

## Indiana Public Defender Commission Meeting Minutes

March 24, 2010

Chairman Mark Rutherford called the business meeting to order at 2:10 pm. Commission members in attendance at the start of the meeting were Susan Carpenter, David Hensel, Peter Nugent, and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Michele Lofthouse, Administrative Assistant Yolanda Collins, and Executive Director of the Indiana Public Defender Council Larry Landis.

Rep. Vernon Smith arrived at the meeting after it was called to order (specific entrance noted below). Rep. Steuerwald had to leave the meeting early (specific departure noted below).

Because a quorum was not present at the start of the meeting, those agenda items not requiring a vote were discussed first.

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

Huntington County: Huntington County is not included in the memoranda but it is interested in getting involved in the program. Ms. Neal met with the three judges to discuss the program's requirements. The judges were interested in the past but could not get the council interested. Now that everyone needs money, they are revisiting the issue.

Benton County: No claim was received from Benton County for the third quarter, despite being contacted by counsel about submitting the claim. Ms. Neal will contact the Benton County Circuit Court Judge regarding the public defense program in the county.

Ms. Neal also visited Jennings, Rush, Marshall and Fountain Counties.

LaPorte County: LaPorte County is now in compliance.

Blackford County: One of the issues causing Blackford County's non-compliance is the lack of attorneys in the county to take public defense cases. [At this time Rep. Vernon Smith arrived at the meeting and a quorum of six members was reached.] The two attorneys that are out of compliance are not even located in Blackford County. The attorneys that are located in Blackford County are all between sixty and seventy years old. Ms. Neal inquired as to whether the Commission has ever thought about contacting the law schools about counties needing public defenders. There is a federal program that provides forgiveness of a certain amount of student loans if a graduate engages in public defense work.

The county is trying to resolve the non-compliance issues, but needs help to do so. Ms. Neal feels that the county is not trying to get around the Commission's requirements. The judge is

very concerned about good representation. He informed Ms. Neal that there are certain attorneys that he will not appoint because he has received complaints. There have been no complaints about compensation. The judge does not believe that is an issue. The two public defenders that are from other counties do not request mileage reimbursement when they travel to Blackford County. The county wants to keep the program running, and Ms. Neal feels the Commission should do what it can to help out the county. Ms. Neal left information on cash bonds with Blackford County judges that may help increase revenues for public defense.

Because a quorum was present and Rep. Steuerwald anticipated having to leave early, the Staff Counsel Memoranda report was suspended so that those items requiring a vote could be addressed with a quorum present.

**Requests for 50% Reimbursement in Capital Cases:** Michele Lofthouse reported that capital claims totaled \$189,543.86 for this quarter, and explained the rationale for the nominal deductions (lack of itemized expense receipts and fees incurred subsequent to sentencing). David Hensel moved to approve payment of capital claims in the amount of \$189,543.86, and Peter Nugent seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
March 24, 2010		
COUNTY	DEFENDANT	TOTAL
Marion	Allen	\$42,689.78
	Davis*	\$38,850.43
	Turner**	\$59,264.46
Parke	Cottrell	\$2,066.50
Putnam	Stevens	\$9,948.04
Vigo	Walker***	\$36,724.65
<b>TOTAL</b>		<b>\$189,543.86</b>
<b>Notes:</b>		
* Davis - Denied \$72.62 of David King's Sept./Oct. invoice because itemized expense receipts for Staples and FedEx were missing.		
** Turner - Denied \$2,608.42 of Dr. Foran's invoice because it included work performed subsequent to the 9/15/09 withdrawal of the death penalty.		
*** Walker - Denied \$803.06 for fees and expenses incurred after sentencing.		

Larry Landis noted that with the recent Katron Walker plea agreement, there are only five pending capital cases in the State of Indiana, and no new cases have been filed since 2008. We are in a real decline, and almost a de facto moratorium.

Deborah Neal brought to the Commission’s attention the Mark Allen Wisheart matter that is set for retrial in Madison County. The case was originally tried in 1983, prior to the Commission’s existence. The Seventh Circuit sent the case back to the trial court in 2005 to retry him, interview the jurors, or dismiss the charges. Susan Carpenter reported that there was a conflict between the prosecutor and judge on what to do which delayed all activity on the case until June of 2009. The county has not requested reimbursement from the Commission but will start doing so and intends to request reimbursement from as far back as June 2009. The Commission is allowed to approve for good cause claims submitted beyond the 120-day deadline if it so chooses.

**Requests for 40% Reimbursement in Non-Capital Cases:** Deborah Neal reported claims in non-capital cases totaled \$3,916,356.01. Madison County is requesting approval of an amendment to its 2009 third quarter request because Geoff Yelton took over during that quarter and was unsure of how to prepare the claim form. An error was subsequently found. Ms. Neal recommends paying it. In addition, Jay County submitted its request ten days late. Ms. Neal asked that the Commission not penalize Jay County because there was a misunderstanding about whether to list the amount that was appropriated or the amount that was actually spent. She visited Jay County and worked with Tom Diller on how to appropriately fill out the reports.

Rep. Vernon Smith moved to approve payment of the non-capital claims in the amount of \$3,916,356.01, and Susan Carpenter and Rep. Greg Steuerwald simultaneously seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$109,144.48	\$35,911.38	33%	\$73,233.10	\$29,293.24
ALLEN	\$874,767.85	\$124,594.16	14%	\$750,173.69	\$300,069.48
BENTON				\$0.00	\$0.00
BLACKFORD	\$45,733.25	\$12,607.00	28%	\$33,126.25	\$13,250.50
CARROLL	\$30,298.33	\$8,023.40	26%	\$22,274.93	\$8,909.97
CLARK	\$155,415.27	\$22,780.89	15%	\$132,634.38	\$53,053.75
DECATUR	\$42,145.43	\$14,775.98	35%	\$27,369.45	\$10,947.78
FAYETTE	\$93,619.65	\$19,648.57	21%	\$73,971.08	\$29,588.43
FLOYD	\$157,242.14	\$27,275.75	17%	\$129,966.39	\$51,986.56
FOUNTAIN	\$52,463.11	\$13,990.16	27%	\$38,472.95	\$15,389.18
FULTON	\$74,425.29	\$29,977.53	40%	\$44,447.76	\$17,779.10
GRANT	\$391,947.59	\$43,085.49	11%	\$348,862.10	\$139,544.84
GREENE	\$90,057.54	\$11,469.12	13%	\$78,588.42	\$31,435.37
HANCOCK	\$154,892.70	\$49,651.09	32%	\$105,241.61	\$42,096.64
HOWARD	\$395,310.87	\$65,895.77	17%	\$329,415.10	\$131,766.04
JASPER	\$86,548.11	\$20,340.80	24%	\$66,207.31	\$26,482.92

JAY	\$82,754.45	\$14,506.21	18%	\$68,248.24	\$27,299.30
JENNINGS	\$59,055.51	\$12,422.39	21%	\$46,633.12	\$18,653.25
KNOX	\$170,729.92	\$68,898.32	40%	\$101,831.60	\$40,732.64
KOSCIUSKO	\$144,532.17	\$49,243.65	34%	\$95,288.52	\$38,115.41
LAKE	\$839,107.23	\$1,167.05	0%	\$837,940.18	\$335,176.07
LAPORTE	\$145,984.59	\$25,635.00	18%	\$120,349.59	\$48,139.84
MADISON	\$405,531.19	\$25,887.07	6%	\$379,644.12	\$151,857.65
MARION	\$4,147,267.30	\$1,163,647.44	28%	\$2,983,619.86	\$1,193,447.94
MARTIN	\$13,038.97	\$4,411.48	34%	\$8,627.49	\$3,451.00
MONROE	\$394,434.82	\$69,480.39	18%	\$324,954.43	\$129,981.77
MONTGOMERY	\$137,786.58	\$62,819.79	46%	\$74,966.79	\$29,986.72
NOBLE	\$96,724.89	\$21,232.96	22%	\$75,491.93	\$30,196.77
OHIO	\$17,106.16	\$1,118.73	7%	\$15,987.43	\$6,394.97
ORANGE	\$42,606.65	\$10,211.51	24%	\$32,395.14	\$12,958.06
PARKE	\$28,977.56	\$5,539.83	19%	\$23,437.73	\$9,375.09
PERRY	\$71,071.96	\$22,181.69	31%	\$48,890.27	\$19,556.11
PIKE	\$48,801.52	\$8,940.77	18%	\$39,860.75	\$15,944.30
PULASKI	\$41,367.33	\$3,097.25	7%	\$38,270.08	\$15,308.03
RUSH	\$65,564.54	\$16,712.53	25%	\$48,852.01	\$19,540.80
SAINT JOSEPH	\$474,317.31	\$70,250.60	15%	\$404,066.71	\$161,626.68
SHELBY	\$95,644.51	\$10,223.67	11%	\$85,420.84	\$34,168.34
SPENCER	\$31,233.00	\$2,738.00	9%	\$28,495.00	\$11,398.00
STEUBEN	\$63,848.70	\$14,688.02	23%	\$49,160.68	\$19,664.27
SULLIVAN	\$49,550.53	\$12,305.57	25%	\$37,244.96	\$14,897.98
SWITZERLAND	\$55,266.32	\$7,441.25	13%	\$47,825.07	\$19,130.03
TIPPECANOE	\$503,019.19	\$75,800.00	15%	\$427,219.19	\$170,887.68
UNION	\$22,606.80	\$949.91	4%	\$21,656.89	\$8,662.76
VANDEBURGH	\$669,674.32	\$122,588.10	18%	\$547,086.22	\$218,834.49
VERMILLION	\$28,538.44	\$11,349.31	40%	\$17,189.13	\$6,875.65
VIGO	\$462,622.29	\$110,053.31	24%	\$352,568.98	\$141,027.59
WABASH	\$55,894.10	\$7,364.40	13%	\$48,529.70	\$19,411.88
WARREN	\$7,204.50	\$2,213.00	31%	\$4,991.50	\$1,996.60
WASHINGTON	\$120,130.49	\$33,173.12	28%	\$86,957.37	\$34,782.95
Madison Amend					\$5,281.59
<b>TOTAL</b>	<b>\$12,346,005.45</b>	<b>\$2,568,319.41</b>		<b>\$9,777,686.04</b>	<b>\$3,916,356.01</b>

**LaGrange County Comprehensive Plan:** Michele Lofthouse presented LaGrange County's Comprehensive Plan and addressed the concern she and Ms. Neal had regarding the language that the Board would issue contracts based upon the recommendation of the judges. While it is understood that Board members will consult with judges when issuing contracts, the inclusion of the language implies that approval from the judges is necessary and gives the impression that the Board may not be independent from the courts. Staff counsel's proposal is to remove the language "upon the recommendation of" the judges.

Rep. Steuerwald moved to send the LaGrange County Comprehensive Plan back to the county to make the change recommended by staff counsel. David Hensel seconded the motion. The motion passed unanimously.

**Approval of Minutes from 12/16/09 Meeting:** Peter Nugent noted that on page three, paragraph four, attorney should be client. Mr. Nugent moved to make the change and approve the minutes as amended. All other Commission members simultaneously seconded the motion. The motion passed unanimously.

At 2:30, Rep. Greg Steuerwald left the meeting. All remaining matters do not require a quorum.

**LaGrange County Comprehensive Plan:** Discussion returned to the LaGrange County comprehensive plan after Rep. Steuerwald's departure. There was concern about whether LaGrange County could submit a claim for reimbursement for the first quarter of 2010 if the plan was not approved until the June meeting. Ms. Neal said that the county could do so and that the Commission could vote to approve reimbursement so long as there was compliance with caseload requirements.

It was noted that the judges' recommendations were not binding, and that the Board need only consider the recommendations. However, the current wording suggests that there is no separation between the courts and the board. Peter Nugent stated that he liked the idea of receiving input from judges, especially in smaller counties. Ms. Neal stated that the Commission wants the county public defender boards to know their responsibility and they are not figure heads.

**Staff Counsel Memorandum:** Discussion returned to Deborah Neal's report on county visits.

**Huntington County:** Huntington is interested in participating in the program. Rep. Smith asked about the impact on the reimbursement percentage if more counties become involved. Ms. Neal stated that as more counties become involved, the percentage reimbursement may be reduced. Reimbursement starts from the point in time that the county comes into the program.

The Commission's funds are non-reverting. This is a budget year, and Larry Landis will be lobbying for an increase. It is important to educate the legislature as to the importance of public defense funds. It is hard to control the budget because public defenders have no control over how many cases are filed.

**Compliance Summary and Warning Letters:** Ms. Neal reported that more and more public defenders are in compliance. Perry County was sent a warning letter. Larry Landis will be attending the meeting of Chief Public Defenders tomorrow, and if the Commission would like to convey anything, let him know.

Clark County should be in compliance next quarter. There was an abnormal amount of Class D felony filings that caused the non-compliance issues.

**Financial Status of Public Defense Fund:** Since 2001, the Commission has used the following fiscal year's allotment to pay the last quarter claims from the previous year (June claims paid after July 1<sup>st</sup>). If claims and allotments remain the same, by 2012 we will be spending the current year's budget without having holdover claims. This is the first year that the Commission has been able to reimburse the full 40% without have to pro-rate the percentage of return.

It was discovered just prior to the meeting that the State erroneously took \$5.4 million out of the Commission's account. Due to the diligent efforts of Jan Smith, Tom Carusillo, and Lilia Judson with State Court Administration, the error was acknowledged and the funds were returned to the account.

**Election of Chairman:** The Commission decided that it would vote on the chairman every two years. Chairman Rutherford acknowledged that this requires a vote and there is not a quorum, but because the vote does not involve the counties or claims for reimbursement the Commission can proceed with the election in order to conduct its business. The election can always be redone at the next meeting. The floor was opened for discussion. Peter Nugent nominated Mark Rutherford to again serve as chairman and moved to have the nomination approved. David Hensel seconded the motion. There was no discussion and the motion passed unanimously.

**Other Matters:** Larry Landis had nothing to report on behalf of the Indiana Public Defender Council. Chairman Rutherford reported on the Department of Justice Symposium that took place in February 2010. Mr. Landis invited Chairman Rutherford to attend with him, and Ms. Neal also attended. It was very informative, and there was a lot of enthusiasm and spirit. One interesting concept that was discussed at the Symposium was the possibility of a federal public defender program. The DOJ is very active with respect to indigent defense, and seems to be following through. There were a lot of prosecutors in attendance, which provided an interesting and helpful point of view.

**Adjournment:** The next Commission meeting is scheduled for June 23, 2010. There being no further business to discuss, David Hensel moved to adjourn the meeting, and Rep. Smith seconded the motion. The motion passed and the meeting adjourned at 2:58.

---

Mark Rutherford, Chairman

---

Date

## Indiana Public Defender Commission Meeting Minutes

June 23, 2010

Chairman Mark Rutherford called the business meeting to order at 2:03 pm. Commission members in attendance were Susan Carpenter, Peter Nugent, Sen. Brent Steele, Sen. Timothy Lanane, Hon. Mary Ellen Diekhoff, and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Michele Lofthouse, Administrative Assistant Yolanda Collins, and Paula Sites of the Indiana Public Defender Council. Guests in attendance included Marvin Smith and David Schneider from the Lake County Public Defender's Office, Steve Raquet from Howard County, and Bob Hill and Ann Sutton from the Marion County Public Defender Agency. Introductions were made, and Marion County's report on D felony requirements was added to the agenda as item 5A.

**Approval of Minutes from 3/24/10 Meeting:** Sen. Steele moved to approve the minutes, and Peter Nugent seconded the motion. There was no discussion or opposition. The minutes were approved.

**LaGrange County Comprehensive Plan:** Paragraph B1 of the plan was amended by LaGrange County to take out the language regarding judges' approval of contracts. Staff counsel recommended that the amended plan be approved. Tim Lanane made the motion to approve LaGrange County's Comprehensive Plan and Susan Carpenter seconded the motion. There was no discussion. The motion passed unanimously.

**Representatives from Howard County:** Steve Raquet, Howard County's Chief Public Defender, appeared before the Commission to explain why 9 out of 18 public defenders are out of compliance and to request that reimbursement not be suspended. Mr. Raquet reported as follows:

- G. Cook was full time, and then went to part time, which skewed his numbers. The full time assignments are now gone, and he is in compliance.
- M. Dabrowski and B. Dechert were just slightly over, and are now in compliance.
- K. Noel and B. Hamilton were assigned to the same court, and an unusual number of cases were filed in that court. They are still over, but their numbers have gone down, and they will be in compliance by next quarter. Mr. Raquet is in the process of moving around court assignments.
- A. Vandenbosch's number has gone down. The other attorney in Mr. Vandenbosch's court was suspended by the Disciplinary Commission for thirty days, which increased Vandenbosch's numbers. He is now in compliance.
- S. Doran was full time. It will take two quarters to get into compliance. Her number has gone down.
- Johnson handles mental health hearings and contempt citations, and they were being counted incorrectly. This was Mr. Raquet's mistake, and it has been corrected. Johnson is now in compliance.
- Rosselot normally handles non-reimbursable cases, but she was assigned one D-felony last quarter that put her over. That has been corrected.

Mr. Raquet reported that the Howard County Council approved a budget for 2011 that includes an additional attorney. Mr. Raquet assured the Commission that one more public defense attorney will help with extra cases that are assigned out of any particular court.

Sen. Steele asked about the attorney that had been suspended. Mr. Raquet stated that it was due to mental health issues. The attorney is on probation and is to continue with counseling. The issues should not repeat.

Sen. Steele made the motion to accept Mr. Raquet's assurances that the program is moving towards compliance and that Howard County's request for reimbursement be paid. Susan Carpenter seconded the motion. There was no discussion other than to note that the county has made great progress towards compliance. All Commission members were in favor of reimbursing Howard County's claims, and the motion passed.

**Representatives from Lake County:** David Schneider appeared before the Commission to request that public defender salaries be transferred from the general fund to the supplemental fund. He stated that the goal of the public defender office is to be on a level playing field with the prosecutor. The county council made him cut 15% of his budget last year (or seven positions). The prosecutor's office has five attorneys in each court. He has four in most courts and five in one. He is mindful of keeping all of his defenders in compliance. He has shifted cases around to keep in compliance and hired overflow counsel from the conflict list.

Mr. Schneider requested that the County Council transfer salaries from the general fund to the supplemental fund. The reimbursement from the Commission goes to plug holes in other areas of the budget. The Council has asked the office to cut another 8.5%. Mr. Schneider stated that after speaking with Larry Landis and Commission counsel, he understands that money for raises can come from the supplemental fund, but that salaries cannot be transferred wholesale to that fund. He just wanted to make the Commission aware, although he is not sure what the Commission can do. His office is trying to do the best it can. Mr. Schneider indicated that it may come to a point next year where the office will have to refuse cases.

Chairman Rutherford asked whether the county is not applying the funds that the Commission reimburses to public defense costs. Mr. Schneider said that is true, but that is just one of the issues. Last year, he had to cut seven people, but the prosecutor's office made no cuts because of the rainy day funds. The office is still in compliance, but Mr. Schneider is worried about it. Any increase in caseload could cause the attorneys to be out of compliance. The county council doesn't care about reimbursement. The council essentially told him last year that if he had not cut seven people, the council would have gone back to the 2001 amounts, and who cares about the reimbursement. The council has the attitude that the money will come from elsewhere.

Mr. Schneider reiterated that he is in favor of a state system. Sen. Lanane asked whether the General Assembly should look at the supplemental fund use and whether the state should take it over. Chairman Rutherford noted that he did not think there was anything that the Commission could do at this time, other than note the issues raised by Mr. Schneider.



**Representatives from Marion County:** Robert Hill, Marion County's Chief Public Defender, reported on the Marion County timekeeping study that started in 2008. The original purpose of the study was to reevaluate the time taken to handle a Class D felony case in counties that have Class D felony only courts. The study showed that full-time attorneys handling Class D felonies only in Class D felony only courts could capably handle 225 cases rather than the recommended 150. The Commission asked Marion County to expand this study to all felonies. Marion County is the first public defense program to complete a time study in the State of Indiana. It has provided quite a bit of information, and will allow the office to provide services more efficiently.

Mr. Hill noted that while his office is down ten lawyers, he has been able to give raises and the office is doing a good job managing compliance. Marion County does have very specialized courts which results in some economies of scale and shared experiences. They have found a difference in the time it takes to handle cases in a drug court versus all other types of courts. They are still trying to determine why there is such a time discrepancy. Mr. Hill thinks that it is because the drug major felony cases are somewhat cookie cutter. There are basically only four types of cases, and witnesses are typically non-civilian. This eliminates the need for depositions of civilian witnesses and therefore it doesn't take as much time. It could be that lawyers are becoming complacent. If that is the case, that is something that Mr. Hill would have to deal with as a manager, but he has not determined that that is the situation.

Depending on the results of the study, Marion County may suggest that there be a special guideline for cases in limited, specialized courts. For instance, a separate standard for drug courts may be recommended. Ms. Carpenter asked what amount of time is being spent on sentencing. Mr. Hill did not know off the top of his head, but noted that the attorneys are keeping track of their time just like is done for a death penalty, PCR or civil case. There was some resistance to tracking time, but efficiency has been tied to raises.

Sen. Steele asked whether Mr. Hill has copies of the time sheets. He does, and the timesheet are itemized such that sentencing should be able to be broken out. However, to get a solid idea of time spent on activities just for sentencing, more specificity may be needed. For example, recording "time spent with family" versus "time spent with family for purposes of sentencing hearing." Mr. Hill noted that with drug cases, sometimes there are incentives not to do anything. It can be in the client's best interested to take the first offer because of the potential for upcharges and harsher penalties.

Chairman Rutherford inquired as to whether Mr. Hill had seen any benefits to keeping track of time other than character building. Mr. Hill stated that it has allowed the attorneys to see the time spent, and to think about whether they did all they could. It has been a self-instructive device. Sen. Lanane asked whether Marion County could figure out the pleas in each category. Mr. Hill stated that this information is not easily available. The information will have to be recorded manually, but it can be captured.

Mr. Hill echoed Lake County's comments about the budget situation. He said it is different because Marion County does care about the reimbursement, but it does go to the General Fund. It makes it hard for public defender offices to make revenue.

**Staff Counsel Memoranda.** Because Mr. Nugent had to leave at 3:15, Deborah Neal first reported on those counties having issues that may impact reimbursement.

**Tippecanoe County:** Tippecanoe County is having issues with compliance, but Ms. Neal is not recommending that reimbursement be withheld this quarter. The problems are out of the control of the chief public defender. The judges were appointing attorneys from the bench without keeping track of appointments, without using a rotation system, and without regard for the standards. They now have a new system for appointment of the assigned counsel cases, and there is an appearance form that each appointed counsel must provide to the public defender's office. This will allow for better record keeping. The county was warned a year or so ago, and they did make improvements. Ms. Neal realized that the cases assigned from the bench by the judges were not being included in the totals. There was no exception in the comprehensive plan that allowed assigned counsel cases to not be counted. One attorney's FTE is at 4.000 (maximum 1.000). This is a way for the courts to avoid non-compliance – assign cases from the bench and then not count them.

Chairman Rutherford asked whether a representative should come to the next meeting. Mr. Nugent recommended that payment be suspended this quarter because a 4.000 FTE is ridiculous. The public defender's office had to know about this because that is a lot of cases. Sen. Lanane asked how prevalent is the practice of judge's making appointments for conflicts and overflow? Ms. Neal stated that Tippecanoe County would have been at the meeting but she indicated to them that they would not be facing suspension. The county did provide some materials explaining some of the issues if that helps the Commission with regard to suspension.

**Compliance Summary and Warning Letters:** Ms. Neal reported that there are other counties out of compliance, but not significantly enough to suspend payment. The numbers are not big. Kosciusko has an open 90-day letter and is being watched. Clark County was sent a warning.

**Financial Status of Public Defense Fund:** There is no money in the Fund until July 1, 2010. The state took money from the fund again without notifying us, but the auditor caught it. The money has now been returned to the fund. Ms. Neal provided an updated Fiscal Report spreadsheet.

**Requests for 50% Reimbursement in Capital Cases:** Michele Lofthouse reported that capital claims totaled \$157,154.52 for this quarter, and explained the rationale for the nominal deductions. She also brought to the Commission's attention that Madison County submitted a claim on the Wisheart matter that included payments that were all outside of the 120-day period. However, staff counsel did recommend that they be paid. Chairman Rutherford asked whether the claims would have been appropriate if they were submitted within 120-day. Ms. Lofthouse reported yes. Sen. Lanane moved to approve payment of capital claims in the amount of

\$157,154.52, and Ms. Carpenter seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
June 23, 2010		
COUNTY	DEFENDANT	TOTAL
Madison	Wisehart 1	\$18,632.56
	Wisehart 2	\$18,114.46
Marion	Allen	\$38,005.26
	Allen	\$29,244.50
	Davis	\$22,036.15
	Turner	\$2,445.00
Putnam	Stevens 1	\$5,950.91
	Stevens 2	\$5,527.69
	Stevens 3	\$8,914.79
	Stevens 4	\$5,460.27
Spencer	Ward	\$2,822.93
<b>TOTAL</b>		<b>\$157,154.52</b>

**Requests for 40% Reimbursement in Non-Capital Cases:** Deborah Neal reported claims in non-capital cases totaled \$3,748,211.96. Mr. Nugent moved to approve all of the claims except for Tippecanoe County which should be addressed separately. He also had a question about Blackford County. He asked where the county is going. Ms. Neal reported that the attorney numbers are getting better and they are moving in the right direction. This is the county that has very few attorneys and struggles to find criminal defense attorneys from surrounding counties to take public defense cases. Sen. Lanane seconded the motion. The motion passed unanimously to approve claims in the amount of \$3,605,341.16.

With regard to Tippecanoe County, Ms. Carpenter stated that it was Ms. Neal’s impression that it was not in bad faith. The public defender did not have control. She has been working with Ms. Neal, went to the judges, and has been working toward a plan to come into compliance. Some of the cases are very old and not all of the numbers are reliable. The cases are being counted when they are being billed, which is not necessarily close in time to the quarter that they were assigned. Mr. Nugent moved to suspend Tippecanoe County’s payment. Judge Diekhoff stated that her concern is that the county thought they were going to receive reimbursement this month. The motion died for a lack of second. Sen. Lanane moved to approve the \$142,870.80 reimbursement amount but issue a letter asking them to appear at the next meeting. Sen. Steele

seconded the motion. Mr. Nugent opposed the motion; all others were in favor. The motion passed, making the total for non-capital reimbursements \$3,748,211.96.

Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>							
First Quarter 2010 Requests for Reimbursements in Non-Capital Cases							
<b>6/23/2010</b>							
<b>COUNTY</b>	<b>Late Factor</b>	<b>2010 Period Covered</b>	<b>Total Expenditure</b>	<b>Adjustment For Non-Reimbrsbl</b>	<b>% of Adjstmt</b>	<b>Eligible Expenditure</b>	<b>40% Reimbursed</b>
ADAMS	0.00	1/01 - 03/31	\$83,922.19	\$21,384.96	25%	\$62,537.23	\$25,014.89
ALLEN	0.00	1/01 - 03/31	\$787,810.87	\$102,854.68	13%	\$684,956.19	\$273,982.48
BENTON	0.00	1/01 - 03/31			#DIV/0!	\$0.00	\$0.00
BLACKFORD	0.00	1/01 - 03/31	\$33,480.78	\$8,522.38	25%	\$24,958.40	\$9,983.36
CARROLL	0.00	1/01 - 03/31	\$44,800.31	\$8,023.40	18%	\$36,776.91	\$14,710.76
CLARK	0.00	1/01 - 03/31	\$151,789.83	\$24,735.89	16%	\$127,053.94	\$50,821.58
CRAWFORD	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
DECATUR	0.00	1/01 - 03/31	\$39,557.88	\$10,905.15	28%	\$28,652.73	\$11,461.09
FAYETTE	0.00	1/01 - 03/31	\$72,831.10	\$21,420.91	29%	\$51,410.19	\$20,564.08
FLOYD	0.00	1/01 - 03/31	\$137,695.33	\$27,417.86	20%	\$110,277.47	\$44,110.99
FOUNTAIN	0.00	1/01 - 03/31	\$17,459.78	\$3,010.31	17%	\$14,449.47	\$5,779.79
FULTON	0.00	1/01 - 03/31	\$49,912.98	\$16,205.51	32%	\$33,707.47	\$13,482.99
GRANT	0.00	1/01 - 03/31	\$189,181.00	\$20,793.00	11%	\$168,388.00	\$67,355.20
GREENE	0.00	1/01 - 03/31	\$85,706.70	\$12,885.18	15%	\$72,821.52	\$29,128.61
HANCOCK	0.00	1/01 - 03/31	\$99,153.12	\$27,117.26	27%	\$72,035.86	\$28,814.34
HENRY	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
HOWARD	0.00	1/01 - 03/31	\$348,776.50	\$58,346.97	17%	\$290,429.53	\$116,171.81
JASPER	0.00	1/01 - 03/31	\$50,879.07	\$15,847.58	31%	\$35,031.49	\$14,012.60
JAY	0.00	1/01 - 03/31	\$72,017.87	\$9,780.53	14%	\$62,237.34	\$24,894.94
JENNINGS	0.00	1/01 - 03/31	\$50,068.68	\$10,110.05	20%	\$39,958.63	\$15,983.45
KNOX	0.00	1/01 - 03/31	\$145,876.12	\$49,131.12	34%	\$96,745.00	\$38,698.00
KOSCIUSKO	0.00	1/01 - 03/31	\$132,472.07	\$49,257.14	37%	\$83,214.93	\$33,285.97
LAGRANGE	0.00	1/01 - 03/31	\$23,656.66	\$1,237.08	5%	\$22,419.58	\$8,967.83
LAKE	0.00	1/01 - 03/31	\$929,917.77	\$6,690.06	1%	\$923,227.71	\$369,291.08
LAPORTE	0.00	1/01 - 03/31	\$141,075.69	\$17,564.35	12%	\$123,511.34	\$49,404.54
MADISON	0.00	1/01 - 03/31	\$344,486.65	\$31,415.33	9%	\$313,071.32	\$125,228.53
MARION	0.00	1/01 - 03/31	\$3,865,942.15	\$692,060.43	18%	\$3,173,881.72	\$1,269,552.69

MARTIN	0.00	1/01 - 03/31	\$19,715.90	\$9,814.76	50%	\$9,901.14	\$3,960.46
MIAMI	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
MONROE	0.00	1/01 - 03/31	\$391,121.90	\$65,423.45	17%	\$325,698.45	\$130,279.38
MONTGOMERY	0.00	1/01 - 03/31	\$117,913.95	\$58,142.06	49%	\$59,771.89	\$23,908.76
NEWTON	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
NOBLE	0.00	1/01 - 03/31	\$95,690.13	\$15,049.00	16%	\$80,641.13	\$32,256.45
OHIO	0.00	1/01 - 03/31	\$34,774.53	\$5,304.04	15%	\$29,470.49	\$11,788.20
ORANGE	0.00	1/01 - 03/31	\$56,709.11	\$11,341.82	20%	\$45,367.29	\$18,146.92
PARKE	0.00	1/01 - 03/31	\$26,840.09	\$4,509.14	17%	\$22,330.95	\$8,932.38
PERRY	0.00	1/01 - 03/31	\$125,048.05	\$26,244.65	21%	\$98,803.40	\$39,521.36
PIKE	0.00	1/01 - 03/31	\$82,360.94	\$25,420.04	31%	\$56,940.90	\$22,776.36
PULASKI	0.00	1/01 - 03/31	\$25,595.53	\$3,328.00	13%	\$22,267.53	\$8,907.01
RUSH	0.00	1/01 - 03/31	\$58,607.43	\$17,837.04	30%	\$40,770.39	\$16,308.16
SAINT JOSEPH	0.00	1/01 - 03/31	\$487,657.41	\$62,309.46	13%	\$425,347.95	\$170,139.18
SCOTT	0.00	1/01 - 03/31			0%	\$0.00	\$0.00
SHELBY	0.00	1/01 - 03/31	\$100,458.39	\$11,690.12	12%	\$88,768.27	\$35,507.31
SPENCER	0.00	1/01 - 03/31	\$28,539.50	\$4,006.00	14%	\$24,533.50	\$9,813.40
STEUBEN	0.00	1/01 - 03/31	\$75,288.18	\$15,493.24	21%	\$59,794.94	\$23,917.98
SULLIVAN	0.00	1/01 - 03/31	\$28,412.81	\$15,442.27	54%	\$12,970.54	\$5,188.22
SWITZERLAND	0.00	1/01 - 03/31	\$48,934.12	\$14,655.96	30%	\$34,278.16	\$13,711.26
TIPPECANOE	0.00	1/01 - 03/31	\$481,412.49	\$124,235.48	26%	\$357,177.01	\$142,870.80
UNION	0.00	1/01 - 03/31	\$13,714.77	\$2,880.08	21%	\$10,834.69	\$4,333.88
VANDEBURGH	0.00	1/01 - 03/31	\$553,578.64	\$87,794.16	16%	\$465,784.48	\$186,313.79
VERMILLION	0.00	1/01 - 03/31	\$25,806.80	\$13,436.60	52%	\$12,370.20	\$4,948.08
VIGO	0.00	1/01 - 03/31	\$382,158.54	\$77,963.13	20%	\$304,195.41	\$121,678.16
WABASH	0.00	1/01 - 03/31	\$55,894.10	\$7,931.23	14%	\$47,962.87	\$19,185.15
WARREN	0.00	1/01 - 03/31	\$6,442.00	\$2,605.00	40%	\$3,837.00	\$1,534.80
WASHINGTON	0.00	1/01 - 03/31	\$108,273.54	\$29,316.20	27%	\$78,957.34	\$31,582.94
<b>TOTAL</b>			<b>\$11,329,419.95</b>	<b>\$1,958,890.06</b>		<b>\$9,370,529.89</b>	<b>\$3,748,211.96</b>

**Additional Staff Memorandum Reports:** Ms. Neal wanted to bring to the Commission's attention the number of counties that are interested in coming into the program. If they all came in and were eligible for reimbursement in 2011, that would require an additional \$750,000.00 in the Fund in order to reimburse everyone at 40%.

**Collateral Costs of Conviction:** Juvenile collateral costs were a topic of discussion at the DOJ Symposium in Washington, D.C. in February 2010. Ms. Lofthouse conducted research into the collateral costs of both juvenile adjudications and adult convictions, and put the information into memo form. Staff counsel intends to make the memo one of the articles in an upcoming Public Defender Commission newsletter. However, the purpose of the research project was to bring these collateral costs to light for others within the justice system. If anyone else knows of a group or organization that could benefit from the information, please pass it along.

**Other Matters:** Paula Sites had nothing to report. Chairman Rutherford reported that Larry Landis was not able to attend because he qualified for the Indiana Amateur Tournament.

Ms. Neal provided a spreadsheet that includes the public defense costs reported by all 92 counties, regardless of whether they are in the reimbursement program.

**Adjournment:** The next Commission meeting is scheduled for September 22, 2010. There being no further business to discuss, Sen. Lanane moved to adjourn the meeting, and Sen. Steele seconded the motion. The motion passed and the meeting adjourned at 3:13 p.m.

---

Mark Rutherford, Chairman

---

Date

# Indiana Public Defender Commission Meeting Minutes

September 22, 2010

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were, Sen. Brent Steele, Hon. Diane Ross Boswell, and David Hensel. Also in attendance were staff counsel Deborah Neal and Larry Landis of the Indiana Public Defender Council. Guests in attendance included Tom Diller from Jay County, Hon. Sam Swaim, Parke Circuit Court Judge, and Amy Hutchison, Tippecanoe County Chief Public Defender. Introductions were made, and Vermillion County's Amended Comprehensive Plan was added to the agenda as item 16a. Deborah Neal informed the Commission of the resignation of Michele Lofthouse as staff counsel.

In deference to the guests in attendance, Chairman Rutherford asked for reports from the county representatives.

**Representative from Jay County:** Tom Diller gave a history of the public defense program in Jay County, which culminated in the present problem of inadequate staff to handle court appointed cases. He reported that the county has been inundated with meth drug cases that require several conflict counsels. Mr. Diller stated that a new attorney has been hired and will begin taking cases in October 2010. In appreciation of Jay County's proactive stance on achieving compliance with caseload standards, David Hensel made the motion that Jay County receive their requested reimbursement for the 2<sup>nd</sup> quarter 2010; Sen. Steele seconded the motion. There was no discussion or opposition. The motion passed unanimously.

**Representative from Parke County:** Judge Sam Swaim addressed the Commission regarding compliance problems in Parke County. He noted that probation violation cases had been over-reported; that he had been keeping a tally of case assignments from the bench without taking into consideration the weighted value of the cases; and that the error of attorney Laura Paul being paid \$50 per hour, not the \$60 per hour required by the Parke County Comprehensive Plan, was being corrected. Upon his request, Judge Swaim received copies from staff counsel of Ms. Paul's billings showing \$50 per hour in order to adjust past payments to reflect a \$60 per hour fee. Judge Boswell made the motion that Parke County receives their requested reimbursement for the 2<sup>nd</sup> quarter 2010; David Hensel seconded the motion. There was no discussion or opposition. The motion passed unanimously.

**Representative from Tippecanoe County:** Amy Hutchison, Chief Public Defender, explained to the Commission that problems with over assigning cases to counsel directly appointed by the judges is corrected. Previously, these appointments were not handled through the Tippecanoe County Public Defender Agency. Ms. Hutchison reported on the difficulty of her office tracking these case assignments; the assignments being recorded from the attorneys' bills which resulted in counting cases in one quarter that were appointed in 2008, 2009 and 2010. She stated the entire system has been changed so that the Tippecanoe County Public Defense Agency receives a copy of the Appearance filed by assigned counsel; the judges and assigned counsel have been

trained on mixed and weighted caseloads; and Children-in-Need of Services cases will be counted by the defendant, not the number of children.

Judge Boswell asked Ms. Hutchison to explain the assignment of cases to counsel outside the Agency. She stated that most case assignments from the bench were due to conflict cases. David Hensel made the motion that Tippecanoe County receives their requested reimbursement for the 2<sup>nd</sup> quarter 2010; Judge Boswell seconded the motion. There was no discussion or opposition. The motion passed unanimously.

**Requests for 50% Reimbursement in Capital Cases:** Deborah Neal reported that two claims were submitted outside the 120-day period. Staff counsel did recommend that they be paid. The Commission allowed the transcript claim on *Davis*, and the *Wisehart* claim was corrected to \$28,835.40 (original request of Madison County) from \$28,970.40. Former Staff Counsel, Michele Lofthouse, had reported an error in attorney fees that were underpaid. However, the Commission cannot reimburse 50% on an amount higher than what was paid by the county. Sen. Steele moved to approve payment of capital claims in the amount of \$130,324.52 and David Hensel seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
September 22, 2010		
COUNTY	DEFENDANT	TOTAL
Madison	Wisehart	\$28,835.40
Marion	Allen	\$7,909.99
	Davis 1	\$20,537.03
	Davis 2	\$44,259.04
Spencer	Ward	\$216.00
Vanderburgh	Weisheit	\$24,202.22
	Wilkes	\$4,364.84
<b>TOTAL</b>		<b>\$130,324.52</b>

**Requests for 40% Reimbursement in Non-Capital Cases:** Deborah Neal reported claims in non-capital cases totaled \$3,913,056.22 and no issues existed as to reimbursement requests. David Hensel moved to approve the claims and Judge Boswell seconded the motion. The motion passed unanimously.



Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>						
<b>Second Quarter 2010 Requests for Reimbursements in Non-Capital Cases</b>						
<b>9/22/2010</b>						
<b>COUNTY</b>	<b>2010 Period Covered</b>	<b>Total Expenditure</b>	<b>Adjustment For Non-Reimbrsbl</b>	<b>% of Adjstmt</b>	<b>Eligible Expenditure</b>	<b>40% Reimbursed</b>
ADAMS	4/01 - 06/30	\$97,686.57	\$15,268.37	16%	\$82,418.20	\$32,967.28
ALLEN	4/01 - 06/30	\$752,713.71	\$84,120.98	11%	\$668,592.73	\$267,437.09
BENTON	4/01 - 06/30	\$5,026.58	\$2,345.74	47%	\$2,680.84	\$1,072.34
BLACKFORD	4/01 - 06/30	\$32,596.00	\$5,974.00	18%	\$26,622.00	\$10,648.80
CARROLL	4/01 - 06/30	\$32,860.18	\$10,672.63	32%	\$22,187.55	\$8,875.02
CLARK	4/01 - 06/30	\$177,250.75	\$50,130.67	28%	\$127,120.08	\$50,848.03
DECATUR	4/01 - 06/30	\$56,375.32	\$17,083.43	30%	\$39,291.89	\$15,716.76
FAYETTE	4/01 - 06/30	\$89,174.26	\$20,688.43	23%	\$68,485.83	\$27,394.33
FLOYD	4/01 - 06/30	\$145,442.58	\$24,064.13	17%	\$121,378.45	\$48,551.38
FOUNTAIN	4/01 - 06/30	\$28,783.53	\$7,498.23	26%	\$21,285.30	\$8,514.12
FULTON	4/01 - 06/30	\$56,483.63	\$21,449.48	38%	\$35,034.15	\$14,013.66
GRANT	4/01 - 06/30	\$270,427.00	\$25,312.00	9%	\$245,115.00	\$98,046.00
GREENE	4/01 - 06/30	\$69,153.60	\$11,044.44	16%	\$58,109.16	\$23,243.66
HANCOCK	4/01 - 06/30	\$94,105.75	\$23,721.25	25%	\$70,384.50	\$28,153.80
HOWARD	4/01 - 06/30	\$336,584.38	\$53,816.51	16%	\$282,767.87	\$113,107.15
JASPER	4/01 - 06/30	\$64,835.95	\$14,442.13	22%	\$50,393.82	\$20,157.53
JAY	4/01 - 06/30	\$79,299.50	\$19,183.51	24%	\$60,115.99	\$24,046.40
JENNINGS	4/01 - 06/30	\$49,877.29	\$8,762.97	18%	\$41,114.32	\$16,445.73
KNOX	4/01 - 06/30	\$184,160.55	\$68,510.12	37%	\$115,650.43	\$46,260.17
KOSCIUSKO	4/01 - 06/30	\$122,456.65	\$43,452.36	35%	\$79,004.29	\$31,601.72
LAGRANGE	4/01 - 06/30	\$37,628.61	\$5,759.46	15%	\$31,869.15	\$12,747.66
LAKE	4/01 - 06/30	\$755,092.95	\$1,071.05	0%	\$754,021.90	\$301,608.76
LAPORTE	4/01 - 06/30	\$143,832.73	\$19,008.86	13%	\$124,823.87	\$49,929.55
MADISON	4/01 - 06/30	\$403,551.59	\$37,205.03	9%	\$366,346.56	\$146,538.62
MARION	4/01 - 06/30	\$4,239,371.04	\$696,248.71	16%	\$3,543,122.33	\$1,417,248.93
MARTIN	4/01 - 06/30	\$19,585.76	\$13,736.04	70%	\$5,849.72	\$2,339.89
MONROE	4/01 - 06/30	\$376,203.16	\$68,024.16	18%	\$308,179.00	\$123,271.60
MONTGOMERY	4/01 - 06/30	\$126,699.62	\$52,585.99	42%	\$74,113.63	\$29,645.45
NOBLE	4/01 - 06/30	\$91,095.18	\$14,226.51	16%	\$76,868.67	\$30,747.47
OHIO	4/01 - 06/30	\$24,862.08	\$1,278.90	5%	\$23,583.18	\$9,433.27

ORANGE	4/01 - 06/30	\$54,206.65	\$12,408.75	23%	\$41,797.90	\$16,719.16
PARKE	4/01 - 06/30	\$33,871.92	\$8,467.98	25%	\$25,403.94	\$10,161.58
PERRY	4/01 - 06/30	\$75,109.00	\$15,682.10	21%	\$59,426.90	\$23,770.76
PIKE	4/01 - 06/30	\$37,750.20	\$5,792.97	15%	\$31,957.23	\$12,782.89
PULASKI	4/01 - 06/30	\$21,402.47	\$3,328.00	16%	\$18,074.47	\$7,229.79
RUSH	4/01 - 06/30	\$56,664.12	\$16,527.04	29%	\$40,137.08	\$16,054.83
SAINT JOSEPH	4/01 - 06/30	\$443,660.00	\$62,207.26	14%	\$381,452.74	\$152,581.10
SHELBY	4/01 - 06/30	\$100,391.70	\$12,218.27	12%	\$88,173.43	\$35,269.37
SPENCER	4/01 - 06/30	\$24,838.15	\$2,408.00	10%	\$22,430.15	\$8,972.06
STEBEN	4/01 - 06/30	\$64,948.93	\$12,521.54	19%	\$52,427.39	\$20,970.96
SULLIVAN	4/01 - 06/30	\$41,780.17	\$13,999.95	34%	\$27,780.22	\$11,112.09
SWITZERLAND	4/01 - 06/30	\$43,276.22	\$15,637.63	36%	\$27,638.59	\$11,055.44
TIPPECANOE	4/01 - 06/30	\$479,717.26	\$72,760.08	15%	\$406,957.18	\$162,782.87
UNION	4/01 - 06/30	\$7,780.78	\$222.82	3%	\$7,557.96	\$3,023.18
VANDEBURGH	4/01 - 06/30	\$589,559.33	\$107,763.32	18%	\$481,796.01	\$192,718.40
VERMILLION	4/01 - 06/30	\$32,360.47	\$12,690.20	39%	\$19,670.27	\$7,868.11
VIGO	4/01 - 06/30	\$456,876.91	\$50,539.58	11%	\$406,337.33	\$162,534.93
WABASH	4/01 - 06/30	\$55,894.10	\$11,708.60	21%	\$44,185.50	\$17,674.20
WARREN	4/01 - 06/30	\$6,613.50	\$1,890.00	29%	\$4,723.50	\$1,889.40
WASHINGTON	4/01 - 06/30	\$85,080.15	\$16,897.81	20%	\$68,182.34	\$27,272.94
<b>TOTAL</b>		<b>\$11,674,998.53</b>	<b>\$1,892,357.99</b>		<b>\$9,782,640.54</b>	<b>\$3,913,056.22</b>

**Approval of Minutes from 6/23/10 Meeting:** Sen. Steele moved to approve the minutes, and David Hensel seconded the motion. There was no discussion or opposition. The minutes were approved.

**2011 Commission Meeting Dates:** Deborah Neal proposed meeting March 23, 2011, June 22, 2011, September 21, 2011 and December 14, 2011. David Hensel moved to approve the 2011 meeting dates as proposed, and Judge Boswell seconded the motion. There was no discussion or opposition. The meeting dates were approved.

**Commission Members Terms of Service:** Deborah Neal reminded the members of the ending date of their four year appointment to the Commission. She asked if the members whose appointment date had passed if they wanted to contact their appointing entity regarding reappointment. After discussion, it was decided that no action was to be taken at this time.

Deborah Neal announced that Commission Member, Bettye Lou Jerrel, has resigned and that a Certificate of Appreciation from the Supreme Court was being prepared to honor Ms. Jerrel's lengthy service to the Indiana Public Defender Commission. Ms. Jerrel will be invited to the December meeting to receive the Certificate, however, if she is unable to attend Chairman Rutherford offered to deliver the Certificate to Bettye Lou in person at her home.

**Staff Counsel Report:** Deborah Neal reported on county visits to Adams, Delaware and DeKalb. She reported that she will be visiting Jefferson County October 1, 2010 to explain the public defense reimbursement program. Ms. Neal noted that eight new counties may be requesting reimbursement in 2011, which would result in additional reimbursements of \$943,000 from the fund if all eight counties qualify.

**Budget Narrative:** The Commission members received copies of the Indiana Public Defense Fund budget narrative that was presented to State Court Administration to include in the Supreme Court's legislative budget request. The members discussed the effect on the Supreme Court's budget of the Public Defense Fund budget requesting \$21 million for FY 2011-12, and \$24 million for FY 2012-13 when all other departments of the Supreme Court are reducing budgets. Larry Landis pointed out the obligation the Commission has to inform the Legislature of increased costs to the Fund in providing the 40% promised to the counties that complied with Commission Standards. Chairman Rutherford suggested it may be time to discuss the Indiana Public Defender Commission's independence from the Supreme Court with the Chief Justice. Deborah Neal was directed by Chairman Rutherford to arrange for a meeting with the Chief Justice to discuss this matter.

**Lawrence County Comprehensive Plan:** Staff counsel recommended that the Comprehensive Plan adopted by Lawrence County be approved. David Hensel made the motion to approve Lawrence County's Comprehensive Plan and Judge Boswell seconded the motion. There was no discussion. The motion passed unanimously.

**Financial Status of Public Defense Fund:** Deborah Neal reported that after June 30, 2010 the State Budget Agency put the Public Defense Fund's remaining \$2,042,216.68 in a closing account and the June claims were paid from the FY10-11 first appropriation of \$9,125,000 after July 1, 2010. According to the State Court Administration fiscal personnel, the Public Defense Fund balance did not reflect the \$2,042,216.68 put into a closing account by the State Budget Agency, nor the \$37,510 belonging to the Public Defense Fund which was already in this closing account. Through several e-mail discussions, Ms. Neal was able to convince the State Budget Agency to return the \$2,079,726.68 to the Public Defense Fund for appropriation by the Indiana Public Defender Commission. Ms. Neal provided an updated Fiscal Report spreadsheet.

**Illinois Death Penalty Seminar:** The Commission approved the Illinois Death Penalty Seminar, sponsored by The Office of the State Appellate Defender, Capital Trial Assistance Unit and the Illinois Institute for Continuing Legal Education, for purposes of Criminal Rule 24's required 12 CLE credits needed by attorneys to qualify as capital defense lead and co-counsel.

**Other Matters:** Vermillion County submitted an Amended Comprehensive Plan for approval. Ms. Neal explained the changes proposed by Vermillion County and recommended that the amended plan be approved. Sen. Steele moved to approve the Vermillion County Amended Comprehensive Plan and David Hensel seconded the motion. The motion passed unanimously.

**Adjournment:** The next Commission meeting is scheduled for December 15, 2010. There being no further business to discuss, Judge Boswell moved to adjourn the meeting, and David Hensel seconded the motion. The motion passed and the meeting adjourned at 3:35 p.m.

---

Mark Rutherford, Chairman

---

Date

# Indiana Public Defender Commission Meeting Minutes

December 15, 2010

Chairman Mark Rutherford called the business meeting to order at 2:01 pm. Commission members in attendance were, Hon. James Ahler, Hon. Mary Ellen Diekhoff, Rep. Greg Steuerwald, Susan Carpenter, Peter Nugent, David Hensel and Rep. Vernon Smith. Also in attendance were staff counsel Deborah Neal, and Larry Landis of the Indiana Public Defender Council.

**New Member:** Chairman Rutherford introduced Judge James Ahler as the new member to the Indiana Public Defender Commission. Judge Ahler is the superior court judge in Jasper County, Rensselaer, Indiana. He was appointed to the Commission on October 6, 2010 by Chief Justice Randall Shepard to fill the position formerly held by Bettye Lou Jerrel of Evansville.

**Certificate of Appreciation to Bettye Lou Jerrel:** The Indiana Public Defender Commission, in conjunction with the Indiana Supreme Court, presented a Certificate of Appreciation to Bettye Lou Jerrel for her seventeen years of service as a member to the Commission. Ms. Jerrel was appointed to the Commission in 1993 by Chief Justice Randall Shepard, and served until resigning her position in 2010. In the seventeen years that Bettye Lou Jerrel was a member, the Commission adopted the Standards for Indigent Defense Services in Non-capital Cases, obtained legislative changes allowing reimbursement from the public defense fund for felony cases, approved fifty-eight counties' comprehensive plans for delivering non-capital indigent defense services, and distributed \$107 million to counties eligible to receive reimbursement from the Public Defense Fund. Due to adverse weather conditions, Ms. Jerrel was unable to attend the meeting to accept the Certificate in person. It will be sent to her home in Evansville, Indiana.

**Approval of Minutes from 9/22/10 Meeting:** Chairman Rutherford asked for any changes or additions to the minutes of September 22, 2010. There being none, Judge Diekhoff made the motion to approve the minutes, and Peter Nugent seconded the motion. There was no discussion or opposition. The minutes were approved.

**2011 Commission Meeting Dates:** The 2011 meeting dates for the Public Defender Commission were previously set as follows: March 23, 2011, June 22, 2011, September 21, 2011 and December 14, 2011. Commission staff was unable to secure room 804 at 30 S. Meridian Street for 6/22/11. Chairman Rutherford proposed moving the 6/22/11 meeting date to 6/15/11, and it was accepted by unanimous consent.

**Staff Counsel Report:** Deborah Neal reported that Knox County's reimbursement will receive a 10% penalty for late reporting. She asked the Commission to consider suspending the 3<sup>rd</sup> quarter payments to Blackford and Jay counties because their new case assignments have been out of compliance for five and six quarters, respectively. Ms. Neal pointed out that the counties have worked with her and the Commission during this time to come into compliance; however, due to lack of available public defense attorneys the counties could not maintain eligibility for

reimbursement from the Public Defense Fund. She recommends that if Blackford or Jay County is able to get into compliance in a reasonable amount of time, the Commission could consider paying the suspended 3<sup>rd</sup> quarter request. Greg Steuerwald made the motion to suspend payment of the 3<sup>rd</sup> quarter reimbursement request from Blackford and Jay Counties, and that the Commission may reconsider this suspension if either county is able to come into compliance with caseload standards. Susan Carpenter seconded the motion. The motion passed unanimously.

Deborah Neal also reported that Jefferson and Cass Counties communicated they are unable to achieve caseload compliance necessary to qualify for reimbursements from the Public Defense Fund at this time.

Michael Fischkorn of Frischkorn Law LLC made a request by letter that his attendance and subsequent CLE credits for participating in the ABA Judicial Division Appellate Judges Conference November 18-21, 2010, be counted towards Standard F's requirements for eligibility to be appointed appellate counsel in non-capital cases. Susan Carpenter moved to approve the ABA Judicial Division Appellate Judges Conference November 18-21, 2010 for eligibility to be appointed appellate counsel in non-capital cases. Judge Diekhoff seconded the motion. Motion passed unanimously.

**Status of Counties Compliance with Standard J – Caseloads:** Ms. Neal reported that 82% of the participating counties are in compliance with Standard J; and this is an improvement over the 74% in compliance last quarter.

**Financial Status of Public Defense Fund:** Deborah Neal reported that December reimbursement requests would be paid after the January 1, 2011 disbursement of \$9.125 million to the Public Defense Fund. At this time, the Fund has a balance of \$3,183,796.68 and needs an additional \$805,500.17 to pay the capital and non-capital claims.

**Requests for 50% Reimbursement in Capital Cases:** Deborah Neal explained that Mark Inman, co-counsel in the Boone County capital case of *State v. Chamorro*, was not in compliance with Criminal Rule 24's continuing legal education requirements at the time of his appointment to the case. He completed the necessary CLE requirements on August 26, 2010. Ms. Neal reduced the 47.2 hrs = \$1,840.07 bill for Mark Inman's attorney services to 3.22 hrs. = \$341.32 (50% is \$170.66). This change on *Chamorro* brought the total reimbursement request for the 3Q10 to \$97,073.45. Susan Carpenter moved to approve payment of capital claims in the amount of \$97,073.45 and Rep. Vernon Smith seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>		
Reimbursement Requests in Capital Cases		
December 15, 2010		
<b>COUNTY</b>	<b>DEFENDANT</b>	<b>TOTAL</b>
Boone	Chamorro 1	\$2,304.71
	Chamorro 2	\$170.66
	Chamorro 3	\$3,328.40
	Chamorro 4	\$1,696.00
Lake	Flores	\$12,211.38
Marion	Davis	\$46,291.42
Vanderburgh	Weisheit 1	\$7,975.44
	Weisheit 2	\$23,095.44
<b>TOTAL</b>		<b>\$97,073.45</b>
<p><b>Notes:</b> Chamorro 2nd request was 1840.07 consisting of only attorney fees for Mark Inman. Inman was not CR24 qualified until 8/26/10; reimbursement for services after that date only.</p>		

**Requests for 40% Reimbursement in Non-Capital Cases:** Deborah Neal reported reimbursement requests in non-capital public defense expenses for the 3<sup>rd</sup> quarter of 2010 totaled \$3,892,223.40; however, suspending Jay and Blackford Counties' reimbursements reduces the total to \$3,856,391.57. David Hensel moved to approve the claims totaling \$3,856,391.57 and Judge Diekhoff seconded the motion. The motion passed unanimously.

Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>							
Third Quarter 2010 Requests for Reimbursements in Non-Capital Cases							
<b>AMENDED 12/15/2010</b>							
<b>COUNTY</b>	<b>Late</b>	<b>2010 Period Covered</b>	<b>Total Expenditure</b>	<b>Adjustment For Non-Reimbrsbl</b>	<b>%</b>	<b>Eligible Expenditure</b>	<b>40% Reimbursed</b>
ADAMS	0.00	7/01 - 9/30	\$69,732.38	\$17,729.65	25%	\$52,002.73	\$20,801.09
ALLEN	0.00	7/01 - 9/30	\$826,780.43	\$95,425.76	12%	\$731,354.67	\$292,541.87
BENTON	0.00	7/01 - 9/30				\$0.00	\$0.00
BLACKFORD	0.00	7/01 - 9/30	\$41,222.50	\$9,017.42	22%	\$32,205.08	\$0.00
CARROLL	0.00	7/01 - 9/30	\$32,031.16	\$6,565.39	20%	\$25,465.77	\$10,186.31
CLARK	0.00	7/01 - 9/30	\$158,308.09	\$20,243.76	13%	\$138,064.33	\$55,225.73
CRAWFORD	0.00	7/01 - 9/30			0%	\$0.00	\$0.00

DECATUR	0.00	7/01 - 9/30	\$40,861.56	\$9,515.72	23%	\$31,345.84	\$12,538.34
FAYETTE	0.00	7/01 - 9/30	\$104,571.45	\$20,629.74	20%	\$83,941.71	\$33,576.68
FLOYD	0.00	7/01 - 9/30	\$132,928.51	\$24,290.30	18%	\$108,638.21	\$43,455.28
FOUNTAIN	0.00	7/01 - 9/30	\$28,231.20	\$3,187.39	11%	\$25,043.81	\$10,017.52
FULTON	0.00	7/01 - 9/30	\$67,028.51	\$19,803.88	30%	\$47,224.63	\$18,889.85
GRANT	0.00	7/01 - 9/30	\$295,868.00	\$42,812.00	14%	\$253,056.00	\$101,222.40
GREENE	0.00	7/01 - 9/30	\$79,147.82	\$12,885.18	16%	\$66,262.64	\$26,505.06
HANCOCK	0.00	7/01 - 9/30	\$123,254.45	\$30,392.75	25%	\$92,861.70	\$37,144.68
HENRY	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
HOWARD	0.00	7/01 - 9/30	\$329,994.16	\$55,880.36	17%	\$274,113.80	\$109,645.52
JASPER	0.00	7/01 - 9/30	\$81,574.06	\$25,491.89	31%	\$56,082.17	\$22,432.87
JAY	0.00	7/01 - 9/30	\$77,273.93	\$19,899.42	26%	\$57,374.51	\$0.00
JENNINGS	0.00	7/01 - 9/30	\$53,662.86	\$10,819.51	20%	\$42,843.35	\$17,137.34
KNOX	0.10	7/01 - 9/30	\$189,437.94	\$57,507.95	30%	\$131,929.99	\$47,494.80
KOSCIUSKO	0.00	7/01 - 9/30	\$139,810.77	\$52,922.72	38%	\$86,888.05	\$34,755.22
LAGRANGE	0.00	7/01 - 9/30	\$38,350.35	\$4,214.60	11%	\$34,135.75	\$13,654.30
LAKE	0.00	7/01 - 9/30	\$880,538.88	\$0.00	0%	\$880,538.88	\$352,215.55
LAPORTE	0.00	7/01 - 9/30	\$142,547.32	\$19,271.99	14%	\$123,275.33	\$49,310.13
MADISON	0.00	7/01 - 9/30	\$374,723.91	\$34,253.03	9%	\$340,470.88	\$136,188.35
MARION	0.00	7/01 - 9/30	\$4,018,249.29	\$760,202.02	19%	\$3,258,047.27	\$1,303,218.91
MARTIN	0.00	7/01 - 9/30	\$7.46		0%	\$7.46	\$2.98
MIAMI	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
MONROE	0.00	7/01 - 9/30	\$398,875.92	\$65,047.46	16%	\$333,828.46	\$133,531.38
MONTGOMERY	0.00	7/01 - 9/30	\$140,717.06	\$63,082.71	45%	\$77,634.35	\$31,053.74
NEWTON	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
NOBLE	0.00	7/01 - 9/30	\$112,352.68	\$26,968.58	24%	\$85,384.10	\$34,153.64
OHIO	0.00	7/01 - 9/30	\$40,253.57	\$1,456.00	4%	\$38,797.57	\$15,519.03
ORANGE	0.00	7/01 - 9/30	\$39,549.39	\$9,348.04	24%	\$30,201.35	\$12,080.54
PARKE	0.00	7/01 - 9/30	\$38,121.82	\$10,516.36	28%	\$27,605.46	\$11,042.18
PERRY	0.00	7/01 - 9/30	\$65,613.75	\$13,300.08	20%	\$52,313.67	\$20,925.47
PIKE	0.00	7/01 - 9/30	\$45,402.60	\$13,353.71	29%	\$32,048.89	\$12,819.56
PULASKI	0.00	7/01 - 9/30	\$28,659.05	\$4,979.00	17%	\$23,680.05	\$9,472.02
RUSH	0.00	7/01 - 9/30	\$52,696.59	\$15,056.17	29%	\$37,640.42	\$15,056.17
SAINT JOSEPH	0.00	7/01 - 9/30	\$501,337.01	\$66,717.82	13%	\$434,619.19	\$173,847.68
SCOTT	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
SHELBY	0.00	7/01 - 9/30	\$96,963.05	\$17,246.22	18%	\$79,716.83	\$31,886.73
SPENCER	0.00	7/01 - 9/30	\$22,168.79	\$7,625.00	34%	\$14,543.79	\$5,817.52



STEUBEN	0.00	7/01 - 9/30	\$71,822.12	\$15,638.68	22%	\$56,183.44	\$22,473.38
SULLIVAN	0.00	7/01 - 9/30	\$46,980.10	\$13,862.65	30%	\$33,117.45	\$13,246.98
SWITZERLAND	0.00	7/01 - 9/30	\$49,206.60	\$14,165.54	29%	\$35,041.06	\$14,016.42
TIPPECANOE	0.00	7/01 - 9/30	\$514,775.08	\$136,294.83	26%	\$378,480.25	\$151,392.10
UNION	0.00	7/01 - 9/30	\$20,298.98	\$2,965.26	15%	\$17,333.72	\$6,933.49
VANDERBURGH	0.00	7/01 - 9/30	\$601,110.96	\$95,911.10	16%	\$505,199.86	\$202,079.94
VERMILLION	0.00	7/01 - 9/30	\$25,096.44	\$12,054.20	48%	\$13,042.24	\$5,216.90
VIGO	0.00	7/01 - 9/30	\$389,858.95	\$42,762.13	11%	\$347,096.82	\$138,838.73
WABASH	0.00	7/01 - 9/30	\$55,894.10	\$11,235.27	20%	\$44,658.83	\$17,863.53
WARREN	0.00	7/01 - 9/30	\$6,450.00	\$1,614.00	25%	\$4,836.00	\$1,934.40
WASHINGTON	0.00	7/01 - 9/30	\$83,679.88	\$16,106.73	19%	\$67,573.15	\$27,029.26
WELLS	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
WHITE	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
WHITLEY	0.00	7/01 - 9/30			0%	\$0.00	\$0.00
<b>TOTAL</b>			\$11,774,021.48	\$2,030,269.97		\$9,743,751.51	\$3,856,391.57
<b>NOTES:</b>	At the 12/15/10 Commission meeting, the members voted to suspend reimbursement to Blackford and Jay Counties.						

**Other Matters:** Larry Landis reported that at the Legislature’s budget hearings, Chief Justice Shepard made the request for an additional \$3 million to the Public Defense Fund for FY11-12; the Indiana Public Defender Commission’s budget is incorporated in the Supreme Court’s budget. Mr. Landis stated that the Chief Justice answered several questions concerning public defense that were presented by the legislators. As more counties are looking for money, the Commission’s public defense reimbursement program has become more desirable for counties not presently participating. The additional \$3 million will cover the cost of additional counties joining the fund and insure that the Commission is able to return the full 40% promised by the Legislature.

Chairman Rutherford discussed the problems with not having a clear directive for who hires staff counsel for the Commission. He plans to meet with Chief Justice Shepard to discuss this matter and the issue of the public defense fund’s budget being separate from the Supreme Court’s budget. Rep. Smith spoke about the difficulty he encountered on other commissions when the hiring of staff was removed from the commission members, citing a lack of communication. He believes a commission should have the authority to hire staff and it should be written into the legislation. Rep. Steuerwald stated that regarding the budget being separate, he believes that the public defense fund is better represented by being part of the Supreme Court’s budget; it gives the fund some insulation from being singled out for budget cuts and it is beneficial from a legislative standpoint for the Chief Justice to champion the case for public defense funding.

Susan Carpenter agreed that having the public defense fund as part of the Supreme Court's budget is a huge influence legislatively. She stated that originally when the fund was created for death penalty reimbursements, it was imperative to have the Supreme Court involved because rules for capital defense needed to be adopted. The members agreed that overhead costs for an office separate from State Court Administration would be significantly more than the 1% presently needed to administer the fund.

Larry Landis reported that Rep. Bill Crawford will be presenting a bill to create a statewide juvenile defense office to handle delinquencies, Children-in-Need-of-Services ("CHINS") and Termination-of-Parental-Rights ("TPR") cases. Mr. Landis stated that he suggested another way to do that is to increase funding to the Commission to cover the cost of reimbursing for CHINS/TPR cases instead of creating a whole separate structure. Some public defenders who do not have the level of expertise necessary to handle these cases would like to see a separate juvenile defense office. They would like a different delivery system than public defenders being appointed in CHINS and TPR cases that do not know how to handle these cases. The bill has not yet been filed.

**Adjournment:** The next Commission meeting is scheduled for March 23, 2011. There being no further business to discuss, David Hensel moved to adjourn the meeting, and Vernon Smith seconded the motion. The motion passed and the meeting adjourned at 3:00 p.m.

---

Mark Rutherford, Chairman

---

Date