

## Indiana Public Defender Commission Meeting Minutes

March 23, 2011

Chairman Mark Rutherford called the business meeting to order at 2:00 pm. Commission members in attendance were, Hon. Mary Ellen Diekhoff, Hon. James Ahler, Susan Carpenter, Peter Nugent, David Hensel and Sen. Brent Steele. Also in attendance were staff counsel Deborah Neal, and Larry Landis of the Indiana Public Defender Council.

**Approval of Minutes from 12/15/10 Meeting:** Chairman Rutherford asked for any changes or additions to the minutes of December 15, 2010. There being none, Sen. Steele made the motion to approve the minutes, and David Hensel seconded the motion. There was no discussion or opposition. The minutes were approved.

**Madison County:** Madison County's Managing Public Defender, Geoff Yelton, addressed the issue of appeals appointments in the county. Mr. Yelton stated that at this time the appointments are being made by the judges without consulting with him, which causes excessive caseloads for full-time public defenders who accept these cases. Appellate work is compensated at \$65 per hour, and is in addition to any salary received by full-time public defenders. Mr. Yelton pointed out that many of the appeals were for probation violations and that Standard J does not provide a category, nor weighted value, for these appeals. Public defense attorneys accepting appeals appointments in Madison County are keeping track of the number of hours spent on each category of appeal. Geoff Yelton suggested that the Commission amend Standard J to include a category for probation violation appeals. Larry Landis stated that the chief public defenders were meeting tomorrow and he would discuss this issue and present solutions and/or language for an amendment to Standard J at the next Public Defender Commission meeting.

Geoff Yelton also asked the Commission to forgive a late filing in the *Wisehart* capital case. He took full responsibility for the oversight due in part to his computer crashing. David Hensel made the motion to approve payment of the *Wisehart* claim, and Judge Diekhoff seconded the motion. There was no further discussion. Motion passed unanimously.

Chairman Rutherford asked the Commission if Madison County's request for reimbursement for the 4<sup>th</sup> quarter 2010 should be paid or suspended due to non-compliance with caseload standards. Sen. Steele moved that the 4<sup>th</sup> quarter 2010 request for reimbursement from Madison County be paid while a solution to the appeals caseload problem is pending. Susan Carpenter seconded the motion to pay Madison County. There was no further discussion. Motion passed unanimously.

**Jay County:** Robert Beymer, Jay County Chief Public Defender, and Garth LeMaster, Jay County Public Defender Board member, were present at the meeting to address the December 15, 2010 suspended 3<sup>rd</sup> quarter reimbursement request. Staff Counsel, Deborah Neal, stated that on February 24, 2011, she visited Jay County and explained the system for tracking new case assignments and how that relates to compliance with Standard J. She also explained the methods for figuring non-reimbursable expenses. After figuring the salaries of three attorneys who handle

most of the public defense cases in Jay County, and comparing those salaries with that of the Deputy Prosecutor, Ms. Neal was able to determine that these attorneys could report new case assignments as a percentage of a full-time/inadequately staffed attorney. This brings all but one attorney into compliance with Standard J. The out-of-compliance attorney, whose FTE maximum should be 0.550, is at 0.697. Bob Beymer assured the Commission that Gail Dues (who is out of compliance) is no longer receiving new case assignments for the rest of the 1<sup>st</sup> quarter of 2011. She should be in compliance at the end of the quarter. Mr. Beymer also explained that the public defenders were being appointed to numerous child support cases under Title IV-D, which has adversely affected the caseload.

Due to the efforts of Jay County to come into compliance, David Hensel made the motion to pay the 3<sup>rd</sup> and 4<sup>th</sup> quarter 2010 reimbursement requests of Jay County. Susan Carpenter seconded the motion. There was no further discussion. Motion passed unanimously.

**Delaware County Comprehensive Plan:** The Comprehensive Plan passed by the Delaware County Public Defender Board was presented to the Commission for approval. David Hensel made the motion to approve the Delaware County Comprehensive Plan. Susan Carpenter seconded the motion. There was no further discussion. Motion passed unanimously.

**Staff Counsel Report: Benton County:** Deborah Neal reported she visited Benton County in February because new case assignments were being counted incorrectly. The Auditor, who had the duty to prepare the Request for Reimbursement quarterly, was counting cases from attorney bills. There were several problems with this system; cases could be counted more than once due to multiple billing; the Auditor did not understand how to read cause numbers that identify case types; she was unaware of how to count probation violations and non-reimbursable cases. After discussion with Judge Kepner, it was agreed that his court reporters from Circuit Court would track public defense caseloads and give the totals to the Auditor at the end of the quarter for reporting as part of the Request for Reimbursement submitted to the Commission. We also agreed to start counting the rolling 12-month new case assignments with the 4Q10 submission, rather than having to recheck every appointment for the past twelve months for duplicates. Benton County was not out of compliance with caseload standards; the county visit was at the request of the Auditor.

**Blackford County:** Deborah Neal reported she visited the county on January 4, 2011 at the request of Judge Young. The county was concerned about the suspension of reimbursement for the 3<sup>rd</sup> quarter, and wanted help finding a solution to the caseload non-compliance problem. Attending the meeting were two Blackford County Public Defender Board members, Mr. Hollander and Mr. Clam, Circuit Court Judge Young, newly elected Superior Court Judge Nick Berry, and newly elected Auditor Sheila Meadows.

It was determined that new assigned cases may have been counted more than once since the past Auditor accumulated the figures from claims submitted by attorneys. To correct this, Deborah Neal set up the Commission's caseload worksheets on the computers of the Circuit and Superior courts; trained the court staff to keep track of caseloads daily and watch for compliance issues; recommended that the court staff trade figures each Friday since the public defense attorneys were receiving assignments from both courts; and informed the auditor that the courts' staff

would provide the caseload figures at the end of the quarter to submit with the request for reimbursement.

It was also determined that public defense attorney Chris Teagle was paid approximately \$80,000 yearly. Mr. Teagle is the attorney that was being assigned a caseload close to that of two attorneys. However, with that income, Mr. Teagle would be considered full-time. Reporting Mr. Teagle as a full-time/inadequately staffed attorney on the caseload worksheet puts him in compliance for the third and fourth quarters of 2010. Now Mr. Teagle will be assigned additional cases (up to maximum allowed) which will reduce Mr. Bade's FTE percentage (another attorney out of compliance). Deborah Neal stated that these changes should assure that Blackford County stays in compliance with Commission Standards, and she recommended that the county be reimbursed for the 3<sup>rd</sup> and 4<sup>th</sup> quarters of 2010.

**Steuben County:** Deborah Neal reported that she discovered Steuben County Public Defender Board Member, Hugh Taylor, took case assignments as a public defender. I informed Mr. Taylor that under Standard A, he could not be a public defender and county public defense board member at the same time. I asked that he submit proof that he had been replaced on the Steuben County Public Defender Board. He has signed a contract to be managing public defender and is helping the county to find a replacement for him on the Board. Sen. Steele asked that staff counsel investigate how often Mr. Taylor accepted public defense appointments while serving on the local public defense board. Sen. Steele also recommended that a reminder about Standard A be published in the newsletter so that this does not happen in other counties.

**Status of Counties Compliance with Standard J – Caseloads:** Ms. Neal reported that 82% of the participating counties are in compliance with Standard J.

**Financial Status of Public Defense Fund:** Deborah Neal reported that after payment of March 2011 claims, the Fund has a balance of \$3,983,184.15.

**Requests for 50% Reimbursement in Capital Cases:** Susan Carpenter moved to approve payment of capital claims in the amount of \$143,311.22 and Judge Diekhoff seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
March 23, 2011		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro	\$29,229.89
Madison	Wisehart	\$12,179.60
Marion	Davis	\$85,107.38
Vanderburgh	Weisheit	\$16,794.35
<b>TOTAL</b>		<b>\$143,311.22</b>
<i>Wisehart claims for reimbursement submitted 13 days past 120 day deadline. Commission approved payments.</i>		
<i>Davis reduced claim \$757.50 for attorney billing after sentencing.</i>		

**Requests for 40% Reimbursement in Non-Capital Cases:** Susan Carpenter moved to approve the claims totaling \$4,190,201.30, which includes 3<sup>rd</sup> quarter reimbursements to Blackford and

Jay Counties. Judge Diekhoff seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>						
Fourth Quarter 2010 Requests for Reimbursements in Non-Capital Cases						
3/23/2011						
<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	10/01 - 12/31	\$103,385.91	\$29,060.68	28%	\$74,325.23	\$29,730.09
ALLEN	10/01 - 12/31	\$865,364.17	\$121,394.83	14%	\$743,969.34	\$297,587.74
BENTON	10/01 - 12/31	\$3,598.10	\$719.62	20%	\$2,878.48	\$1,151.39
BLACKFORD	10/01 - 12/31	\$59,481.50	\$23,515.94	40%	\$35,965.56	\$14,386.22
BLACKFORD	7/1-9/30	\$41,222.50	\$9,017.42	22%	\$32,205.08	\$12,882.03
CARROLL	10/01 - 12/31	\$40,242.31	\$11,774.97	29%	\$28,467.34	\$11,386.94
CLARK	10/01 - 12/31	\$190,756.02	\$67,583.90	35%	\$123,172.12	\$49,268.85
CRAWFORD	10/01 - 12/31			0%	\$0.00	\$0.00
DECATUR	10/01 - 12/31	\$38,418.38	\$10,610.79	28%	\$27,807.59	\$11,123.04
FAYETTE	10/01 - 12/31	\$68,587.34	\$9,251.32	13%	\$59,336.02	\$23,734.41
FLOYD	10/01 - 12/31	\$174,257.57	\$24,652.20	14%	\$149,605.37	\$59,842.15
FOUNTAIN	10/01 - 12/31	\$29,199.73	\$6,783.78	23%	\$22,415.95	\$8,966.38
FULTON	10/01 - 12/31	\$75,298.65	\$28,522.22	38%	\$46,776.43	\$18,710.57
GRANT	10/01 - 12/31	\$192,127.58	\$15,068.83	8%	\$177,058.75	\$70,823.50
GREENE	10/01 - 12/31	\$100,719.15	\$12,885.18	13%	\$87,833.97	\$35,133.59
HANCOCK	10/01 - 12/31	\$117,158.88	\$29,288.55	25%	\$87,870.33	\$35,148.13
HENRY	10/01 - 12/31			0%	\$0.00	\$0.00
HOWARD	10/01 - 12/31	\$349,114.44	\$65,348.72	19%	\$283,765.72	\$113,506.29
JASPER	10/01 - 12/31	\$94,980.18	\$24,612.21	26%	\$70,367.97	\$28,147.19
JAY	10/01 - 12/31	\$85,449.43	\$16,667.68	20%	\$68,781.75	\$27,512.70
JAY	7/01 - 9/30	\$77,273.93	\$19,899.42	26%	\$57,374.51	\$22,949.80
JENNINGS	10/01 - 12/31	\$72,462.55	\$14,942.70	21%	\$57,519.85	\$23,007.94
KNOX	10/01 - 12/31	\$162,097.41	\$53,573.37	33%	\$108,524.04	\$43,409.62
KOSCIUSKO	10/01 - 12/31	\$139,544.71	\$44,734.43	32%	\$94,810.28	\$37,924.11
LAGRANGE	10/01 - 12/31	\$48,351.75	\$6,048.55	13%	\$42,303.20	\$16,921.28
LAKE	10/01 - 12/31	\$734,969.92	\$1,105.22	0%	\$733,864.70	\$293,545.88
LAPORTE	10/01 - 12/31	\$146,316.17	\$23,154.41	16%	\$123,161.76	\$49,264.70
LAWRENCE	10/01 - 12/31	\$192,199.40	\$19,199.42	10%	\$172,999.98	\$69,199.99
MADISON	10/01 - 12/31	\$359,808.27	\$23,029.23	6%	\$336,779.04	\$134,711.62
MARION	10/01 - 12/31	\$4,550,935.41	\$860,253.45	19%	\$3,690,681.96	\$1,476,272.78
MARTIN	10/01 - 12/31	\$63,085.96	\$22,905.65	36%	\$40,180.31	\$16,072.12
MIAMI	10/01 - 12/31			0%	\$0.00	\$0.00
MONROE	10/01 - 12/31	\$413,881.21	\$66,252.17	16%	\$347,629.04	\$139,051.62
MONTGOMERY	10/01 - 12/31	\$125,699.22	\$52,941.26	42%	\$72,757.96	\$29,103.18
NEWTON	10/01 - 12/31			0%	\$0.00	\$0.00
NOBLE	10/01 - 12/31	\$116,792.79	\$36,248.31	31%	\$80,544.48	\$32,217.79
OHIO	10/01 - 12/31	\$36,370.28	\$4,220.75	12%	\$32,149.53	\$12,859.81
ORANGE	10/01 - 12/31	\$48,050.32	\$8,479.47	18%	\$39,570.85	\$15,828.34
PARKE	10/01 - 12/31	\$32,942.96	\$9,641.84	29%	\$23,301.12	\$9,320.45
PERRY	10/01 - 12/31	\$91,536.23	\$15,782.11	17%	\$75,754.12	\$30,301.65
PIKE	10/01 - 12/31	\$38,445.39	\$11,070.31	29%	\$27,375.08	\$10,950.03
PULASKI	10/01 - 12/31	\$35,515.19	\$14,037.50	40%	\$21,477.69	\$8,591.08
RUSH	10/01 - 12/31	\$58,279.79	\$20,244.56	35%	\$38,035.23	\$15,214.09
SAINT JOSEPH	10/01 - 12/31	\$486,479.43	\$69,057.45	14%	\$417,421.98	\$166,968.79
SCOTT	10/01 - 12/31			0%	\$0.00	\$0.00
SHELBY	10/01 - 12/31	\$103,497.17	\$35,073.40	34%	\$68,423.77	\$27,369.51
SPENCER	10/01 - 12/31	\$33,736.34	\$7,331.56	22%	\$26,404.78	\$10,561.91
STEUBEN	10/01 - 12/31	\$75,650.11	\$16,183.79	21%	\$59,466.32	\$23,786.53
SULLIVAN	10/01 - 12/31	\$57,635.67	\$9,901.68	17%	\$47,733.99	\$19,093.60
SWITZERLAND	10/01 - 12/31	\$64,270.67	\$18,341.52	29%	\$45,929.15	\$18,371.66
TIPPECANOE	10/01 - 12/31	\$490,937.03	\$137,554.46	28%	\$353,382.57	\$141,353.03

UNION	10/01 - 12/31	\$17,174.53	\$1,904.77	11%	\$15,269.76	\$6,107.90
VANDERBURGH	10/01 - 12/31	\$664,983.07	\$109,147.62	16%	\$555,835.45	\$222,334.18
VERMILLION	10/01 - 12/31	\$30,326.21	\$11,879.51	39%	\$18,446.70	\$7,378.68
VIGO	10/01 - 12/31	\$443,894.05	\$51,371.23	12%	\$392,522.82	\$157,009.13
WABASH	10/01 - 12/31	\$55,894.10	\$11,420.18	20%	\$44,473.92	\$17,789.57
WARREN	10/01 - 12/31	\$11,204.00	\$3,899.00	35%	\$7,305.00	\$2,922.00
WASHINGTON	10/01 - 12/31	\$104,582.32	\$21,093.00	20%	\$83,489.32	\$33,395.73
WELLS	10/01 - 12/31			0%	\$0.00	\$0.00
WHITE	10/01 - 12/31			0%	\$0.00	\$0.00
WHITLEY	10/01 - 12/31			0%	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$12,814,185.40</b>	<b>\$2,338,682.14</b>		<b>\$10,475,503.26</b>	<b>\$4,190,201.30</b>
<b>NOTES:</b>	<b>Commission voted to allow previously suspended 3Q10 reimbursement to Blackford and Jay counties.</b>					

**Other Matters:** Larry Landis reported that Indiana State Senate Bill 301, if passed, will provide an additional \$2,000,000 in the next fiscal year to the Public Defense Fund. Mr. Landis also thanked Senator Steele for sponsoring Senate Bill 561. SB561 was prepared by the Criminal Code Evaluation Committee and provides for significant changes in criminal sentencing laws; changes which would reduce the number and costs of incarceration.

Susan Carpenter is retiring from her position as State Public Defender, effective May 2011, which may affect her serving on the Commission. Ms. Carpenter is one of the first members appointed to serve on the newly created Indiana Public Defender Commission. The Indiana Criminal Justice Institute named Ms. Carpenter as their appointment to serve on the Commission in October, 1989. The Commission members expressed their appreciation for her dedication and service, and noted that she holds the honor of being the longest serving Commission member. Susan will be presented with a Supreme Court Certificate of Appreciation at the June 15, 2011 meeting.

**Adjournment:** The next Commission meeting is scheduled for June 15, 2011. There being no further business to discuss, David Hensel moved to adjourn the meeting, and Peter Nugent seconded the motion. The motion passed and the meeting adjourned at 3:00 p.m.

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Mark Rutherford, Chairman

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Date

# Indiana Public Defender Commission Meeting Minutes

June 15, 2011

Chairman Mark Rutherford called the business meeting to order at 2:15 pm. Commission members in attendance were, Honorable James Ahler, Susan Carpenter, Peter Nugent, and David Hensel. Rep. Greg Steuerwald joined the meeting by telephone conference call. Also in attendance were staff counsel Deborah Neal, Larry Landis of the Indiana Public Defender Council, Stephen Owens, Chief Public Defender of Vanderburgh County, and Bob Hill, Marion County Chief Public Defender.

In order to accommodate Rep. Steuerwald, Chairman Mark Rutherford announced that matters which need approval by a quorum, would be discussed first.

**Requests for 50% Reimbursement in Capital Cases:** Susan Carpenter moved to approve payment of capital claims in the amount of \$74,556.61 and Judge Ahler seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
June 15, 2011		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1 thru 11	\$34,508.39
Lake	Flores	\$2,813.25
	Isom	\$11,226.38
Vanderburgh	Weisheit	\$26,008.59
<b>TOTAL</b>		<b>\$74,556.61</b>

**Requests for 40% Reimbursement in Non-Capital Cases:** Deborah Neal informed the Commission that Delaware County's first request for reimbursement indicated a problem complying with Standard J's caseload maximums. She wrote a letter to Jack Quirk, Chief Public Defender, and explained that if cases were not more evenly assigned, or more attorneys hired, or an increase in salary was approved, the county would be out of compliance after four quarters. Their reimbursement request for 40% this quarter equals \$104,576.26. David Hensel asked that if the Commission could not send a 90-Day Notice to Delaware County until attorneys were out of compliance over a 12-month period, does that mean we cannot act before that time. Deborah Neal pointed out that the Commission certifies to the State Auditor that each county requesting reimbursement is in compliance with the Standards, and believes that the Commission could suspend payment until such time as compliance is achieved. Susan Carpenter stated that historically it takes time for a new member county to come into compliance. Larry Landis agreed, and stated Delaware County should be given more time to comply with caseload standards and that the Delaware County Public Defender Agency could also suspend appointments once the attorneys reach their maximum number of cases. The Commission members agreed that it was good to warn Delaware County of the possible non-compliance and that the county should be reimbursed for their first quarter expenses.

Deborah Neal reported that Monroe County had to estimate the new case assignments for the 4<sup>th</sup> quarter of 2010 due to a computer crash. The problems have been solved and the Monroe County Public Defender Agency submitted an amended request for 4Q10, showing an overpayment of \$423.98, which will be subtracted from the 1Q11 request for reimbursement.

Steve Owens, Chief Public Defender of Vanderburgh County addressed the Commission asking to amend the 2Q10, 3Q10, 4Q10 and 1Q11 requests for reimbursement. He explained that as co-counsel in the *Weisheit* capital case earning \$106 hr. Vanderburgh County paid him \$90 hr. as an independent contractor and the remaining \$16 hr. was paid as part of his salary as Chief Public Defender. The county received 50% reimbursement on \$106 hr. paid to Mr. Owens in *Weisheit* and then 40% of his entire salary quarterly as Chief Public Defender, failing to subtract the amount from his salary that was reimbursed at 50% (\$2,849.60). In order to rectify this error, Steve Owens amended the quarterly requests for reimbursement subject to the double reimbursement. Deborah Neal verified that the quarterly amendments would correct the problem, and recommended that the Commission accept the amended requests for the second, third and fourth quarters of 2010 and the first quarter of 2011. She stated that Vanderburgh County's first quarter 2011 request for reimbursement would have to be reduced by \$1,111.38 if the amendments were accepted.

David Hensel moved to approve the claims totaling \$4,037,064.75 which includes the amendments to Vanderburgh County 2Q10, 3Q10, 4Q10 and 1Q11 requests for reimbursement. Susan Carpenter seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
<b>AMENDED</b> First Quarter 2011 Requests for Reimbursements in Non-Capital Cases						
6/15/2011						
COUNTY	2011 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjst	Eligible Expenditure	40% Reimbursed
ADAMS	01/01-3/31	\$71,282.71	\$15,516.84	22%	\$55,765.87	\$22,306.35
ALLEN	01/01-3/31	\$846,868.92	\$93,198.67	11%	\$753,670.25	\$301,468.10
BENTON	01/01-3/31	\$5,803.98	\$171.37	3%	\$5,632.61	\$2,253.04
BLACKFORD	01/01-3/31	\$32,088.33	\$7,460.25	23%	\$24,628.08	\$9,851.23
CARROLL	01/01-3/31	\$40,000.66	\$13,707.54	34%	\$26,293.12	\$10,517.25
CLARK	01/01-3/31	\$152,673.62	\$27,704.05	18%	\$124,969.57	\$49,987.83
CRAWFORD	01/01-3/31			0%	\$0.00	\$0.00
DECATUR	01/01-3/31	\$42,824.91	\$12,433.04	29%	\$30,391.87	\$12,156.75
DELAWARE	01/01-3/31	\$271,123.63	\$9,682.99	4%	\$261,440.64	\$104,576.26
FAYETTE	01/01-3/31	\$68,011.81	\$8,841.54	13%	\$59,170.27	\$23,668.11
FLOYD	01/01-3/31	\$191,755.95	\$27,709.49	14%	\$164,046.46	\$65,618.58
FOUNTAIN	01/01-3/31	\$18,246.52	\$4,091.64	22%	\$14,154.88	\$5,661.95
FULTON	01/01-3/31	\$71,427.59	\$29,458.84	41%	\$41,968.75	\$16,787.50

GRANT	01/01-3/31	\$190,927.00	\$12,966.94	7%	\$177,960.06	\$71,184.02
GREENE	01/01-3/31	\$72,284.75	\$11,469.12	16%	\$60,815.63	\$24,326.25
HANCOCK	01/01-3/31	\$136,217.33	\$34,025.31	25%	\$102,192.02	\$40,876.81
HENRY	01/01-3/31			0%	\$0.00	\$0.00
HOWARD	01/01-3/31	\$322,148.67	\$58,464.67	18%	\$263,684.00	\$105,473.60
JASPER	01/01-3/31	\$46,514.69	\$13,737.50	30%	\$32,777.19	\$13,110.88
JAY	01/01-3/31	\$76,312.50	\$20,474.09	27%	\$55,838.41	\$22,335.36
JENNINGS	01/01-3/31	\$37,091.06	\$7,263.98	20%	\$29,827.08	\$11,930.83
KNOX	01/01-3/31	\$180,507.70	\$52,391.74	29%	\$128,115.96	\$51,246.38
KOSCIUSKO	01/01-3/31	\$145,609.10	\$52,333.83	36%	\$93,275.27	\$37,310.11
LAGRANGE	01/01-3/31	\$24,355.05	\$3,402.27	14%	\$20,952.78	\$8,381.11
LAKE	01/01-3/31	\$933,112.17	\$3,688.19	0%	\$929,423.98	\$371,769.59
LAPORTE	01/01-3/31	\$141,272.27	\$18,138.03	13%	\$123,134.24	\$49,253.70
LAWRENCE	01/01-3/31	\$139,649.47	\$22,884.39	16%	\$116,765.08	\$46,706.03
MADISON	01/01-3/31	\$404,209.63	\$22,998.91	6%	\$381,210.72	\$152,484.29
MARION	01/01-3/31	\$3,973,212.35	\$773,074.62	19%	\$3,200,137.73	\$1,280,055.09
MARTIN	01/01-3/31	\$10,882.22	\$5,845.01	54%	\$5,037.21	\$2,014.88
MIAMI	01/01-3/31			0%	\$0.00	\$0.00
MONROE	01/01-3/31	\$393,237.90	\$71,593.99	18%	\$321,643.91	\$128,233.58
MONTGOMERY	01/01-3/31	\$102,211.43	\$41,706.24	41%	\$60,505.19	\$24,202.08
NEWTON	01/01-3/31			0%	\$0.00	\$0.00
NOBLE	01/01-3/31	\$102,366.50	\$25,327.14	25%	\$77,039.36	\$30,815.74
OHIO	01/01-3/31	\$20,110.63	\$1,409.50	7%	\$18,701.13	\$7,480.45
ORANGE	01/01-3/31	\$72,970.19	\$20,129.71	28%	\$52,840.48	\$21,136.19
PARKE	01/01-3/31	\$28,939.82	\$4,569.45	16%	\$24,370.37	\$9,748.15
PERRY	01/01-3/31	\$107,418.86	\$15,002.63	14%	\$92,416.23	\$36,966.49
PIKE	01/01-3/31	\$127,106.69	\$37,737.26	30%	\$89,369.43	\$35,747.77
PULASKI	01/01-3/31	\$32,151.50	\$6,424.25	20%	\$25,727.25	\$10,290.90
RUSH	01/01-3/31	\$59,762.85	\$17,141.28	29%	\$42,621.57	\$17,048.63
SAINT JOSEPH	01/01-3/31	\$464,614.67	\$62,788.93	14%	\$401,825.74	\$160,730.30
SCOTT	01/01-3/31			0%	\$0.00	\$0.00
SHELBY	01/01-3/31	\$114,275.68	\$15,375.12	13%	\$98,900.56	\$39,560.22
SPENCER	01/01-3/31	\$45,231.97	\$12,680.00	28%	\$32,551.97	\$13,020.79
STEBEN	01/01-3/31	\$65,180.65	\$18,422.29	28%	\$46,758.36	\$18,703.34
SULLIVAN	01/01-3/31	\$70,312.02	\$29,619.04	42%	\$40,692.98	\$16,277.19
SWITZERLAND	01/01-3/31	\$39,888.16	\$13,007.01	33%	\$26,881.15	\$10,752.46
TIPPECANOE	01/01-3/31	\$498,437.89	\$131,892.70	26%	\$366,545.19	\$146,618.08



UNION	01/01-3/31			0%	\$0.00	\$0.00
VANDERBURGH	01/01-3/31	\$610,984.27	\$95,324.50	16%	\$515,659.77	\$205,152.53
VERMILLION	01/01-3/31	\$28,621.78	\$12,859.06	45%	\$15,762.72	\$6,305.09
VIGO	01/01-3/31	\$402,210.83	\$48,410.30	12%	\$353,800.53	\$141,520.21
WABASH	01/01-3/31	\$56,760.07	\$13,619.78	24%	\$43,140.29	\$17,256.12
WARREN	01/01-3/31	\$6,361.08	\$2,382.00	37%	\$3,979.08	\$1,591.63
WASHINGTON	01/01-3/31	\$75,391.19	\$13,903.90	18%	\$61,487.29	\$24,594.92
WELLS	01/01-3/31			0%	\$0.00	\$0.00
WHITE	01/01-3/31			0%	\$0.00	\$0.00
WHITLEY	01/01-3/31			0%	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$12,170,961.22</b>	<b>\$2,074,460.94</b>		<b>\$10,096,500.28</b>	<b>\$4,037,064.75</b>
<b>NOTES:</b>	Monroe County was overpaid \$423.98 for 4Q10 Request. That amt. subtracted from 1Q11 Request. Vanderburgh Co. amended 2Q10,3Q10,4Q10 reducing reimbmsmt by \$1,111.38; 1Q11 amended. Total reimbursement reflects 1Q11 amendment minus \$1,111.38 overpayment in 2010.					

**Approval of Minutes from 3/23/11 Meeting:** Approval of the March 23, 2011 minutes will be put on the September meeting agenda.

**Salaried Capital Public Defender for Vanderburgh County:** Larry Landis discussed the possibility of having a full-time, salaried capital public defender in Vanderburgh County. He noted that Marion County and Clark County each have one attorney that is authorized as a full-time, salaried capital public defender. Landis noted that each capital case counts as 40 felony cases for their caseloads. He stated he personally thinks chief public defenders should never be appointed to a capital case because it interferes with duties as chief. Steve Owens noted that the Vanderburgh County Council wants him to be designated as a salaried capital public defender so that they are paying one salary, not a salary and an hourly rate on the capital case. He asked what portion of that salary (capital public defender) is reimbursed at 50% and what part at 40%? Deborah Neal noted that Jeff Stonebraker, Clark County Chief Public Defender, as lead counsel on the *Melcher* capital case, was designated a salaried capital public defender. His salary was increased to match the salary of the lead prosecutor on the case. Mr. Stonebraker took his regular salary as chief public defender at 40%, and the increased amount for being lead counsel on the capital case at 50%. Neal reminded the Commission that it is the duty of the Executive Director of State Court Administration to approve a request for designation as a salaried capital public defender.

Due to the death of the lead counsel in the Vanderburgh County capital case, *Weisheit*, Steve Owens asked if a lead counsel could be appointed to the case before being CR24 qualified due to insufficient continuing legal education credits. Deborah Neal informed Mr. Owens that such an exception to appointing a CR24 qualified attorney to a capital case was determined by the Indiana Supreme Court.

**Staff Counsel Report:** Ms. Neal reported that 86% of the counties are in compliance. She also reported that Huntington County has passed an ordinance to form a public defender board. If they qualify for reimbursement, Huntington County will receive approximately \$54,000 yearly.

Jasper County has reported possible non-compliance due to the suspension of one of the public defense attorneys. Deborah Neal stated she appreciated the county communicating with the Commission before the problem arises. Judge Ahler stated there may be other issues with Jasper County and may be another attorney suspension in the future.

Madison County is still working on the study of appeal cases in order to propose an amendment to the Standard J maximum caseloads for appeals. Larry Landis reported that other chief public defenders are willing to do time studies on appeal cases. The standard was adopted when all appeals were for jury trials. He wants to develop a consensus about workload for plea appeals, probation appeals, etc. Mr. Landis stated in twenty years many changes have been made and not one size fits all with regards to maximum caseloads for appeals.

**Financial Status of Fund:** Deborah Neal reported that the balance in the Public Defense Fund has been encumbered through purchase orders to prevent any money after the end of the fiscal year being transferred to a closing account. Before money was encumbered, the Fund balance was \$4,009,722, but the amount of claims and overhead costs totaled \$4,344,914. The claims approved at this meeting will be paid with the encumbered funds, plus the allotment disbursed after July 1, 2011. At this time the Fund balance is \$3,400.

Deborah Neal also reported on the additional \$2 million that the Fund will receive in FY 2011-12 through additional court fees. IC 33-37-7-9(c)(2) directs the State Auditor to distribute court fees to the Public Defense Fund. The annual distribution by statute of \$5.4 million has been increased to \$7.4 million. Larry Landis stated that Sen. Kenley and the legislators serving on the Indiana Public Defender Commission were instrumental in pushing forward this legislation.

**New Staff Counsel:** Deborah Neal reported that State Court Administration has hired Elana Saltzman to serve as part-time staff counsel to the Commission. Chairman Rutherford interviewed Elana and agreed that she is qualified to serve as staff counsel and would be a good fit for the position. Mrs. Saltzman was a public defender in Hawaii.

**Recognition of Susan Carpenter's Service to the Commission:** Chairman Mark Rutherford presented Susan Carpenter with a Certificate of Appreciation signed by the Supreme Court Justices for her service to the Indiana Public Defender Commission. Ms. Carpenter, as State Public Defender, served on the Commission from 1989 to 2011 as the long-time appointment of the Indiana Criminal Justice Institute. In the twenty-two years that Susan was a member, the Commission developed and was instrumental in the passage of the Indiana Supreme Court's Criminal Rule 24 which set the standards for trying capital cases in Indiana, adopted Standards for Indigent Defense Services in Non-capital Cases, and obtained legislative changes allowing reimbursement from the public defense fund for defense services in felony cases. Ms. Carpenter participated in the approval of sixty county comprehensive plans for delivering non-capital indigent defense services in Indiana, and the distribution of \$107 million to counties eligible to

receive reimbursement from the Public Defense Fund. Susan Carpenter was the longest serving member of the Commission and will certainly be missed. All members thanked her and wished her the best of luck in her future endeavors.

**Adjournment:** The next Commission meeting is scheduled for September 21, 2011. There being no further business to discuss, Peter Nugent moved to adjourn the meeting, and Judge Ahler seconded the motion. The motion passed and the meeting adjourned at 3:30 p.m.

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Mark Rutherford, Chairman

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Date

# Indiana Public Defender Commission Meeting Minutes

September 21, 2011

Chairman Mark Rutherford called the business meeting to order at 2:15 pm. Commission members in attendance were Peter Nugent, David Hensel, Sen. Tim Lanane and Larry Landis. Rep. Greg Steuerwald joined the meeting by telephone conference call. Also in attendance were staff counsels Deborah Neal and Elana Salzman. Visitors were Jeff Stonebraker, Chief Public Defender of Clark County, and Mrs. Judith DeSimone, President of the Clark County Public Defender Board.

Chairman Rutherford welcomed Larry Landis to the Commission as the new member (replacing Susan Carpenter). Before quorum was established with a telephone conference call, Chairman Rutherford announced that items not requiring a quorum would be discussed first.

**Staff Counsel Report:** Brown County: Deborah Neal reported that the Brown County Council is interested in the public defense reimbursement program. The county would like to know if there could be an exception to the Commission's guideline that prohibits reimbursement for self-insured programs. The Brown County Auditor explains that their self-insured program requires an employee to pay a monthly premium with a \$1,500 deductible. The county pays actual bills after the deductible. The maximum cost to the county is \$40,000 per person; any claims over that are covered by reinsurance. There are presently two attorneys who take public defense cases and are receiving benefits from the county. Their premiums are \$108.57 and \$113.36 per payroll period for an annual total of \$2,822.82 and \$2,947.36, respectively. If the maximum of \$80,000 was paid by the county in one year for the public defense attorneys, the 40% reimbursement from the Public Defense Fund would be \$32,000.

Commission members expressed concerns regarding an exception to their guideline which does not allow for reimbursement on county self-insurance programs. Larry Landis asked what would be the principle established by this exception; would it be based on size, risk possibility? Dave Hensel added what is the criteria for the next county that comes asking for an exception to this guideline?

Larry Landis said there would be no question the Commission would reimburse on premiums for Brown County like it does for all other eligible counties. Dave Hensel suggested surveying other counties in the reimbursement program to get an average premium; then the Commission could reimburse county self-insurance programs based on this average premium. Peter Nugent stated this average premium should be the cap amount reimbursed for self-insurance programs.

Tim Lanane pointed out that upon eligibility Brown County could be part of the public defense reimbursement program for all expenses except their self-insurance program. He noted that Brown County only has two public defense attorneys, but what if other larger counties decided to go to a self-insurance program to cut costs. Dave Hensel stated that the reason for the guideline must be that it is difficult to get a handle on what the costs will be for a county self-insurance program, what risks are involved, the costs of catastrophic illnesses, and the liability for the Public Defense Fund. Peter Nugent noted that if the Public Defense Fund reimburses on an average premium, this average premium would have to be revisited every year due to the rising costs of premiums.

Deborah Neal said that staff counsel would conduct a survey on counties receiving reimbursements from the Public Defense Fund to determine what type of health insurance they provide and their costs. Larry Landis suggested contacting the Association of Counties for any survey information they could provide. Deborah Neal said Brown County will be contacted to provide the insurance costs previously incurred for the public defense attorneys, and quotes from health insurance providers so that the Commission can

determine whether to reimburse on actual costs or an average premium before further consideration of an exception to the guideline.

**County Compliance Status:** The compliance for counties receiving reimbursement is down 85% from 86%.

**Huntington County:** In June 2011, The Huntington County Commissioners passed an ordinance establishing a local public defense board. Deborah Neal reported the county has not submitted a comprehensive plan for approval. She will contact Huntington County for an update.

**LaPorte County:** In May 2011, the county was warned that the caseloads were out of compliance. Craig Braje, Chief Public Defender in LaPorte County, wrote on 8/23/11 that the county council has approved the hiring of an additional attorney which will ease the new case assignment problem.

**Financial Statement:** Deborah Neal informed the Commission that State Court Administration would be charging the Public Defense Fund \$30,000 for an administrative assistant.

The final fiscal report for the Public Defense Fund on June 30, 2011 shows a balance of \$3.9 million in the Fund, with \$4.1 million in outstanding claims. Staff counsel encumbered by purchase order the \$3.9 million in claims, and \$3.1 million of those claims were paid by June 30, 2011. The remaining claims were paid after the July 1<sup>st</sup> distribution of FY11-12 appropriation.

PUBLIC DEFENDER FUND					
Fiscal Report 2010-11					
Category	Allotted	Expended	Balance	Condensed Summary	
Addl allotments from closing account	\$2,079,726.68		\$2,079,726.68	-	
Personal Services (Salaries)	\$126,895.00	\$92,165.47	\$34,729.53	Approp + Closing Acct	\$20,329,726.68
Services other than personal	\$33,775.00	\$963.51	\$32,811.49	Expenses	\$16,332,300.01
Services by Contract		\$0.00	\$0.00	Balance	\$3,997,426.67
Materials and Supplies	\$2,000.00	\$2,065.34	-\$65.34	Cost Alloc/Retiree Hlth Ins.	\$2,943.93
Equipment	\$0.00	\$0.00	\$0.00	Purchase Orders	\$3,997,163.00
Land and Structures	\$0.00	\$0.00	\$0.00	Balance	-\$2,680.26
Grants, subsidies, refunds	\$18,048,257.00	\$16,235,724.81	\$1,812,532.19	<b>Admin Actions - Credits</b>	
June 2011 Encumbered Grants Paid		\$3,134,090.63	-\$3,134,090.63	<b>for closing FY2011</b>	<b>\$2,680.26</b>
In-state Travel	\$0.00	\$1,380.88	-\$1,380.88	<b>Balance at year end</b>	<b>\$0.00</b>
Out-of-state Travel		\$0.00	\$0.00		
<b>TOTALS</b>	<b>\$20,290,653.68</b>	<b>\$19,466,390.64</b>	<b>\$824,263.04</b>		
<b>Bal. Encum. To pay claims after 7/1/11</b>			<b>\$824,263.04</b>		
Appropriation for 2010-11	\$18,250,000.00				
Addl allotments from closing account	\$2,079,726.68				
<b>Total Approp./Allot. in 2010-11</b>		<b>\$20,329,726.68</b>			
Less Expenditures		\$19,466,390.64			
State Wide Cost Allocation		-\$1,528.93			
Retiree Health Benefit Cost due to SEA 501		-\$1,415.00			
Encumbered Cap/Non-Cap Claims		-\$863,072.37			
<b>Total Expenditures</b>		<b>\$20,332,406.94</b>			
<b>Balance as of June 30, 2011</b>			<b>-\$2,680.26</b>		

The allocation to the Public Defense Fund in fiscal year 2011-12 is \$20,250,000. The additional \$2 million is due to the General Assembly increasing through statute the amount of court fees distributed annually to the Public Defense Fund; the statutory distribution of \$5.4 million increased to \$7.4 million annually.

July 1, 2011 the Fund received \$3.7 million from court fees, and \$6.425 million from the State's general fund. The balance of unpaid first quarter claims, \$977,530. 72, was paid upon receipt of the July distribution. Second quarter claims totaling \$4,257,239.51 was submitted for approval. After payment of the second quarter claims and expenses, the Public Defense Fund will have a balance of \$5,733,411.63. The fiscal report for 2011-12 is as follows:

<b>FISCAL REPORT 2011-2012</b>			
<b>INDIANA PUBLIC DEFENDER COMMISSION</b>			
<b>9/21/2011</b>			
<b>2011-2012 Budget:</b>	<b>Appropriations</b>	<b>Expenditures</b>	<b>Balance</b>
<b>\$20,250,000.00</b>			
<b>July Distribution for FY11-12</b>			
Court Fees - \$3.7 million:			
General Fund - \$6.425 million:	\$ 10,125,000.00		
Balance of encumbered funds:	\$ 863,072.37		
Total:			\$10,988,072.37
<b>1st Quarter 2011 Claims pd after 7/1/11</b>			
<b>Non-Capital Claims</b>		\$ 938,983.12	
<b>Capital Claims</b>		\$ 38,547.60	
<b>July Payroll and Expenses:</b>		<u>\$ 6,358.83</u>	
Total July Payments:		\$ 983,889.55	
Balance:			\$10,004,182.82
<b>2nd Quarter 2011</b>			
<b>Non-Capital Claims - 40%</b>		\$ 4,181,277.35	
<b>Capital Claims - 50%</b>		\$ 75,962.16	
<b>Payroll 8/1/11 to 9/14/11</b>		\$ 12,717.66	
Expenses		<u>\$ 784.02</u>	
Total August Payments:		\$ 4,270,741.19	
Balance:			\$ 5,733,441.63

**Other Matters: Marion County's Request for Exception to Standard J:** Marion County Public Defender Agency submitted a memorandum regarding adequate support staff for their full-time major felony division; and for a finding of Standard J's Table 2 being obsolete as applied to the Marion County Public Defender Agency.

Larry Landis stated that the Commission Standards were developed in the late 80's and adopted in the 90's before technology was developed that allows attorneys to do most of their own secretarial work. He agrees that the tables in Standard J are out of date, and suggested adopting combined categories of secretary/paralegal and paralegal/investigator. Mr. Landis recommended that a draft amendment to Standard J's staffing table be sent to other county chief public defenders and ask for comments.

At 2:35 p.m., Greg Steuerwald joined the Commission meeting by telephone conference call. Chairman Rutherford stated the Commission would turn its attention to the matter of Clark County compliance.

**Clark County:** Staff counsel, Deborah Neal, explained that representatives were invited to this September meeting to address excessive case assignments to ten of the eleven Clark County public defense attorneys in the second quarter of 2011, and the anticipated future non-compliance in the third quarter. Responding to the invitation were Jeff Stonebraker, Chief Public Defender of Clark County, and Mrs. Judith DeSimone, President of the Clark County Public Defender Board

Mr. Jeffrey Stonebraker said he brought to the attention of the judges in the county the heavy caseloads carried by the public defense attorneys and the issue of not complying with the Commission's Standards. Stonebraker told the Commission that he is asking the Clark County Council for an additional appropriation to hire another attorney, and the issue is on the Council's October agenda. He also stated that the judges are being encouraged to investigate eligibility before appointing an attorney to defendants in an effort to reduce case assignments.

Larry Landis suggested as a cure to the heavy caseloads that Mr. Stonebraker refuse new case assignments and force the judges to assign counsel outside the public defense agency, if the Clark County Council refuses an additional appropriation for hiring another attorney. Landis asked if another letter from staff counsel would be helpful; a letter concerning non-compliance with caseload standards and jeopardized reimbursements to the county. Dave Hensel noted that Clark County receives over \$200,000 annually from the Public Defense Fund and the council should be made aware of the cost of non-compliance.

Dave Hensel made a motion to approve Clark County's second quarter reimbursement request based upon Jeff Stonebraker's presentation and commitment to hire another attorney; he also moved that staff counsel send another warning letter to Clark County. Peter Nugent seconded the motion. Motion passed unanimously.

**Blackford County:** Deborah Neal reported that a non-compliance warning letter was sent to Blackford County after their second quarter report showed an unqualified attorney was appointed to a major felony case. Blackford County Circuit Court Judge Dean Young responded with a letter stating there was an error in reporting; the letter included an amended New Case Assignment Sheet that no longer showed an unqualified attorney being appointed to a major felony case. The attorney in question works in his father's law office (the father also takes public defense assignments) and the case was assigned to the firm. The Judge stated that future major felony assignments would be specifically assigned to the attorney qualified to accept these cases. In lieu of the Judge's explanation, staff counsel recommended that Blackford County receive the second quarter reimbursement.

**Requests for 50% Reimbursement in Capital Cases:** Peter Nugent moved to approve payment of capital claims in the amount of \$75,962.16 and Sen. Tim Lanane 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 21, 2011		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1 thru 13	\$19,111.33
Lake	Isom	\$20,480.02
Marion	Hardy	\$20,569.20
Vanderburgh	Weisheit	\$15,801.61
<b>TOTAL</b>		<b>\$75,962.16</b>

**Requests for 40% Reimbursement in Non-Capital Cases:** Larry Landis moved to approve the claims totaling \$4,181,277.35 which, in light of the plan to achieve compliance presented by Jeff Stonebraker, includes payment of the 2<sup>nd</sup> quarter request for reimbursement for Clark County and that Blackford County be reimbursed for their second quarter request. David Hensel seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>						
Second Quarter 2011 Requests for Reimbursements in Non-Capital Cases						
9/21/2011						
<b>COUNTY</b>	<b>2011 Period Covered</b>	<b>Total Expenditure</b>	<b>Adjustment For Non-Reimbrsbl</b>	<b>% of Adjst</b>	<b>Eligible Expenditure</b>	<b>40% Reimbursed</b>
ADAMS	4/1-6/30	\$86,954.02	\$16,543.70	19%	\$70,410.32	\$28,164.13
ALLEN	4/1-6/30	\$785,856.49	\$117,119.78	15%	\$668,736.71	\$267,494.68
BENTON	4/1-6/30	\$11,017.75	\$1,573.96	14%	\$9,443.79	\$3,777.52
BLACKFORD	4/1-6/30	\$35,965.50	\$11,003.00	31%	\$24,962.50	\$9,985.00
CARROLL	4/1-6/30	\$43,001.67	\$17,399.98	40%	\$25,601.69	\$10,240.68
CLARK	4/1-6/30	\$161,558.78	\$27,817.15	17%	\$133,741.63	\$53,496.65
DECATUR	4/1-6/30	\$44,578.41	\$12,804.44	29%	\$31,773.97	\$12,709.59
DELAWARE	4/1-6/30	\$241,603.51	\$12,173.49	5%	\$229,430.02	\$91,772.01
FAYETTE	4/1-6/30	\$77,780.95	\$14,109.10	18%	\$63,671.85	\$25,468.74
FLOYD	4/1-6/30	\$179,225.10	\$26,214.31	15%	\$153,010.79	\$61,204.32
FOUNTAIN	4/1-6/30	\$22,194.25	\$4,637.60	21%	\$17,556.65	\$7,022.66
FULTON	4/1-6/30	\$62,887.66	\$19,170.60	30%	\$43,717.06	\$17,486.82
GRANT	4/1-6/30	\$194,696.00	\$10,247.16	5%	\$184,448.84	\$73,779.54
GREENE	4/1-6/30	\$75,334.87	\$11,469.12	15%	\$63,865.75	\$25,546.30
HANCOCK	4/1-6/30	\$136,664.75	\$42,124.39	31%	\$94,540.36	\$37,816.14
HOWARD	4/1-6/30	\$333,577.43	\$59,192.68	18%	\$274,384.75	\$109,753.90
JASPER	4/1-6/30	\$71,870.49	\$19,662.68	27%	\$52,207.81	\$20,883.12
JAY	4/1-6/30	\$98,786.58	\$11,942.24	12%	\$86,844.34	\$34,737.74
JENNINGS	4/1-6/30	\$52,999.06	\$11,441.83	22%	\$41,557.23	\$16,622.89
KNOX	4/1-6/30	\$180,637.37	\$43,869.08	24%	\$136,768.29	\$54,707.32
KOSCIUSKO	4/1-6/30	\$128,483.87	\$40,895.87	32%	\$87,588.00	\$35,035.20
LAGRANGE	4/1-6/30	\$36,821.62	\$2,224.95	6%	\$34,596.67	\$13,838.67
LAKE	4/1-6/30	\$714,999.00		0%	\$714,999.00	\$285,999.60
LAPORTE	4/1-6/30	\$147,105.90	\$23,615.66	16%	\$123,490.24	\$49,396.10
LAWRENCE	4/1-6/30	\$119,146.98	\$25,766.59	22%	\$93,380.39	\$37,352.16
MADISON	4/1-6/30	\$455,131.80	\$30,184.58	7%	\$424,947.22	\$169,978.89
MARION	4/1-6/30	\$4,559,065.70	\$813,901.98	18%	\$3,745,163.72	\$1,498,065.49
MARTIN	4/1-6/30	\$13,951.23	\$4,894.74	35%	\$9,056.49	\$3,622.60
MONROE	4/1-6/30	\$367,412.76	\$67,062.47	18%	\$300,350.29	\$120,140.12
MONTGOMERY	4/1-6/30	\$113,675.85	\$47,985.31	42%	\$65,690.54	\$26,276.22
NOBLE	4/1-6/30	\$125,332.92	\$35,973.16	29%	\$89,359.76	\$35,743.90
OHIO	4/1-6/30	\$23,919.72	\$2,403.00	10%	\$21,516.72	\$8,606.69
ORANGE	4/1-6/30	\$63,488.23	\$12,586.84	20%	\$50,901.39	\$20,360.56
PARKE	4/1-6/30	\$33,688.44	\$7,205.29	21%	\$26,483.15	\$10,593.26
PERRY	4/1-6/30	\$68,434.60	\$11,901.67	17%	\$56,532.93	\$22,613.17
PIKE	4/1-6/30	\$51,738.61	\$10,038.83	19%	\$41,699.78	\$16,679.91
PULASKI	4/1-6/30	\$30,601.19	\$13,727.25	45%	\$16,873.94	\$6,749.58
RUSH	4/1-6/30	\$68,672.96	\$20,790.90	30%	\$47,882.06	\$19,152.82
SAINT JOSEPH	4/1-6/30	\$460,519.80	\$62,788.93	14%	\$397,730.87	\$159,092.35
SHELBY	4/1-6/30	\$119,581.91	\$25,831.26	22%	\$93,750.65	\$37,500.26
SPENCER	4/1-6/30	\$35,470.73	\$7,134.61	20%	\$28,336.12	\$11,334.45
STEUBEN	4/1-6/30	\$74,723.15	\$21,289.15	28%	\$53,434.00	\$21,373.60
SULLIVAN	4/1-6/30	\$48,259.91	\$7,783.86	16%	\$40,476.05	\$16,190.42
SWITZERLAND	4/1-6/30	\$57,332.37	\$13,489.97	24%	\$43,842.40	\$17,536.96
TIPPECANOE	4/1-6/30	\$513,058.22	\$150,453.78	29%	\$362,604.44	\$145,041.78
UNION	4/1-6/30	\$20,116.64	\$2,790.90	14%	\$17,325.74	\$6,930.30
VANDERBURGH	4/1-6/30	\$667,996.45	\$109,950.82	16%	\$558,045.63	\$223,218.25
VERMILLION	4/1-6/30	\$30,670.38	\$11,564.24	38%	\$19,106.14	\$7,642.46



VIGO	4/1-6/30	\$419,493.02	\$51,089.62	12%	\$368,403.40	\$147,361.36
WABASH	4/1-6/30	\$56,760.07	\$13,657.63	24%	\$43,102.44	\$17,240.98
WARREN	4/1-6/30	\$7,264.41	\$3,047.70	42%	\$4,216.71	\$1,686.68
WASHINGTON	4/1-6/30	\$81,991.03	\$16,358.89	20%	\$65,632.14	\$26,252.86
<b>TOTAL</b>		<b>\$12,612,100.11</b>	<b>\$2,158,906.74</b>		<b>\$10,453,193.37</b>	<b>\$4,181,277.35</b>

**Approval of Minutes from 3/23/11 and 6/15/11 Meetings:** Chairman Rutherford asked for any changes or additions to the minutes. There being none, Tim Lanane made the motion to approve both sets of minutes, and Peter Nugent seconded the motion. There was no discussion or opposition. The minutes were approved.

**2012 Commission Meeting Dates:** The 2012 proposed meeting dates for the Public Defender Commission are as follows: March 21, 2012, June 20, 2012, September 19, 2012 and December 12, 2012. Chairman Rutherford asked for any discussion on the proposed meeting dates. There being none, Peter Nugent made the motion to approve the proposed meeting dates for 2012, and Dave Hensel seconded the motion. The motion passed unanimously.

**Proposed Changes to Standard J:** The Commission continued the discussion on Marion County Public Defender Agency's ("MCPDC") proposal to change the support staff table in Standard J. It was noted that the Standard is outdated by present technology, which affects the ratio of administrative help to public defense attorneys. Larry Landis reported that he asked Bob Hill, Chief Public Defender in Marion County, to prepare a comprehensive amendment to Standard J that could be presented to all other chief public defenders for their comment and input; Larry noted that he would discuss the proposed changes with public defense attorneys because the changes may have the effect of them handling more cases with no additional salary. At the present time, MCPDC does not report any of its attorneys as "adequately staffed." An adequately staffed designation would raise the maximum allowable case assignments for MCPDC's attorneys. Bob Hill argues in his memorandum that the position of secretary is outdated; that his paralegals are well trained and able to handle the assignments of secretaries/paralegals and paralegals/investigators.

**Capital Cases:** Deborah Neal reported that Steve Owens, Vanderburgh County Chief Public Defender, was designated by Lilia Judson, Executive Director of State Court Administration, as a "salaried capital co-counsel public defender" in the *Weisheit* death penalty case in accordance with Criminal Rule 24. Mr. Owens' compensation as salaried capital co-counsel is his present chief public defender salary. He will not receive the additional \$106 per hour for the time spent on the capital case.

Ms. Neal also reported there are only four open capital cases in the state at this time.

**Adjournment:** The next Commission meeting is scheduled for December 14, 2011. There being no further business to discuss, Tim Lanane moved to adjourn the meeting, and Peter Nugent seconded the motion. The motion passed and the meeting adjourned at 3:00 p.m.

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Mark Rutherford, Chairman

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Date

# Indiana Public Defender Commission Meeting Minutes

December 14, 2011

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were David Hensel, Hon. James R. Ahler, Hon. Mary Ellen Diekhoff and Larry Landis. Sen. Tim Lanane and Rep. Greg Steuerwald joined the meeting by telephone conference call. Also in attendance were staff counsels Deborah Neal and Elana Salzman.

Before quorum was established with a telephone conference call, Chairman Rutherford announced that items not requiring a quorum would be discussed first.

**Staff Counsel Report:** Deborah Neal reported that 90% of the program counties are in compliance with Standard J's caseload restrictions. Mark Rutherford noted that of the remaining 10%, with the exception of Clark County, each county is only marginally out of compliance.

**Clark County:** Clark County Chief Public Defender, Jeff Stonebraker, informs the Commission by letter that the Clark County Council has approved the hiring of an additional attorney. A new attorney began employment on November 1, 2011. Mr. Stonebraker reported that the caseload compliance matter (10 of 11 attorneys were out of compliance in the 2<sup>nd</sup> and 3<sup>rd</sup> quarters of 2011) will begin to show improvement in the 4<sup>th</sup> quarter of 2011. Deborah Neal recommended that Clark County be reimbursed for the 3<sup>rd</sup> quarter 2011.

**Vigo County:** The 2<sup>nd</sup> quarter 2011 request for reimbursement from Vigo County failed to report \$23,000 in additional public defense expenses. This error was found in the audit of the 3<sup>rd</sup> quarter request. The county would have received an additional \$9,200 reimbursement if the error had not occurred. Deborah Neal asks that the Commission approve this \$9,200 payment to Vigo County this quarter.

[Commission has a quorum with the addition of members Lanane and Steuerwald by telephone.]

**Requests for 50% Reimbursement in Capital Cases:** Elana Salzman reported on a request for reimbursement on outstanding expenses in the *Flores* capital case from Lake County. This case ended a year ago with a sentence of life without parole however the claim was timely filed (within the 120 day deadline). She also reported that Steve Owens, lead counsel in the *Weisheit* capital case is now a salaried capital public defender and is not receiving an hourly rate in the case, only his chief public defender salary. A percentage of that salary based on hours worked in *Weisheit* is submitted for 50% reimbursement.

Larry Landis moved to approve payment of capital claims in the amount of \$90,849.69 and Jim Ahler 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 14, 2011		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro	\$20,453.70
Lake	Isom	\$34,267.75
	Flores	\$1,305.00
Vanderburgh	Weisheit	\$34,823.24
<b>TOTAL</b>		<b>\$90,849.69</b>

**Requests for 40% Reimbursement in Non-Capital Cases:** David Hensel moved to approve the claims totaling \$4,284,872.49 which includes the additional \$9,200 to Vigo County due to the error in the 2<sup>nd</sup> quarter 2011. Mary Ellen Diekhoff seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

<b>INDIANA PUBLIC DEFENDER COMMISSION</b>						
Third Quarter 2011 Requests for Reimbursements in Non-Capital Cases						
<b>12/14/2011</b>						
COUNTY	Quarter	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	7/1-9/30	\$78,337.72	\$19,483.41	25%	\$58,854.31	\$23,541.72
ALLEN	7/1-9/30	\$882,609.20	\$105,577.56	12%	\$777,031.64	\$310,812.66
BENTON	7/1-9/30	\$14,828.89	\$3,056.28	21%	\$11,772.61	\$4,709.04
BLACKFORD	7/1-9/30	\$50,588.75	\$22,132.58	44%	\$28,456.17	\$11,382.47
CARROLL	7/1-9/30	\$50,171.28	\$18,617.95	37%	\$31,553.33	\$12,621.33
CLARK	7/1-9/30	\$164,465.98	\$27,182.37	17%	\$137,283.61	\$54,913.44
CRAWFORD	7/1-9/30			0%	\$0.00	\$0.00
DECATUR	7/1-9/30	\$39,869.98	\$12,481.04	31%	\$27,388.94	\$10,955.58
DELAWARE	7/1-9/30	\$284,989.10	\$13,956.81	5%	\$271,032.29	\$108,412.92
FAYETTE	7/1-9/30	\$93,313.64	\$13,186.10	14%	\$80,127.54	\$32,051.02
FLOYD	7/1-9/30	\$195,511.87	\$31,927.83	16%	\$163,584.04	\$65,433.62
FOUNTAIN	7/1-9/30	\$21,867.45	\$5,754.59	26%	\$16,112.86	\$6,445.14
FULTON	7/1-9/30	\$76,584.72	\$21,072.33	28%	\$55,512.39	\$22,204.96
GRANT	7/1-9/30	\$203,394.00	\$7,957.09	4%	\$195,436.91	\$78,174.76
GREENE	7/1-9/30	\$83,421.31	\$13,380.64	16%	\$70,040.67	\$28,016.27
HANCOCK	7/1-9/30	\$140,261.67	\$40,519.22	29%	\$99,742.45	\$39,896.98
HENRY	7/1-9/30			0%	\$0.00	\$0.00
HOWARD	7/1-9/30	\$326,410.87	\$63,994.37	20%	\$262,416.50	\$104,966.60
JASPER	7/1-9/30	\$60,215.03	\$21,807.61	36%	\$38,407.42	\$15,362.97
JAY	7/1-9/30	\$95,513.96	\$19,442.79	20%	\$76,071.17	\$30,428.47
JENNINGS	7/1-9/30	\$52,567.88	\$13,042.93	25%	\$39,524.95	\$15,809.98
KNOX	7/1-9/30	\$184,089.71	\$60,699.85	33%	\$123,389.86	\$49,355.94
KOSCIUSKO	7/1-9/30	\$140,119.09	\$51,378.93	37%	\$88,740.16	\$35,496.06
LAGRANGE	7/1-9/30	\$37,811.74	\$4,201.30	11%	\$33,610.44	\$13,444.18
LAKE	7/1-9/30	\$814,656.75	\$966.38	0%	\$813,690.37	\$325,476.15
LAPORTE	7/1-9/30	\$143,804.43	\$18,183.70	13%	\$125,620.73	\$50,248.29

LAWRENCE	7/1-9/30	\$124,888.25	\$18,259.67	15%	\$106,628.58	\$42,651.43
MADISON	7/1-9/30	\$390,185.63	\$23,567.00	6%	\$366,618.63	\$146,647.45
MARION	7/1-9/30	\$4,481,659.95	\$763,088.47	17%	\$3,718,571.48	\$1,487,428.59
MARTIN	7/1-9/30	\$20,534.63	\$9,657.54	47%	\$10,877.09	\$4,350.84
MIAMI	7/1-9/30			0%	\$0.00	\$0.00
MONROE	7/1-9/30	\$438,152.42	\$76,658.14	17%	\$361,494.28	\$144,597.71
MONTGOMERY	7/1-9/30	\$101,603.18	\$42,106.38	41%	\$59,496.80	\$23,798.72
NEWTON	7/1-9/30			0%	\$0.00	\$0.00
NOBLE	7/1-9/30	\$117,092.10	\$31,054.93	27%	\$86,037.17	\$34,414.87
OHIO	7/1-9/30	\$14,513.89	\$732.00	5%	\$13,781.89	\$5,512.76
ORANGE	7/1-9/30	\$47,618.89	\$4,397.11	9%	\$43,221.78	\$17,288.71
PARKE	7/1-9/30	\$29,081.36	\$6,370.20	22%	\$22,711.16	\$9,084.46
PERRY	7/1-9/30	\$53,973.61	\$6,628.34	12%	\$47,345.27	\$18,938.11
PIKE	7/1-9/30	\$33,152.46	\$8,232.97	25%	\$24,919.49	\$9,967.80
PULASKI	7/1-9/30	\$37,451.34	\$8,068.50	22%	\$29,382.84	\$11,753.14
RUSH	7/1-9/30	\$56,269.55	\$13,239.89	24%	\$43,029.66	\$17,211.86
SAINT JOSEPH	7/1-9/30	\$493,575.42	\$71,122.52	14%	\$422,452.90	\$168,981.16
SCOTT	7/1-9/30			0%	\$0.00	\$0.00
SHELBY	7/1-9/30	\$98,046.47	\$9,240.23	9%	\$88,806.24	\$35,522.50
SPENCER	7/1-9/30	\$16,706.24	\$2,692.52	16%	\$14,013.72	\$5,605.49
STEUBEN	7/1-9/30	\$88,875.01	\$28,080.63	32%	\$60,794.38	\$24,317.75
SULLIVAN	7/1-9/30	\$45,088.66	\$8,861.45	20%	\$36,227.21	\$14,490.88
SWITZERLAND	7/1-9/30	\$53,879.10	\$25,214.72	47%	\$28,664.38	\$11,465.75
TIPPECANOE	7/1-9/30	\$483,359.85	\$137,394.92	28%	\$345,964.93	\$138,385.97
UNION	7/1-9/30	\$22,364.57	\$1,289.87	6%	\$21,074.70	\$8,429.88
VANDEBURGH	7/1-9/30	\$666,102.75	\$103,933.95	16%	\$562,168.80	\$224,867.52
VERMILLION	7/1-9/30	\$33,927.93	\$12,051.70	36%	\$21,876.23	\$8,750.49
VIGO	7/1-9/30	\$446,818.84	\$55,207.99	12%	\$391,610.85	\$156,644.34
VIGO	4/1-6/30					\$9,200.00
WABASH	7/1-9/30	\$56,760.07	\$14,502.34	26%	\$42,257.73	\$16,903.09
WARREN	7/1-9/30	\$16,440.00	\$1,570.00	10%	\$14,870.00	\$5,948.00
WASHINGTON	7/1-9/30	\$91,610.92	\$12,729.25	14%	\$78,881.67	\$31,552.67
WELLS	7/1-9/30			0%	\$0.00	\$0.00
WHITE	7/1-9/30			0%	\$0.00	\$0.00
WHITLEY	7/1-9/30			0%	\$0.00	\$0.00
<b>TOTAL</b>		<b>\$12,795,138.11</b>	<b>\$2,105,956.89</b>		<b>\$10,689,181.22</b>	<b>\$4,284,872.49</b>
<b>NOTES:</b>	Vigo Co.'s 2Q11 Request had a \$23,000 error, which shorted the county \$9,200 in reimbursement.					

**Financial Statement:** Larry Landis asked if there will be any need to prorate reimbursement to the counties this year. Deborah Neal responded there will be no prorating and after payment of these claims the fund will have a balance of \$1.3 million.

**FISCAL REPORT 2011-2012  
INDIANA PUBLIC DEFENDER COMMISSION  
12/14/2011**

2011-2012 Budget: \$20,250,000.00	Appropriations	Expenditures	Balance
<b>July Distribution for FY11-12</b>			
Court Fees - \$3.7 million:			
General Fund - \$6.425 million:	\$10,125,000.00		
Balance of encumbered funds:	\$863,072.37		
Total:			\$10,988,072.37
<b>1st Quarter 2011 Claims pd after 7/1/11</b>			
<b>Non-Capital Claims</b>		\$938,983.12	
<b>Capital Claims</b>		\$38,547.60	
<b>July Payroll and Expenses:</b>		\$6,358.83	
Total July Payments:		\$983,889.55	
Balance:			\$10,004,182.82
<b>2nd Quarter 2011</b>			
<b>Non-Capital Claims - 40%</b>		\$4,181,277.35	
<b>Capital Claims - 50%</b>		\$75,962.16	
<b>Payroll 8/1/11 to 9/14/11</b>		\$12,717.66	
Expenses		\$784.02	
Balance:		\$4,270,741.19	
			\$5,733,441.63
<b>3rd Quarter 2011</b>			
<b>Non-Capital Claims - 40%</b>		\$4,284,872.49	
<b>Capital Claims - 50%</b>		\$90,849.69	
<b>Payroll 9/28/11 to 12/31/11 [est.]</b>		\$22,255.91	
Expenses [est.]		\$750.00	
Total:		\$4,398,728.09	
Balance:			\$1,334,713.54

**Approval of Minutes from 9/21/11 Meeting:** Chairman Rutherford asked for any changes or additions to the minutes. There being none, Larry Landis made the motion to approve the minutes, and David Hensel seconded the motion. There was no discussion or opposition. The minutes were approved.

**Continued Staff Counsel Report:** Deborah Neal reports Brown County has passed a public defense ordinance and is creating a county public defender board. Once the board is formed, a comprehensive plan will be submitted for the Commission’s approval. Covering self-insurance claims is not an issue for Brown County joining the reimbursement program.

Ms. Neal reported on her visit to Lawrence County to attend a Lawrence County Public Defender Board meeting in November and learned that three counties in the area are talking about the possibility of consolidating public defense services under the supervision of one chief public defender. [Davies, Lawrence and Martin] Larry Landis stated that he is working with the Chief Public Defender Lorinda Youngcourt on this possible consolidation. Once all the matters are worked out, the proposal will be presented to the Commission for approval.

Deborah Neal contacted Huntington County and asked if they were proceeding with forming a public defender board. Judge Heffelfinger responded by e-mail stating, “... we slowed down our process to

determine whether it is going to be beneficial to our county to participate. We have spoke with judges in surrounding counties and have got mixed responses. Judge Hakes and I are therefore gathering more statistical information before we move forward. As we all know, public monies are shrinking. In the end, Huntington County will choose that option which balances adequate representation at a reasonable cost.

Elana Salzman reported that at the September 21, 2011 Commission meeting, the question was raised regarding whether self-insured counties should be eligible to come into the program and be reimbursed for insurance costs. It was requested that counsel find out how much counties currently pay in insurance for their public defender employees, in order to determine how much it would cost to bring self-insured counties into the program. Requests were made to each county that reported health benefits to the Commission for reimbursement, and to date we have received the following responses:

**Adams:** 3 public defenders/\$10,187.16 per defender  
**Grant:** \$14,876.04 per defender

Lawrence	Plan	70% contribution	75% contribution	Marion	Cost of Plan	# of Emp.
	single	\$4,648.32	\$4,403.28		\$4,224.72	15
	Emp./child	\$7,855.68	\$7,441.44		\$4,244.64	1
	Emp/spouse	\$8,878.08	\$8,409.96		\$4,448.88	2
	family	\$12,224.64	\$11,580.24		\$4,464.72	52
					\$5,420.40	1
					\$5,494.80	25
Vanderburgh	Cost of Plan	# of Emp			\$5,734.80	13
	\$5,062.08	1			\$7,266.96	5
	\$7,593.12	4			\$7,506.96	20
	\$14,274.72	2			\$9,861.60	2
	\$14,426.52	1			\$10,101.60	6
	\$15,185.88	3			\$10,120.32	2
	\$15,434.64	1			\$10,337.76	1
	\$21,412.32	4			\$10,360.32	11
	\$22,779.00	8			\$12,693.60	8
					\$13,980.96	6
					\$14,220.96	20
					\$16,784.88	3
Vigo	Cost of Plan	# of employees				
single	\$4,053.24	6				
Emp/spouse	\$10,614.00	4				
Family	\$9,770.00	11				

Larry Landis stated that Brown County could still submit requests for reimbursement of health insurance premiums if they can come up with a figure for insurance premiums charged by a health insurance provider that is comparable to what is being paid in other counties.

Tim Lanane asked about the policy of not reimbursing from the public defense fund for county-self-insurance programs. Deborah Neal pointed out the Commission's guideline to that effect, dated 08/29/01, "The Commission will reimburse counties for the cost of insurance premiums (i.e. health and malpractice), but will not reimburse counties for costs associated with self-insurance programs."

**Other Matters:** Judge Ahler stated that he is receiving questions from other judges about a newly proposed rule that would require in each juvenile delinquency case that the child not be allowed to waive right to counsel without counsel present. The judges are worried that appointing counsel for every delinquency case would cause their county to be out of compliance with the Commission's Standards. The Commission discussed possibilities if this rule is adopted. A guideline could be established that these appointments not be counted towards the attorney's caseload unless the attorney continues on the case; or there could be a grace period created for counties going out of compliance due to this issue to give the county time to hire additional attorneys.

**Adjournment:** The next Commission meeting is scheduled for March 21, 2012. There being no further business to discuss, David Hensel moved to adjourn the meeting and Mary Ellen Diekhoff seconded the motion. The motion passed and the meeting adjourned at 3:00 p.m.

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

\_\_\_\_\_  
Date