	\$335,935.86	\$134,374.34
MONTGOMERY	\$121,279.17	\$62,845.68	52%	\$58,433.49	\$23,373.40
NEWTON	\$0.00	\$0.00	0%	\$0.00	\$0.00
NOBLE	\$79,667.76	\$16,762.93	21%	\$62,904.83	\$25,161.93
OHIO	\$21,607.80	\$1,558.33	7%	\$20,049.47	\$8,019.79
ORANGE	\$53,331.80	\$18,268.60	34%	\$35,063.20	\$14,025.28
PARKE	\$37,999.26	\$9,405.76	25%	\$28,593.50	\$11,437.40
PERRY	\$101,991.05	\$17,584.66	17%	\$84,406.39	\$33,762.56
PIKE	\$68,724.49	\$10,226.73	15%	\$58,497.76	\$23,399.10
PULASKI	\$42,047.83	\$4,775.11	11%	\$37,272.72	\$14,909.09
RUSH	\$53,460.39	\$26,007.76	49%	\$27,452.63	\$10,981.05
SAINT JOSEPH	\$507,187.46	\$70,250.60	14%	\$436,936.86	\$174,774.74
SCOTT	\$0.00	\$0.00	0%	\$0.00	\$0.00
SHELBY	\$93,374.52	\$13,674.32	15%	\$79,700.20	\$31,880.08
SPENCER	\$20,257.84	\$2,968.00	15%	\$17,289.84	\$6,915.94
STEUBEN	\$80,624.59	\$16,081.82	20%	\$64,542.77	\$25,817.11
SULLIVAN	\$36,618.93	\$9,158.02	25%	\$27,460.91	\$10,984.36
SWITZERLAND	\$44,634.25	\$14,521.17	33%	\$30,113.08	\$12,045.23
TIPPECANOE	\$486,340.46	\$168,035.44	35%	\$318,305.02	\$127,322.01
UNION	\$22,388.88	\$2,599.45	12%	\$19,789.43	\$7,915.77
VANDEBURGH	\$555,942.91	\$104,111.53	19%	\$451,831.38	\$180,732.55
VERMILLION	\$25,881.70	\$12,304.41	48%	\$13,577.29	\$5,430.92
VIGO	\$387,771.63	\$80,316.34	21%	\$307,455.29	\$122,982.12
WABASH	\$55,894.10	\$11,453.49	20%	\$44,440.61	\$17,776.24
WARREN	\$8,632.97	\$3,531.00	41%	\$5,101.97	\$2,040.79
WASHINGTON	\$94,759.17	\$19,408.14	20%	\$75,351.03	\$30,140.41

WELLS	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITE	\$0.00	\$0.00	0%	\$0.00	\$0.00
WHITLEY	\$0.00	\$0.00	0%	\$0.00	\$0.00
TOTAL	\$12,009,645.90	\$2,267,419.89	19%	\$9,742,226.01	\$3,896,890.40

Request for Approval of Death Penalty Course for CR24 CLE Requirement: Jeff Wiese submitted an agenda from the Death Penalty Institute sponsored by the Kentucky Department of Public Advocacy to the Commission. He requested the Commission to approve this course for Criminal Rule 24 credit. The Commission does have the authority to approve all capital case training courses sponsored by the KDPA for Criminal Rule 24 credit. Larry Landis said the Kentucky Department of Public Advocacy conducts quality training programs. Susan Carpenter made a motion to approve all death penalty training programs sponsored by the Kentucky Department of Public Advocacy for Criminal Rule 24 credit. Peter Nugent seconded the motion. The motion passed unanimously.

Other Matters: Indiana Public Defender Council: Larry Landis reports he has applied for a grant from the Criminal Justice Institute to help cover the cost of developing a module compatible with the Supreme Court's Odyssey computer program for a management information system for public defenders. This module will generate a lot of useful data regarding public defense. The module should also generate caseload reports for the counties electronically helping staff and the counties.

Larry Landis stated he had hoped to present information on the survey of public defender overhead costs. Eight public defender offices have responded to his request for information however, the data varies greatly from office to office and he needs to meet with the chief public defenders to resolve this matter. He is hoping for better data which he plans on presenting to the Commission at the March meeting.

Adjournment: The next Commission meeting is scheduled for March 24, 2010. Elections for Chairperson will be held in addition to normal quarterly business. There being no further business to discuss, Susan Carpenter made the motion to adjourn and Peter Nugent seconded the motion. The motion passed and the meeting adjourned at 3:30 p.m.

Mark Rutherford, Chairman

Date