

Indiana Public Defender Commission Meeting Minutes

March 20, 2013

Chairman Mark Rutherford called the business meeting to order at 2:00 pm. Commission members in attendance were Larry Landis, Dave Hensel, Andrew Roesener, Hon. James Ahler and Sen. Brent Steele. Present by telephone conference call was Hon. Mary Ellen Diekhoff. Also in attendance were staff counsels Deborah Neal and Elana Salzman. Absent were Hon. Diane Ross Boswell, Sen. Greg Taylor, Rep. Greg Steuerwald and Rep. Vernon Smith.

In the event a commission member needs to leave the meeting before adjournment, Chairman Rutherford announced that matters needing a quorum vote would be discussed first.

Approval of Minutes from 12/12/12 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. Andrew Roesener made the motion to approve the minutes as presented and Larry Landis seconded the motion. There was no discussion or opposition. The minutes were approved.

Sponsoring CLE for 50th Anniversary of *Gideon v. Wainwright*: The Indiana Public Defender Council and Supreme Court are presenting a continuing legal education program on May 1, 2013 titled 100 Years of Public Defense in Indiana: *Webb v. Baird* to *Gideon* to the Present. The Commission is invited to be one of the sponsors to this program. David Hensel moved to sponsor the CLE program and Larry Landis seconded the motion. Motion passed unanimously.

Fayette County Amended Comprehensive Plan: An amendment to Fayette County's Comprehensive Plan was presented for approval. Deborah Neal explained that Fayette County's Public Defender Board removed the language in paragraph B(b)(iv) Compensation and reimbursement that set the minimum hourly rate for assigned counsel at \$60 per hour; and substituted the language that "An attorney appointed to provide representation on a case-by-case basis will be paid the minimum rate per hour as promulgated by the Indiana Public Defender Commission, at any given time.." The Fayette County Public Defender Board amended their plan in response to the recent increase in minimum hourly rate to \$70 mandated by the Commission. Andrew Roesener moved to approved Fayette County Public Defender Board's Amended Comprehensive Plan, and David Hensel seconded the motion. Motion passed unanimously.

Supplemental Public Defender Services Fund:

a. LaPorte County Question.

On February 22, 2013, Judge William J. Boklund, LaPorte Superior Court #4 wrote to the LaPorte County Council asking to be put on the March 25, 2013 agenda for an appropriation from the county's Supplemental Public Defender Services Fund of \$50,000 to hire public defense attorneys outside the public defense program to handle Class D felonies and misdemeanor cases for indigent persons. Judge Boklund states in his letter that the county needs to establish some form of supplemental defense program for indigent people after the members of the Public Defender department have reached their allowable caseload limits. He says he has been informed that the LaPorte County Public Defense program is almost at the "breaking point now." Judge Boklund argues that justice requires that he appoint counsel, under I.C. 3-40-7-10(a), because the "Public Defender department has been taken to its limits under its caseload limitation requirements."

Staff Counsel Deborah Neal reminded the Commission that in the past when a county is out of compliance on caseload limits, the Commission requires the county public defender board to create a solution under its' comprehensive plan that may require the county to hire more attorneys. She directed the Commission to the LaPorte County's new case assignment sheet in the meeting materials. This document records the case assignments of public defense attorneys for the past 12 months. Neal stated this report does not indicate that the LaPorte County public defense attorneys are taken to their limits under Standard J's maximum caseload requirements.

Larry Landis pointed out that if the LaPorte County Council allowed the appropriation from the supplemental public defender services fund the public defense expenses generated under that appropriation would not be reimbursable by the Public Defense Fund.

Andy Roesener recommended that the Commission not take a position regarding the LaPorte County Council's appropriation from the supplemental public defender services fund without the Commission first establishing standards and guidelines for the counties' supplemental public defender services funds.

Deborah Neal explained that under state statute 33-40-3-1 each county established a supplemental public defender services fund. The Indiana Public Defender Commission's duty under state statute 33-40-5-4(2)(C) is to adopt guidelines and standards for the use and expenditure of funds in the county supplemental public defender services fund. Ms. Neal said that to date she has not found in past meeting minutes or established Guidelines and Standards where the Public Defender Commission has determined the use and expenditure of funds in county supplemental public defender services funds.

Larry Landis stated that the Commission never created guidelines for these funds; that spending from the fund would require an appropriation from a county council which would provide oversight; and that in the past the fund has been used for public defense expenses such as witness and expert fees, travel, training, depositions and investigators.

Deborah Neal explained that county supplemental public defender services funds receive money from defendants who are ordered by the court to pay all or a portion of the cost of a court appointed attorney. It is not tax dollars in the fund.

Deborah Neal stated that Delaware County is also asking to use their supplemental public defender services fund to pay the additional salary required for the Chief Public Defender to be in compliance with the Standards in 2013.

Dave Hensel said the Commission should establish guidelines for supplemental public defender services funds and then it would be up to each county council to decide if the guidelines are advisory or mandatory when appropriating money from that fund.

Mark Rutherford suggested that counties be able to pay for a public defense attorney from the supplemental public defender services funds to temporarily relieve non-compliance issues.

Geoff Yelton, Managing Public Defender from Madison County, addressed the Commission concerning the supplemental fund in his county. He stated that the judges were diligent at assessing the \$100 fee for a felony charge and \$50 fee for a misdemeanor charge where a public defense attorney has been assigned to the case. From the supplemental fund, the county is paying for two \$25,000 contracts to

attorneys doing children-in-need-of-services and termination-of-parental-rights cases; the county also pays \$1,000 to each public defense attorney as reimbursement for office expenses; and reimburses \$200 per year in continuing legal education expenses.

Deborah Neal asked the Commission members what is to keep county judges from hiring their cronies and paying them from the county's supplemental fund – are we not back where we started when the Commission was formed? David Hensel said one of the disincentives is that the county will not be reimbursed from the Public Defense Fund for any attorney salaries paid from their supplemental fund and eventually the fund will run out of money.

Elana Salzman asked if a county that is in the reimbursement program needs to hire another attorney but does not want to take the money from the general fund, so they appropriate the salary from the supplemental fund, how is that not supplanting or replacing other funding for county appointed legal services? Judge Ahler said that in smaller counties like his (Jasper), when there is a drug bust and several conflict counsels must be appointed to the case, the county is likely to turn to the supplemental fund to pay for these services.

Larry Landis said he thinks spending from a supplemental fund is a local political issue; that the Commission cannot be saying to a council or judge that we do not believe a particular expenditure from that supplemental fund is a wise thing to do.

Deborah Neal asked if the portion of Jack Quirk's salary that the Delaware County Council is asking to be paid from their supplement fund is reimbursable. Larry Landis said it should be allowed because it is going to be used to see that the county comes into compliance with the chief public defender's salary.

Dave Hensel said it is important for the Commission to publish guidelines for use of supplemental public defender services funds to make sure of the incentives we want to create for the counties, anticipate those situations where a county is trying to go around our Standards, and determine what expenses are reimbursable.

Judge Diekhoff said she agrees that there needs to be some tracking and controlling of supplemental public defender services funds, and when there is an emergency for public defense services outside the program a county should be allowed to pay the expenses from that fund. However, she said that Deborah Neal reports that there is no emergency in LaPorte County at this time.

Deborah Neal said that Judge Boklund is not asking her if there is a need in LaPorte County to hire another attorney, he is asking if the council does allow him to hire an attorney paid through the supplemental public defender services fund would the reimbursement program for LaPorte County be in jeopardy.

Brent Steele said the Commission does not have an obligation to answer the question of whether Judge Boklund's request is allowable until we see a need. He moved to authorize the writing of a letter stating that from our cursory look at the numbers, it does not appear that there would be any need for additional public defense attorneys; and that the Commission would appreciate the opportunity to meet with the LaPorte County Public Defender Board to see if there is a justification for the request that additional counsel is required. Dave Hensel seconded the motion. Motion passed unanimously.

b. Guidelines.

Dave Hensel made a motion that staff counsel draft guidelines and standards for uses and expenditures of county supplemental public defender services funds as established under state statute 33-40-3. Larry Landis seconded the motion. Motion passed unanimously. Dave Hensel was appointed by Chairman Rutherford to assist staff counsel in drafting the guidelines and standards for supplemental public defender services funds.

Response to Proposed Changes to Standards G and J Regarding Compensation and Benefits for Public Defense Attorneys Equaling Compensation and Benefits for Prosecutors.

Deborah Neal directed the Commission members to the letters in their packets which are county responses to proposed changes to Standards G and J. Additional responses were presented at the meeting.

Chairman Rutherford asked for a summation of the responses. Deborah Neal stated that most chief public defenders and public defense attorneys are in favor of the proposed changes however county councils are concerned about the additional costs.

Larry Landis stated that resistance to the proposal was expected and he suggests giving counties a grace period in which to comply with these changes and the opportunity to present their plan for coming into compliance. He also suggests the effective date to be January 1, 2015 which would give counties time to incorporate the changes in their budgets.

Geoff Yelton, Managing Public Defender from Madison County, presented in person a response from Madison County concerning the additional cost to Madison County if the Standards are amended. Mr. Yelton reported that county paid prosecutors are paid \$60,000 from the county general fund and then receive additional compensation from grants, Title IV D money and the prosecutor's diversion program. His county council is asking why it should pay public defense attorneys from the general fund salaries equal to deputy prosecutors' supplemented salaries. Geoff Yelton said that the Madison County Council would scrap the reimbursement program rather than incur additional expenses for public defense.

Chairman Rutherford asked the Commission members if there is a need to hear from more program counties before making a decision on these amendments to Standard G and J.

Andrew Roesener said it seems as though there is support for salary and benefit parity between the chief public defenders and elected prosecutors; and that there is support for developing an "average" salary schedule for county-paid prosecutors that can be used in counties that do not have county-paid prosecutors to set public defense salaries for positions other than chief and deputy chief public defender.

Chairman Rutherford asked staff counsel to work with Commission members to develop a salary schedule for county-paid prosecutors and get information concerning the proposed changes from more counties. Larry Landis made the motion to that effect and Brent Steele seconded the motion. Motion passed unanimously. Chairman Rutherford explained that this is an information gathering motion and that a final decision on the changes to Standard G and J can be made at the June meeting.

Staff Reports: Elana Salzman reported on drafting a guideline that prevents chief public defenders from being assigned as counsel in death penalty cases. On February 14, 2013, she presented a draft guideline to the Supreme Court Justices asking their opinion on the proposed change, and asked them if

an amendment to Criminal Rule 24 to prevent chief public defenders from being assigned as capital counsel would be more appropriate. The Justices asked if county judges were having difficulty finding qualified capital public defenders; and are county councils pressuring capital qualified chief public defenders to take these cases as a cost-saving measure. She told them that there is no hard data to support either scenario. The Justices said they would take the matter under advisement. Larry Landis reported that the members of the Indiana Public Defender Council voted to absolutely never allow capital qualified chief public defenders to accept appointment to capital cases.

Elana Salzman reported that she has received certification from J. Pat Biggs that his duties as chief public defender and his indigent defense caseload will not interfere with his representation in the *Gibson* case.

Compliance Report: Deborah Neal reported that 94% of the counties are in compliance with caseload standards.

Staff Report: Deborah Neal reported on her visit to Rush County to assist with the preparation of the quarterly report. Bryan Barrett is out of compliance at FTE 1.236, however we ran his case numbers for the first quarter of 2013, and his FTE was only 0.964.

Ms. Neal reported that Robert Hill, Chief Public Defender of Marion County, offered to create a qualification standard and maximum caseload numbers for children-in-need-of-services (“CHINS”) and termination-of-parental-rights (“TPR”) cases. This is in anticipation of the Commission receiving an additional \$2 million from the General Assembly and allowing reimbursement on CHINS and TPR cases in eligible counties. At the present time, there are no written qualifications for attorneys accepting CHINS and TPR cases. Robert Hill noted that CHINS and TPR cases do not need to be weighted at the same value as major felony cases on the New Case Assignment Sheet. Mr. Hill said that his agency has time studies on CHINS and TPR cases.

Ray Casanova, supervisor at Marion County Public Defender Agency, reported that the three-year time study on CHINS/TPR cases perform by their agency indicates that it takes six to eight hours per case; with a full-time/inadequately staffed caseload maximum of 100 cases, at most 800 hours per year are spent on a CHINS/TPR caseload. If you figure 2,000 work hours per year, the maximum number of CHINS/TPR cases could be increased. At 150 cases, 1,200 hours per year would be spent on a full-time/inadequately staffed CHINS/TPR caseload.

Deborah Neal suggests that the Commission consider setting continuing legal education requirements for attorneys wanting to be assigned to CHINS/TPR cases.

Chairman Rutherford asks that staff prepare a proposal for attorney qualifications and caseload standards on CHINS/TPR cases for the June meeting. Larry Landis suggested polling smaller counties to find the average number of hours spent on CHINS/TPR cases. He noted that Marion County Public Defender Agency has a much larger staff that can more efficiently handle these cases compared to smaller counties. Geoff Yelton stated that Madison County can also provide figures for hours spent on CHINS/TPR cases. Larry Landis suggested contacting St. Joseph County for timesheets on cases assigned to their public defenders.

Financial Status of Public Defense Fund: Larry Landis reported that at present the state budget for fiscal years 2013 to 2015 contains an additional \$2 million for the Public Defense Fund. It is anticipated that this extra money will be used to reimburse counties for their CHINS/TPR defense costs. Mr. Landis said not all counties will be able to request reimbursement on CHINS/TPR cases immediately, but will need time to phase into compliance. It should be considered in June whether to allow counties to opt-in or opt-out of reimbursement on CHINS/TPR cases.

The financial status of the Public Defense Fund is as follows:

FISCAL REPORT 2012-2013				
INDIANA PUBLIC DEFENDER COMMISSION				
3/20/2013				
2012-2013 Budget: \$20,250,000.00	Appropriations	Expenditures	Encumbered	Balance
6/30/12 Fund Balance Encumbered			\$7,127,359.46	\$ 7,127,359.46
Outstanding unpaid claims \$4,272,892.75				
June Claims pd from purchase orders		\$ 4,216,518.27		
Balance encumbered				\$ 2,910,841.19
July Distribution for FY12-13				
Court Fees - \$7.4 million:				
General Fund - \$12.850 million:	\$ 20,250,000.00			
Balance of App. + encumbered amt.				\$23,160,841.19
June Capital/Non-capital paid without PO		\$ 56,374.48		
Balance:		\$ 56,374.48		\$23,104,466.71
2nd Quarter 2012				
Non-Capital Claims - 40%		\$ 4,328,206.57		
Capital Claims - 50%		\$ 47,392.50		
Payroll for July/August/September Expenses		\$ 55,273.55		
		\$ 620.77		
Balance:		\$ 4,431,493.39		\$18,672,973.32
Payroll for October/November Expenses for October/November		\$ 18,065.43		
		\$ 1,306.32		
Balance:		\$ 19,371.75		\$18,653,601.57
3rd Quarter 2012				
Non-Capital Claims - 40%		\$ 4,271,820.39		
Capital Claims - 50%		\$ 66,595.19		
Balance:		\$ 4,338,415.58		\$14,315,185.99
Payroll for December Expenses for December		\$ 13,512.30		
		\$ 347.79		
Balance:		\$ 13,860.09		\$14,301,325.90
4th Quarter 2012				
Non-Capital Claims - 40%		\$ 4,463,435.31		
Capital Claims - 50%		\$ 58,967.38		
Balance:		\$ 4,522,402.69		\$ 9,778,923.21
Payroll for January/February Expenses for January/February		\$ 35,098.67		
		\$ 1,956.70		
Balance:		\$ 37,055.37		\$ 9,741,867.84

Request for 50% Reimbursement in Capital Cases: Elana Salzman explained that the Floyd County reimbursement request for the *Gibson* capital case was presented beyond the 120-day time limit. She is asking the Commission for approval to pay this request. Andrew Roesener moved to approve payment of Floyd County's capital claims and James Ahler seconded the motion. Motion passed unanimously. David Hensel moved to approve the capital claims in the amount of \$58,967.38. Larry Landis seconded the motion. Motion passed unanimously.

Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
March 20, 2013		
COUNTY	DEFENDANT	TOTAL
Floyd	Gibson 919	\$2,842.39
Floyd	Gibson 1145	\$2,842.39
Fulton	Bell 1 thru 10	\$22,757.62
Lake	Isom	\$17,672.12
Vanderburgh	Weisheit	\$12,852.86
TOTAL		\$58,967.38

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. Staff Attorney Deborah Neal explained the additional \$1,149.26 requested for Floyd County is to cure an error in the third quarter reimbursement for the county. David Hensel moved to approve the claims totaling \$4,463,435.31 which includes the additional payment of \$1,149.26 for Floyd County. Larry Landis seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Fourth Quarter 2012 Requests for Reimbursements in Non-Capital Cases						
3/20/2013						
COUNTY	2012 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	% adjstd	Eligible Expenditure	40% Reimbursed
ADAMS	10/1-12/31	\$80,573.47	\$20,115.06	25%	\$60,458.41	\$24,183.36
ALLEN	10/1-12/31	\$828,777.62	\$98,973.33	12%	\$729,804.29	\$291,921.72
BENTON	10/1-12/31	\$20,807.41	\$6,242.22	30%	\$14,565.19	\$5,826.08
BLACKFORD	10/1-12/31	\$60,896.70	\$11,549.37	19%	\$49,347.33	\$19,738.93
BROWN	10/1-12/31	\$47,835.62	\$11,820.37	25%	\$36,015.25	\$14,406.10
CARROLL	10/1-12/31	\$58,973.39	\$16,467.35	28%	\$42,506.04	\$17,002.42
CLARK	10/1-12/31	\$170,453.65	\$26,183.69	15%	\$144,269.96	\$57,707.98
DECATUR	10/1-12/31	\$43,000.17	\$14,469.25	34%	\$28,530.92	\$11,412.37
DELAWARE	10/1-12/31	\$300,832.01	\$15,748.25	5%	\$285,083.76	\$114,033.50
FAYETTE	10/1-12/31	\$65,465.30	\$11,374.09	17%	\$54,091.21	\$21,636.48
FLOYD	10/1-12/31	\$299,607.31	\$22,224.62	7%	\$277,382.69	\$112,102.34
FOUNTAIN	10/1-12/31	\$35,140.45	\$8,529.24	24%	\$26,611.21	\$10,644.48
FULTON	10/1-12/31	\$78,546.18	\$28,328.13	36%	\$50,218.05	\$20,087.22
GRANT	10/1-12/31	\$183,801.00	\$5,312.17	3%	\$178,488.83	\$71,395.53

GREENE	10/1-12/31	\$108,888.57	\$13,650.00	13%	\$95,238.57	\$38,095.43
HANCOCK	10/1-12/31	\$126,133.82	\$47,875.09	38%	\$78,258.73	\$31,303.49
HOWARD	10/1-12/31	\$373,037.53	\$51,703.79	14%	\$321,333.74	\$128,533.50
JASPER	10/1-12/31	\$95,980.06	\$27,493.79	29%	\$68,486.27	\$27,394.51
JAY	10/1-12/31	\$85,815.33	\$19,366.59	23%	\$66,448.74	\$26,579.50
JENNINGS	10/1-12/31	\$82,648.57	\$11,867.64	14%	\$70,780.93	\$28,312.37
KNOX	10/1-12/31	\$153,399.30	\$47,432.68	31%	\$105,966.62	\$42,386.65
KOSCIUSKO	10/1-12/31	\$116,537.01	\$32,704.06	28%	\$83,832.95	\$33,533.18
LAGRANGE	10/1-12/31	\$51,083.68	\$4,252.79	8%	\$46,830.89	\$18,732.36
LAKE	10/1-12/31	\$893,008.86	\$3,502.00	0%	\$889,506.86	\$355,802.74
LAPORTE	10/1-12/31	\$151,480.36	\$23,429.80	15%	\$128,050.56	\$51,220.22
LAWRENCE	10/1-12/31	\$156,132.80	\$17,706.88	11%	\$138,425.92	\$55,370.37
MADISON	10/1-12/31	\$405,682.95	\$25,273.88	6%	\$380,409.07	\$152,163.63
MARION	10/1-12/31	\$4,252,133.03	\$704,070.54	17%	\$3,548,062.49	\$1,419,225.00
MARTIN	10/1-12/31	\$45,559.45	\$8,219.94	18%	\$37,339.51	\$14,935.80
MONROE	10/1-12/31	\$476,369.26	\$79,955.97	17%	\$396,413.29	\$158,565.32
MONTGOMERY	10/1-12/31	\$101,718.49	\$43,101.06	42%	\$58,617.43	\$23,446.97
NOBLE	10/1-12/31	\$140,711.09	\$29,653.68	21%	\$111,057.41	\$44,422.96
OHIO	10/1-12/31	\$20,825.89	\$1,522.40	7%	\$19,303.49	\$7,721.40
ORANGE	10/1-12/31	\$48,373.70	\$8,536.54	18%	\$39,837.16	\$15,934.86
PARKE	10/1-12/31	\$37,347.57	\$8,543.56	23%	\$28,804.01	\$11,521.60
PERRY	10/1-12/31	\$41,802.19	\$8,975.93	21%	\$32,826.26	\$13,130.50
PIKE	10/1-12/31	\$68,938.24	\$21,702.78	31%	\$47,235.46	\$18,894.18
PULASKI	10/1-12/31	\$26,634.60	\$12,074.75	45%	\$14,559.85	\$5,823.94
RUSH	10/1-12/31	\$62,927.03	\$15,731.76	25%	\$47,195.27	\$18,878.11
SAINT JOSEPH	10/1-12/31	\$515,721.79	\$80,868.41	16%	\$434,853.38	\$173,941.35
SHELBY	10/1-12/31	\$111,113.13	\$14,660.86	13%	\$96,452.27	\$38,580.91
SPENCER	10/1-12/31	\$57,686.21	\$6,036.32	10%	\$51,649.89	\$20,659.96
STEUBEN	10/1-12/31	\$92,998.33	\$29,399.47	32%	\$63,598.86	\$25,439.54
SULLIVAN	10/1-12/31	\$34,340.18	\$5,042.96	15%	\$29,297.22	\$11,718.89
SWITZERLAND	10/1-12/31	\$72,656.18	\$16,310.57	22%	\$56,345.61	\$22,538.24
TIPPECANOE	10/1-12/31	\$572,708.37	\$125,593.94	22%	\$447,114.43	\$178,845.77
UNION	10/1-12/31	\$26,127.86	\$3,958.77	15%	\$22,169.09	\$8,867.64
VANDEBURGH	10/1-12/31	\$743,475.89	\$124,575.36	17%	\$618,900.53	\$247,560.21
VERMILLION	10/1-12/31	\$35,322.36	\$11,747.09	33%	\$23,575.27	\$9,430.11
VIGO	10/1-12/31	\$400,895.21	\$50,062.33	12%	\$350,832.88	\$140,333.15
WABASH	10/1-12/31	\$66,715.30	\$17,740.77	27%	\$48,974.53	\$19,589.81
WARREN	10/1-12/31	\$12,853.50	\$6,556.50	51%	\$6,297.00	\$2,518.80
WASHINGTON	10/1-12/31	\$91,408.22	\$17,948.69	20%	\$73,459.53	\$29,383.81
TOTAL		\$13,231,902.19	\$2,076,187.08		\$11,155,715.11	\$4,463,435.31
NOTES:	Floyd Co. claim includes \$1,149.26 due from 3Q12 Request.					

Adjournment: The next Commission meeting is scheduled for June 19, 2013. There being no further business to discuss, David Hensel moved to adjourn the meeting and Andrew Roesener seconded the motion. The motion passed and the meeting adjourned at 4:15 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

June 19, 2013

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were Larry Landis, Dave Hensel, Hon. James Ahler, Hon. Mary Ellen Diekhoff and Sen. Greg Taylor. Present by telephone conference call was Hon. Diane Ross Boswell. Also in attendance were counsels Deborah Neal and Elana Salzman. Absent were Andrew Roesener, Sen. Brent Steele, Rep. Greg Steuerwald and Rep. Vernon Smith.

Visitors to the meeting include Chief Public Defenders Jim Abbs, Noble County, Geoff Yelton, Madison County, and Lorinda Youngcourt, Lawrence County; also present from Marion County, Ann Sutton and Ray Casanova. In the event a commission member needs to leave the meeting before adjournment, Chairman Rutherford announced that matters needing a quorum vote would be discussed first.

Request for 50% Reimbursement in Capital Cases: Elana Salzman explained the large bill on *Isom* is for the trial and sentencing and a bill for the beginning of the appeal. Greg Taylor moved to approve the capital claims in the amount of \$208,503.71. Larry Landis seconded the motion. Motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
June 19, 2013		
COUNTY	DEFENDANT	TOTAL
Floyd	Gibson 919	\$10,994.53
Floyd	Gibson 1145	\$18,517.70
Fulton	Bell 1 thru 11	\$25,364.27
Lake	Isom	\$127,938.95
Vanderburgh	Weisheit	\$25,688.26
TOTAL		\$208,503.71

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. Commission counsel, Deborah Neal, reported that LaGrange County was out of compliance; that they had received notice that their reimbursement was in jeopardy; and had submitted a plan to come into compliance in the next two quarters. Ms. Neal recommended that their request for reimbursement be paid this quarter. Mary Ellen Diekhoff moved to approve the claims, including LaGrange County, totaling \$4,483,356.04. Diane Ross Boswell seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
First Quarter 2013 Requests for Reimbursements in Non-Capital Cases						
6/19/2013						
COUNTY	2013 Qtr	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	1/1-3/31	\$75,809.78	\$13,411.38	18%	\$62,398.40	\$24,959.36
ALLEN	1/1-3/31	\$826,598.78	\$112,575.85	14%	\$714,022.93	\$285,609.17
BENTON	1/1-3/31	\$8,023.21	\$3,111.04	39%	\$4,912.17	\$1,964.87

BLACKFORD	1/1-3/31	\$47,661.14	\$8,340.20	17%	\$39,320.94	\$15,728.38
BROWN	1/1-3/31	\$21,410.05	\$7,673.50	36%	\$13,736.55	\$5,494.62
CARROLL	1/1-3/31	\$67,164.15	\$29,970.64	45%	\$37,193.51	\$14,877.40
CLARK	1/1-3/31	\$173,034.54	\$18,749.97	11%	\$154,284.57	\$61,713.83
DECATUR	1/1-3/31	\$46,137.42	\$9,300.43	20%	\$36,836.99	\$14,734.80
DELAWARE	1/1-3/31	\$320,755.03	\$13,112.63	4%	\$307,642.40	\$123,056.96
FAYETTE	1/1-3/31	\$65,814.52	\$10,672.62	16%	\$55,141.90	\$22,056.76
FLOYD	1/1-3/31	\$194,999.24	\$28,964.29	15%	\$166,034.95	\$66,413.98
FOUNTAIN	1/1-3/31	\$20,402.44	\$4,781.52	23%	\$15,620.92	\$6,248.37
FULTON	1/1-3/31	\$59,247.03	\$17,930.02	30%	\$41,317.01	\$16,526.80
GRANT	1/1-3/31	\$228,826.00	\$2,934.00	1%	\$225,892.00	\$90,356.80
GREENE	1/1-3/31	\$74,177.18	\$12,161.52	16%	\$62,015.66	\$24,806.26
HANCOCK	1/1-3/31	\$101,033.40	\$23,766.20	24%	\$77,267.20	\$30,906.88
HOWARD	1/1-3/31	\$353,564.13	\$64,688.68	18%	\$288,875.45	\$115,550.18
JASPER	1/1-3/31	\$68,210.37	\$20,935.17	31%	\$47,275.20	\$18,910.08
JAY	1/1-3/31	\$72,650.48	\$16,599.88	23%	\$56,050.60	\$22,420.24
JENNINGS	1/1-3/31	\$35,272.58	\$9,764.85	28%	\$25,507.73	\$10,203.09
KNOX	1/1-3/31	\$206,936.04	\$43,240.37	21%	\$163,695.67	\$65,478.27
KOSCIUSKO	1/1-3/31	\$136,832.87	\$38,769.31	28%	\$98,063.56	\$39,225.42
LAGRANGE	1/1-3/31	\$25,270.00	\$1,684.20	7%	\$23,585.80	\$9,434.32
LAKE	1/1-3/31	\$798,581.26	\$1,027.78	0%	\$797,553.48	\$319,021.39
LAPORTE	1/1-3/31	\$149,220.16	\$17,996.71	12%	\$131,223.45	\$52,489.38
LAWRENCE	1/1-3/31	\$130,101.93	\$15,929.35	12%	\$114,172.58	\$45,669.03
MADISON	1/1-3/31	\$409,136.16	\$31,661.73	8%	\$377,474.43	\$150,989.77
MARION	1/1-3/31	\$4,739,412.12	\$737,579.07	16%	\$4,001,833.05	\$1,600,733.22
MARTIN	1/1-3/31	\$44,494.09	\$18,496.94	42%	\$25,997.15	\$10,398.86
MONROE	1/1-3/31	\$416,930.74	\$66,723.04	16%	\$350,207.70	\$140,083.08
MONTGOMERY	1/1-3/31	\$84,009.92	\$29,280.33	35%	\$54,729.59	\$21,891.84
NOBLE	1/1-3/31	\$123,180.19	\$35,955.80	29%	\$87,224.39	\$34,889.76
OHIO	1/1-3/31	\$18,695.58	\$2,042.75	11%	\$16,652.83	\$6,661.13
ORANGE	1/1-3/31	\$60,591.45	\$8,813.30	15%	\$51,778.15	\$20,711.26
PARKE	1/1-3/31	\$48,325.85	\$13,051.00	27%	\$35,274.85	\$14,109.94
PERRY	1/1-3/31	\$64,210.34	\$11,706.86	18%	\$52,503.48	\$21,001.39
PIKE	1/1-3/31	\$65,868.70	\$18,968.26	29%	\$46,900.44	\$18,760.18
PULASKI	1/1-3/31	\$35,198.01	\$8,935.00	25%	\$26,263.01	\$10,505.20
RUSH	1/1-3/31	\$72,329.50	\$10,873.06	15%	\$61,456.44	\$24,582.58
SAINT JOSEPH	1/1-3/31	\$513,245.97	\$77,678.75	15%	\$435,567.22	\$174,226.89
SHELBY	1/1-3/31	\$114,929.38	\$13,890.08	12%	\$101,039.30	\$40,415.72
SPENCER	1/1-3/31	\$61,763.00	\$17,856.00	29%	\$43,907.00	\$17,562.80
STEUBEN	1/1-3/31	\$83,905.47	\$22,701.92	27%	\$61,203.55	\$24,481.42
SULLIVAN	1/1-3/31	\$34,340.18	\$3,639.03	11%	\$30,701.15	\$12,280.46
SWITZERLAND	1/1-3/31	\$49,657.05	\$17,025.27	34%	\$32,631.78	\$13,052.71
TIPPECANOE	1/1-3/31	\$541,812.72	\$151,454.08	28%	\$390,358.64	\$156,143.46
UNION	1/1-3/31	\$17,010.75	\$5,003.16	29%	\$12,007.59	\$4,803.04
VANDERBURGH	1/1-3/31	\$639,720.39	\$106,500.69	17%	\$533,219.70	\$213,287.88
VERMILLION	1/1-3/31	\$40,909.19	\$12,047.82	29%	\$28,861.37	\$11,544.55
VIGO	1/1-3/31	\$502,221.14	\$68,648.60	14%	\$433,572.54	\$173,429.02
WABASH	1/1-3/31	\$64,301.82	\$19,349.78	30%	\$44,952.04	\$17,980.82
WARREN	1/1-3/31	\$4,237.54	\$1,393.00	33%	\$2,844.54	\$1,137.82
WASHINGTON	1/1-3/31	\$127,515.57	\$17,929.01	14%	\$109,586.56	\$43,834.62
TOTAL		\$13,285,686.55	\$2,077,296.44		\$11,208,390.11	\$4,483,356.04

Approval of Minutes from 03/20/13 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. David Hensel made the motion to approve the minutes as presented and Larry Landis seconded the motion. The minutes were approved.

Supplemental Public Defender Services Fund Guidelines: Commission counsel, Elana Salzman, and Commissioner David Hensel proposed a guideline for use of county supplemental public defender services funds. The proposal is as follows:

This guideline is intended to establish use of the Supplemental Public Defender Services Fund under IC 33-40-3 *et seq.* Under IC 33-40-3-3, the supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services.

The fund may not be used for any ongoing public defender salaries or benefits, or to pay the hourly or contract rates of attorneys providing ongoing public defender services in any class of criminal case, juvenile delinquency case, or juvenile dependency case. It is intended to be used for one-time or temporary expenses required to provide quality defense in case-specific situations.

The fund may be used for any of the following:

1. The cost of hiring one-time or temporary public defenders in case-specific circumstances, such as the hiring of conflict counsel on a case with multiple defendants. Claims made under this section must specify the particular circumstances that warrant the hiring of additional counsel.
2. Non-attorney costs of providing quality public defense on a case-specific basis. These would include but not be limited to investigative costs, expert consultant fees, witness fees, hiring of social work staff, costs of defense requested depositions and transcripts, and mileage reimbursements.
3. One-time or temporary administrative expenses or building expenses.
4. Professional development of attorneys and staff.

Claims to the supplemental public defense fund are reimbursable by the Public Defender Commission. Claims to this fund are to be filed by the chief or managing public defender or the county public defender board. In counties not required to have a public defender board, claims are to be filed by the presiding judge.

Discussion followed. David Hensel read Indiana Code 33-40-3-3, and stated his interpretation is that the Commission may establish guidelines for use of a supplemental public defender services fund, however, he does not believe the Commission has the authority to tell a county that it may not take money from this fund to pay for a full-time lawyer. Elana Salzman argued that a county should not be allowed to have separate public defense systems; that the entire reimbursement of that county program should be in jeopardy if a county hires counsel outside the established public defense program. Larry Landis said the statute deals with eligibility to receive reimbursement from the Public Defense Fund; that the Commission cannot sanction county spending of this fund. Greg Taylor stated that the purpose of the standards and guidelines is to set boundaries for how the money can be spent. Dave Hensel stated that if a county hires attorneys outside of the county public defense program, then the Commission should say that the county will not be reimbursed for those expenses. Diane Ross Boswell asked “what are the long-time consequences of that if everybody is allowed to hire an attorney and slip him over into this fund (supplemental fund) do they have to abide by the salary standards or can they pay them anything they want? How many counties are we going to let do that?” Larry Landis argued that the hiring of this attorney from the fund would still require compliance with all the standards and guidelines and if there is a failure to do so, then reimbursement on this expenditure is withheld.

Elana Salzman presented the question about the intent of 33-40-5-4 which lists the duties of the Commission under which the counties will be eligible for reimbursement. She asked if what is being said is that the Commission will withhold a county's request for reimbursement if they fail to be in compliance with the standards and guidelines governing (A) eligibility to be appointed defense counsel, (D) qualification of attorneys, (E) compensation rates, (F) maximum caseloads, but not for (C) hiring a full-time public defense attorney and paying that attorney solely from the supplemental fund? David Hensel said yes because it is a fund that we don't control like our fund that we pay 50% or 40% and can hold the money if a county does not comply. He referred to statute 33-40-3-2 and quoted "the fiscal body of the county shall appropriate money from the fund to supplement and provide court appointed legal services," and 33-40-3-3 provides the rule we are trying to follow, if you do that you shouldn't replace other funds.

Larry Landis said he understood the question of why we are setting a different consequence for not complying. He stated the Legislature has given the county autonomy to spend the money however they want. We are just making a policy statement that violation of this guideline does not forfeit total compensation.

Deborah Neal asked for clarification based on the situation in LaPorte County where a judge was asking if the county public defense reimbursement program would be in jeopardy if he hired a full-time public defense attorney for his court and paid that person from the supplemental public defense services fund, the Commission is now saying that LaPorte's public defense program would not have been out of compliance, that the judge could have hired his own attorney from the supplemental fund, and reimbursement would only be in jeopardy if that attorney exceeded the caseload maximums or any other Standard set by the Commission. Diane Boswell stated that is not a good precedent to set, and that it will backfire on the Commission. She said that counties will try to shift as much money to that fund as possible. Larry Landis said that spending from that fund for unauthorized expenses is conversion, in his opinion that would be supplanting what should be a county expenditure from the public defense fund; that it should be a onetime expenditure; that in the next budget cycle that person needs to be paid from the public defense program. David Hensel said he agrees that it would be a use by the county that is in violation of section 33-40-3-3 of the supplemental fund statute, but that the Commission does not have the authority to enforce. Diane Boswell asked for clarification on the county being penalized only for that particular employee and not jeopardizing their entire participation in the program. David Hensel said he believes if the county does not violate any other standards or guidelines their program is not in jeopardy.

James Ahler asked the Commission to consider how to handle a county hiring a public defender that handles only misdemeanor cases and paid that person out of the supplemental fund. Mary Ellen Diekhoff stated that adherence to guidelines for a supplemental public defender services fund use should be subject to compliance. It is not separate from the other requirements of eligibility for reimbursement.

Commissioners were unable to agree on the amount of authority the Public Defender Commission has to tell counties how to spend the money in the supplemental public defender services fund. It was decided that Counsel Elana Salzman and Commissioner David Hensel would create a new draft guideline for spending money in a county supplemental public defender services fund based upon the discussions today and present it at the next meeting.

Proposed Changes to Standards G Regarding Compensation and Benefits for Public Defense Attorneys Equaling Compensation and Benefits for Prosecutors: Commissioner Larry Landis presented proposed changes to Standard G which affect full-time salaried public defenders only, as follows:

STANDARD G.

COMPENSATION OF SALARIED OR CONTRACTUAL PUBLIC DEFENDERS.

The comprehensive plan shall provide that the salaries and compensation of full-time salaried and contractual public defenders shall be substantially comparable to the same as the salaries and compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney. The compensation of contractual public defenders shall be substantially comparable to the compensation provided to deputy prosecutors in similar positions with similar experience in the office of the Prosecuting Attorney. Compensation shall include, but is not limited to, reimbursement for reasonable office expenses and other reasonable, incidental expenses, e.g., photocopying, long distance telephone calls, postage, and travel. In counties that have established a county public defender office, the salaries and compensation provided to the chief public defender and deputy chief public defender shall be the same as provided to the elected prosecutor and the chief deputy prosecutor in the county under IC 33-39-6-5. Effective 1/1/14.

Larry Landis said that equal pay for contract counsel needs to be investigated further because it is difficult to determine what would be a county prosecutor's pay that would be used for comparison. Most contract counsel are part-time with office overhead, and there is no comparison in a Prosecutor's office. He said that his office would investigate the salary of county paid deputy prosecutors; that it will be time consuming because there is no data base at this time for those figures. Mr. Landis stated that he would investigate and prepare a salary schedule. Larry Landis also proposed eliminating the following guidelines:

- 06/08/95 ~~As it pertains to the Chief Public Defender's salary, the Commission defines "substantially comparable" as not less than 90% of the Prosecutor's compensation.~~
- 07/14/98 ~~For counties where there is no position in the prosecutor's office corresponding with a position in the public defenders' office a full time public defender must be paid not less than \$40,100 and a part time public defender, not less than \$20,050.~~

Deborah Neal stated that some counties were reporting public defense attorneys who were contracted for \$40,100 or more on full-time new case assignment sheets due to this guideline. She asked that if the Commission feels that the figures of \$40,100 and \$20,050 were too low, that new amounts be proposed to replace those figures. Larry Landis suggested that the 7/14/98 guideline remain as is until a salary schedule is prepared. He also recommends that the changes to Standard G not be effective until January 1, 2014 to allow counties time to adopt budgets that include the changes.

Deborah Neal asked if the \$5,000 that counties pay to the state-paid prosecutors be included in the amount considered equal. Diane Boswell said that just the state-paid salary should be considered. Larry Landis said that it should be the state-paid amount plus the county supplemental to make it equal. Diane Boswell said not all counties pay that supplemental amount to prosecutors. Larry Landis said that if the prosecutor does not get it, then the public defender does not get it. Mark Rutherford said that the intent

of the amendment is that chief public defenders get whatever the state-paid prosecutor gets. Larry Landis said it covers full-time public defenders; that they should be making the same as the full-time prosecutor with the same experience doing the same type of cases. Larry Landis proposes that in order to be considered full-time, the attorney must work as a public defender full-time, and that a full-time chief public defender not have a private practice.

Larry Landis moved to approve the amendment to Standard G, as proposed, and the elimination of the guideline created on 6/8/95 (“As it pertains to the Chief Public Defender’s salary, the Commission defines “substantially comparable” as not less than 90% of the Prosecutor’s compensation.”). He further stated as part of the motion that the 7/14/98 guideline pertaining to minimum salaries shall remain in place. Deborah Neal asked if there is also going to be a guideline stating that a full-time public defender is not considered full-time if they have a private practice. Larry Landis recommended waiting on the issue of private practice until the Commission can define that with more flexibility, and state it as a guideline. He said the Commission would want to define what is full-time for deputy public defenders also. He noted that Marion County Public Defender Agency allows full-time public defenders to have a limited private practice. A guideline should be crafted so that we do not exclude all of them, but definitely the chiefs on the guideline should say if you want full-time compensation then you have to be a full-time chief public defender and not calling yourself full-time chief just to get the salary and then have a private practice. Landis said if we adopt this amendment to Standard G, it will send the message to the counties in time to prepare budgets for 2014. However, more time is needed to develop a guideline defining full-time, even as it pertains to chief deputy public defenders. Mark Rutherford asked if the January 1, 2014 deadline gave counties enough time to adjust the 2014 budget for any increases in pay. Lorinda Youngcourt, Chief Public Defender in Lawrence County, said that she must submit a budget by July 1, 2013; that it would be close. Jim Abbs, Chief Public Defender in Noble County, said that his budget already includes the salary increases. David Hensel seconded the motion. Motion passed unanimously.

CHINS/TPR Qualifications and Caseload Standard. Counsel Deborah Neal reported that the Indiana General Assembly increased the appropriation for the Public Defense Fund by \$2 million for the fiscal years 2013-14 and 2014-15. It is anticipated that a portion of this increase in appropriation will be used to reimburse eligible counties for children-in-need-of-services (“CHINS”) and termination-of-parental-rights (“TPR”) cases, and that such reimbursement will require that a standard for attorney qualification to accept CHINS/TPR cases be established and that a maximum caseload figure for CHINS/TPR cases in Standard J be reviewed and amended, if necessary. She noted that issues before the Commission are:

- Reimbursement to counties for CHINS/TPR cases,
- Adopting qualification standard for attorneys accepting CHINS/TPR assignments,
- Setting maximum caseload standard for CHINS/TPR cases, and
- Counting CHINS/TPR cases with same defendant as one case.

Marion County Public Defender Agency has conducted a three year time study of CHINS/TPR cases and has proposed changes to Standards E and J based upon this study. The proposed amendment to Standard E reads as follows:

To be eligible to serve as appointed counsel in CHINS/TPR cases, counsel shall possess the following qualifications:

a. An attorney shall have completed prior to appointment at least six (6) hours of training in CHINS/TPR practice in a course approved by the Indiana Public Defender Commission.

b. Any attorney with less than one (1) year experience in TPR Litigation or has not litigated at least one (1) TPR to completion must have co-counsel in any TPR matter proceeding to trial. Co-counsel shall have the required minimum experience and training.

The proposed changes to Standard J are that CHINS/TPR maximum caseload for full-time adequately staffed attorneys in a 12-month period be 140 cases; that CHINS/TPR maximum caseload for part-time adequately staffed attorneys in a 12-month period be 60 cases; that CHINS/TPR maximum caseload for full-time inadequately staffed attorneys in a 12-month period be 120 cases; and that CHINS/TPR maximum caseload for part-time inadequately staffed attorneys in a 12-month period be 55 cases.

Ray Casanova, Supervisor, Marion County Public Defender Agency, provided a power point presentation to the Commission concerning the time studies for CHINS/TPR cases that were used in developing the proposed attorney qualifications and caseload standards. He showed how the use of the time studies showing the average number of hours spent on these cases would allow for higher maximum caseloads.

Geoff Yelton, Managing Public Defender from Madison County, reported on the time study of CHINS/TPR cases conducted in the county. It showed an average of five hours spent on each case (6.5 hrs. in Marion County study). Mr. Yelton said that the caseload standards could be raised and not adversely affect the attorneys in his county, however, in speaking with other chief public defenders in Noble and Monroe Counties the cases were handled differently. Jim Abbs, Chief Public Defender Noble County, reported that Noble County had more court time in the defense of the CHINS/TPR cases – Noble County has extensive conferencing encompassing a lot of the attorney's time. Mr. Abbs said that the CHINS/TPR attorneys in Noble County are satisfied with the maximum caseload standards as they are now. Geoff Yelton said that the courts and departments of child services in each county handle the cases differently and that it would be very difficult to come up with a maximum caseload solution that fits all 50 counties. Lorinda Youngcourt, Chief Public Defender Lawrence County, stated there seems to be an assumption in the argument for raising the number of CHINS/TPR cases that the attorneys are doing a good job on these cases. In her county, the CHINS/TPR lawyers are required to go to the "family team" meetings because that is where a lot of the big decisions are made and where the defense attorney can have a significant impact.

Larry Landis said there is probably no case that has more variance in the amount of time spent than CHINS and TPR cases, which creates a problem in setting maximum caseload standards. An increase in the maximum caseload standard for CHINS/TPR could cause some counties to demand attorneys take more cases for the same amount of money. He reported that the weighted caseload study performed by State Court Administration indicates the amount of time a judge spends on each case has significantly increased in the time needed to handle CHINS/TPR cases.

Larry Landis recommends that counties be given time to come into compliance with the new qualifications for handling CHINS/TPR cases and allow the counties to request reimbursement on these cases when compliance is achieved.

Larry Landis moved that the Commission reimburse public defense expenses in CHINS/TPR cases beginning July 1, 2013; that the counties are to be given a reasonable amount of time to come into compliance on CHINS/TPR cases; and that the caseload standards for CHINS/TPR cases remains unchanged. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

David Hensel made a motion to adopt the amendment to Standard E as proposed; that the 6 hour training program prepared by the Marion County Public Defender Agency is approved for compliance to Standard E; and that the training program is available to counties by request to the Public Defender Commission's counsel. Greg Taylor seconded the motion. Motion passed unanimously.

Staff Reports: Elana Salzman reported on the Commission's request that counsel draft a proposed Commission Guideline that would prohibit chief public defenders from serving as capital counsel, and present it to the Supreme Court for its comments. A proposed Guideline was drafted and presented to the Court on February 14, 2013. The Supreme Court solicited input from the Indiana Prosecuting Attorneys Council, the Public Defender Council, and the Criminal Law Policy Committee of the Indiana Judicial Center. In summary, the Public Defender Council and Criminal Law Policy Committee supported such a Guideline or rule, but the Prosecuting Attorneys Council opposed it. The Court was reluctant to approve an outright prohibition of chief public defenders serving as capital counsel. They expressed concerns that smaller counties would have difficulty finding qualified attorneys to take capital cases. Ms. Salzman reminded the Court that there was an extensive list of qualified capital counsel provided by the Commission. It was also suggested that such a change should be a rule amendment, rather than a Guideline. The Court also suggested that an amendment be aspirational rather than prohibitive, requiring judges to consider administrative duties when assessing workload in making capital appointments. A revised draft of the rule amendment was brought back to Court Conference for discussion on May 23, 2013. The rule amendment was approved and filed on May 29, 2013. Indiana Rules of Criminal Procedure, Rule 24, was amended as follows:

(B) Appointment of Qualified Trial Counsel. Upon a finding of indigence, it shall be the duty of the judge presiding in a capital case to enter a written order specifically naming two (2) qualified attorneys to represent an individual in a trial proceeding where a death sentence is sought. The provisions for the appointment of counsel set forth in this section do not apply in cases wherein counsel is employed at the expense of the defendant.

...

(3) *Workload of Appointed and Salaried Capital Counsel.* In the appointment of counsel, the nature and volume of the workload of appointed counsel must be considered to assure that counsel can direct sufficient attention to the defense of a capital case.

...

(b) A judge shall not make an appointment of counsel in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

...

(d) The workload of full-time salaried capital public defenders will be limited consistent with subsection (B)(3)(a) of this rule. The head of the local public defender agency or office, or in the event there is no agency or office, the trial judge, shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload, including the administrative duties of a chief or managing public defender.

Staff Report: Deborah Neal reported that all counties, with the exception of LaGrange, are in compliance this quarter.

Noble County Amended Comprehensive Plan: An amendment to Noble County's Comprehensive Plan was presented for approval. Deborah Neal recommended that the Commission approve the amended plan. Larry Landis moved to approved Noble County Public Defender Board's Amended Comprehensive Plan, and Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Financial Status of Public Defense Fund: The financial status of the Public Defense Fund is as follows:

FISCAL REPORT 2012-2013				
INDIANA PUBLIC DEFENDER COMMISSION				
6/19/13				
2012-2013 Budget: \$20,250,000.00	Appropriations	Expenditures	Encumbered	Balance
6/30/12 Fund Balance Encumbered			\$7,127,359.46	\$ 7,127,359.46
Outstanding unpaid claims \$4,272,892.75				
June Claims pd from purchase orders		\$ 4,216,518.27		
Balance encumbered				\$ 2,910,841.19
July Distribution for FY12-13				
Court Fees - \$7.4 million:				
General Fund - \$12.850 million:	\$ 20,250,000.00			
Balance of App. + encumbered amt.				\$23,160,841.19
June Capital/Non-capital paid without PO		\$ 56,374.48		
Balance:		\$ 56,374.48		\$23,104,466.71
2nd Quarter 2012				
Non-Capital Claims - 40%		\$ 4,328,206.57		
Capital Claims - 50%		\$ 47,392.50		
Payroll for July/August/September		\$ 55,273.55		
Expenses		\$ 620.77		
Balance:		\$ 4,431,493.39		\$18,672,973.32
Payroll for October/November		\$ 18,065.43		
Expenses for October/November		\$ 1,306.32		
Balance:		\$ 19,371.75		\$18,653,601.57
3rd Quarter 2012				
Non-Capital Claims - 40%		\$ 4,271,820.39		
Capital Claims - 50%		\$ 66,595.19		
Balance:		\$ 4,338,415.58		\$14,315,185.99
Payroll for December		\$ 13,512.30		
Expenses for December		\$ 347.79		
Balance:		\$ 13,860.09		\$14,301,325.90

4th Quarter 2012		
Non-Capital Claims - 40%	\$ 4,463,435.31	
Capital Claims - 50%	\$ 58,967.38	
Balance:	\$ 4,522,402.69	\$ 9,778,923.21
Payroll for January/February		
	\$ 35,098.67	
Expenses for January/February	\$ 1,956.70	
Balance:	\$ 37,055.37	\$ 9,741,867.84
Payroll for March, April, May, June		
	\$ 49,713.39	
Expenses for March, April, May, June	\$ 2,800.00	
Balance:	\$ 52,513.39	\$ 9,689,354.45
1st Quarter 2013		
Non-Capital Claims - 40%	\$ 4,483,356.04	
Capital Claims - 50%	\$ 208,503.71	
Balance:	\$ 4,691,859.75	\$ 4,997,494.70

Meeting Change: Mary Ellen Diekhoff brought to the Commission's attention that the meeting scheduled for September 19, 2013 conflicts with a mandatory judicial conference and asks if the meeting can be changed. Mary Ellen Diekhoff moved to change the 2nd quarter meeting date to September 11, 2013, and Dave Hensel seconded the motion. Motion passed unanimously.

Adjournment: The next Commission meeting is scheduled for September 11, 2013. There being no further business to discuss, Larry Landis moved to adjourn the meeting and Mary Ellen Diekhoff seconded the motion. The motion passed and the meeting adjourned at 4:15 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

September 11, 2013

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were Larry Landis, Dave Hensel, Hon. Diane Ross Boswell, Hon. James Ahler, Hon. Mary Ellen Diekhoff, Sen. Brent Steele, and Rep. Ryan Dvorak. Also in attendance were counsels Deborah Neal and Elana Salzman. Absent were Andrew Roesener, Sen. Greg Taylor, and Rep. Jud McMillin.

Chairman Rutherford reported that Representatives Vernon Smith and Greg Steuerwald would no longer serve on the Commission and thanked them for their service to the Commission since 2008. They will receive certificates of appreciation from the Supreme Court. Rutherford announced the Speaker of the House's appointments to the Commission - Representatives Ryan Dvorak of South Bend and Jud McMillin of Brookeville. He welcomed Ryan Dvorak who was present and extended a welcome to Jud McMillin through his legislative assistant Mike Cunningham, who was present at the meeting.

In the event a commission member needs to leave the meeting before adjournment, Chairman Rutherford announced that matters needing a quorum vote would be discussed first.

Request for 50% Reimbursement in Capital Cases: Elana Salzman presented the claims for approval, and discussed reductions in reimbursement due to math errors in the claims. Larry Landis moved to approve the capital claims in the amount of \$47,436.16. Brent Steele seconded the motion. Motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
September 11, 2013		
COUNTY	DEFENDANT	TOTAL
Clark	Hooten	\$17,595.43
Floyd	Gibson 919	\$ 9,014.64
Floyd	Gibson 1145	\$ 6,625.85
Fulton	Bell	\$14,200.24
TOTAL		\$47,436.16

Requests for 40% Reimbursement in Non-Capital Cases: Deborah Neal reported that Decatur County submitted their request for reimbursement 13 days late and in accordance with the Guidelines, their reimbursement should be reduced 25%. Larry Landis moved to approve the claims totaling \$4,345,134.64. Mary Ellen Diekhoff seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Second Quarter 2013 Requests for Reimbursements in Non-Capital Cases						
9/11/2013						
COUNTY	Late Fctr	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	0.00	\$59,748.53	\$12,519.41	21%	\$47,229.12	\$18,891.65
ALLEN	0.00	\$874,364.64	\$131,946.10	15%	\$742,418.54	\$296,967.42
BENTON	0.00	\$28,289.75	\$6,286.61	22%	\$22,003.14	\$8,801.26
BLACKFORD	0.00	\$54,994.03	\$14,590.98	27%	\$40,403.05	\$16,161.22

BROWN	0.00	\$36,732.30	\$10,910.92	30%	\$25,821.38	\$10,328.55
CARROLL	0.00	\$56,042.41	\$20,451.18	36%	\$35,591.23	\$14,236.49
CLARK	0.00	\$170,763.40	\$27,224.68	16%	\$143,538.72	\$57,415.49
CRAWFORD	0.00			0%	\$0.00	\$0.00
DECATUR	0.25	\$49,693.76	\$12,189.04	25%	\$37,504.72	\$11,251.42
DELAWARE	0.00	\$266,916.41	\$8,451.18	3%	\$258,465.23	\$103,386.09
FAYETTE	0.00	\$63,668.68	\$8,463.64	13%	\$55,205.04	\$22,082.02
FLOYD	0.00	\$427,572.23	\$40,316.25	9%	\$387,255.98	\$154,902.39
FOUNTAIN	0.00	\$18,710.76	\$5,432.16	29%	\$13,278.60	\$5,311.44
FULTON	0.00	\$66,675.25	\$24,745.45	37%	\$41,929.80	\$16,771.92
GRANT	0.00	\$206,223.92	\$4,886.82	2%	\$201,337.10	\$80,534.84
GREENE	0.00	\$85,790.85	\$14,188.44	17%	\$71,602.41	\$28,640.96
HANCOCK	0.00	\$122,270.82	\$23,555.50	19%	\$98,715.32	\$39,486.13
HENRY	0.00			0%	\$0.00	\$0.00
HOWARD	0.00	\$365,149.22	\$69,824.83	19%	\$295,324.39	\$118,129.76
JASPER	0.00	\$90,713.57	\$36,467.52	40%	\$54,246.05	\$21,698.42
JAY	0.00	\$82,109.47	\$18,757.18	23%	\$63,352.29	\$25,340.92
JENNINGS	0.00	\$51,408.20	\$12,059.47	23%	\$39,348.73	\$15,739.49
KNOX	0.00	\$206,337.42	\$51,162.68	25%	\$155,174.74	\$62,069.90
KOSCIUSKO	0.00	\$149,334.80	\$52,582.68	35%	\$96,752.12	\$38,700.85
LAGRANGE	0.00	\$39,945.00	\$3,422.61	9%	\$36,522.39	\$14,608.96
LAKE	0.00	\$797,240.34	\$2,899.06	0%	\$794,341.28	\$317,736.51
LAPORTE	0.00	\$150,340.16	\$16,112.78	11%	\$134,227.38	\$53,690.95
LAWRENCE	0.00	\$128,188.97	\$14,941.38	12%	\$113,247.59	\$45,299.04
MADISON	0.00	\$413,698.31	\$31,616.37	8%	\$382,081.94	\$152,832.78
MARION	0.00	\$4,205,755.09	\$736,179.57	18%	\$3,469,575.52	\$1,387,830.21
MARTIN	0.00	\$49,831.22	\$20,386.77	41%	\$29,444.45	\$11,777.78
MIAMI	0.00			0%	\$0.00	\$0.00
MONROE	0.00	\$490,364.17	\$82,471.22	17%	\$407,892.95	\$163,157.18
MONTGOMERY	0.00	\$83,732.35	\$38,645.70	46%	\$45,086.65	\$18,034.66
NEWTON	0.00			0%	\$0.00	\$0.00
NOBLE	0.00	\$148,326.10	\$46,394.30	31%	\$101,931.80	\$40,772.72
OHIO	0.00	\$19,522.88	\$2,926.00	15%	\$16,596.88	\$6,638.75
ORANGE	0.00	\$39,736.86	\$7,358.68	19%	\$32,378.18	\$12,951.27
PARKE	0.00	\$40,142.54	\$12,380.41	31%	\$27,762.13	\$11,104.85
PERRY	0.00	\$60,891.31	\$11,163.41	18%	\$49,727.90	\$19,891.16
PIKE	0.00	\$59,697.36	\$12,248.30	21%	\$47,449.06	\$18,979.62
PULASKI	0.00	\$39,639.59	\$19,479.20	49%	\$20,160.39	\$8,064.16
RUSH	0.00	\$69,369.67	\$13,416.35	19%	\$55,953.32	\$22,381.33
SAINT JOSEPH	0.00	\$565,075.86	\$85,701.51	15%	\$479,374.35	\$191,749.74
SCOTT	0.00			0%	\$0.00	\$0.00
SHELBY	0.00	\$106,523.76	\$11,790.13	11%	\$94,733.63	\$37,893.45
SPENCER	0.00	\$41,592.81	\$6,184.00	15%	\$35,408.81	\$14,163.52
STEUBEN	0.00	\$93,999.32	\$26,722.10	28%	\$67,277.22	\$26,910.89
SULLIVAN	0.00	\$25,079.69	\$6,328.75	25%	\$18,750.94	\$7,500.38
SWITZERLAND	0.00	\$60,695.06	\$13,123.26	22%	\$47,571.80	\$19,028.72
TIPPECANOE	0.00	\$484,370.42	\$140,771.95	29%	\$343,598.47	\$137,439.39
UNION	0.00	\$21,782.50	\$5,445.63	25%	\$16,336.87	\$6,534.75
VANDERBURGH	0.00	\$602,220.12	\$113,239.21	19%	\$488,980.91	\$195,592.36
VERMILLION	0.00	\$35,173.76	\$14,309.97	41%	\$20,863.79	\$8,345.52
VIGO	0.00	\$464,375.58	\$53,695.91	12%	\$410,679.67	\$164,271.87
WABASH	0.00	\$66,279.86	\$16,982.72	26%	\$49,297.14	\$19,718.86
WARREN	0.00	\$8,761.25	\$2,252.89	26%	\$6,508.36	\$2,603.34
WASHINGTON	0.00	\$110,392.35	\$8,439.05	8%	\$101,953.30	\$40,781.32
WELLS	0.00			0%	\$0.00	\$0.00
WHITE	0.00			0%	\$0.00	\$0.00
WHITLEY	0.00			0%	\$0.00	\$0.00
TOTAL		\$13,056,254.68	\$2,184,041.91		\$10,872,212.77	\$4,345,134.64

NOTES: Decatur County submitted claim 13 days late -reimbursement reduced 25% in accordance with Guidelines

Approval of Minutes from 06/19/13 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. Diane Boswell made the motion to approve the minutes as presented and Larry Landis seconded the motion. The minutes were approved.

2014 Meeting Dates: Deborah Neal submitted 2014 meeting dates for approval. The dates are March 19, 2014, June 18, 2014, September 17, 2014 and December 10, 2014. David Hensel moved to approve these 2014 meeting dates and Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Hancock County Amended Comprehensive Plan: Hancock County submitted an amended comprehensive plan for approval. The amendments incorporate changes made by the Indiana Public Defender Commission, such as qualifications to handle juvenile, children in need of services, and termination of parental rights cases; plus updating references to state statutes. Mary Ellen Diekhoff moved to approve the amended comprehensive plan submitted by Hancock County, and Diane Boswell seconded the motion. Motion passed unanimously.

Supplemental Public Defender Services Fund Guidelines: Commission counsel, Elana Salzman, and Commissioner David Hensel presented two guidelines for use of county supplemental public defender services funds. These funds are established under IC 33-40-3, and are funded by court ordered fines. Mrs. Salzman explained that the first version states that the county fund must be used for certain matters and that any use of the fund that is not authorized by the Indiana Public Defender Commission will result in that county being out of compliance and ineligible for reimbursement. She explained that the second version allows counties to spend their supplemental public defender services funds in any manner unless the county is requesting reimbursement from the Commission; then the expenses would have to be those approved by the guideline. Larry Landis also offered a guideline for the Commission's consideration. Landis stated that he has changed his opinion from the discussion last June, in that, he now believes that uses of a supplemental public defender services funds outside the guideline adopted by the Commission would be an act of non-compliance by the county that would jeopardize any reimbursement to the county. Public defenders would like to see restriction on the uses of this fund so that the county could not usurp the money, or judges could not hire public defenders outside of the established public defense program in the county.

David Hensel agrees with Elana Salzman that a guideline restricting the uses of the county supplemental public defender services funds should be adopted; and that any deviation from the guideline, just like with caseloads, is non-compliance that could stop reimbursements from the Public Defense Fund.

Deborah Neal stated that Elana Salzman's first guideline proposal is adequate for the uses of the supplemental public defender services funds, and that it should be left to the discretion of staff counsel to determine if the guideline is being followed.

Larry Landis said the guideline should also include the ability to contract with counsel for two quarters when a county has excessive caseloads.

Brent Steele suggested adding the cost of hiring temporary contract counsel to stay in compliance with caseload standards.

Larry Landis asked that training expenses be added to the list of acceptable uses for the supplemental public defender services fund.

The amended guideline is as follows:

This guideline is intended to establish use of the Supplemental Public Defender Services Fund under IC 33-40-3 *et seq.* Under IC 33-40-3-3, the supplemental public defender services fund may be used only to supplement the provision for court appointed legal services and may not be used to replace other funding of court appointed legal services. All counties participating in the Public Defender reimbursement program must spend the Supplemental Public Defender Services Fund as specified below, whether or not they specifically seek reimbursement for expenditures from that Fund.

The Supplemental Public Defender Services Fund may not be used for any ongoing public defender salaries or benefits, or to pay the hourly or contract rates of attorneys providing ongoing public defender services in any class of criminal case, juvenile delinquency case, or juvenile dependency case. The fund may be used for any of the following:

1. The cost of hiring one-time or temporary public defenders in case-specific circumstances, such as the hiring of conflict counsel on a case with multiple defendants or the hiring of temporary contract counsel to stay in compliance with caseload standards. Claims made under this section must specify the particular circumstances that warrant the hiring of additional counsel.
2. One-time or temporary non-attorney costs of providing quality public defense on a case-specific basis. These would include but not be limited to investigative costs, expert consultant fees, witness fees, social work or mental health services, costs of defense requested depositions and transcripts, and mileage reimbursements.
3. One-time or temporary administrative, building, or training expenses.

Claims to the supplemental public defense fund are reimbursable by the Public Defender Commission. Claims to this fund are to be filed by the chief or managing public defender or the county public defender board. In counties not required to have a public defender board, claims are to be filed by the presiding judge.

David Hensel moved for adoption of the guideline, as amended, and Ryan Dvorak seconded the motion. Motion passed unanimously.

Questions on Changes to Standards G Regarding Compensation and Benefits for Public Defense Attorneys Equaling Compensation and Benefits for Prosecutors:

Deborah Neal presented ten scenarios for calculating public defense salaries when the changes in Standard G goes into effect 1/1/14. She reminded the Commission that equal pay for contract counsel needs to be discussed because it is difficult to determine what would be a county prosecutor's pay that would be used for comparison. Neal investigated the salaries of county paid prosecutors and found that most of them handle only Title IV D divorce contempt cases, or misdemeanor and alcohol class D felonies only. She recommends that the state-paid salary of a full-time deputy prosecutor at \$60,350 be used for comparison with a full-time public defender and that half of that amount be used for part-time comparison.

Diane Boswell stated that there was so much diversity between what a prosecutor does and what a public defender does that she doesn't believe that equal pay can be justified. Larry Landis said that the Standard has always said that public defenders be paid compensation that is substantially comparable to prosecutor compensation. The difficulty is determining what is substantially comparable. Landis said that most public defenders are contract counsel with overhead costs being compared to prosecutors who have no overhead costs. He said that realistically we are going to have to come up with a salary schedule for full-time and part-time public defenders, and a minimum contract amount, much like probation officers.

Deborah Neal stated that the public defenders are hoping that at this meeting the Commission sets a minimum amount for contract counsel; that the present guideline states that amount is \$40,100 for full-time and \$20,050 for part-time. She reported that in some counties the public defenders that are paid \$40,100 are being forced to take full-time caseloads so that the county can use less public defenders. Neal said that if a county does not want to contract for a full-time public defender at \$60,350, then the caseload should be reduced so as not to exceed the percentage of the public defenders' salary and compensation compared to the salary and compensation of the deputy prosecutor in a similar position.

Judge Boswell added that her experience is that public defenders are not providing the kind of service that warrants \$60,350.

Ryan Dvorak said that basically this is mandating increased costs to the county.

Larry Landis said he is not opposed to the 60/30 – it's better than what we have. I think it is just the first step; that we should continue to develop a more refined way to determine it and deal with attorneys taking full-time caseloads when we know they are part-time with private practices.

Larry Landis moved to approve minimum contract amounts of \$60,350 for full-time and \$30,175 for part-time, effective 1/1/14. Brent Steele seconded the motion. Judge Boswell and Judge Ahler abstained from voting. Those voting in favor of the motion were Larry Landis, Brent Steele, David Hensel and Mary Ellen Diekhoff. Ryan Dvorak voted against the motion. Motion passed.

CHINS/TPR Qualifications and Caseload Standard. Counsel Elana Salzman asked for clarification on what training is expected for qualifying as public defense counsel for children in need of services (“CHINS”) and termination-of-parental-rights (“TPR”) cases; specifically, must the 6 hours of training be CLE qualified. She noted that video training does not qualify for CLE credit unless screened and proctored.

Elana Salzman also asked the Commission for clarification on how an attorney is to be qualified to accept TPR cases in accordance with the amended Standard. She said one way to interpret the Standard is that an attorney who completes the 6 hours of CHINS/TPR training is qualified to take a TPR case unless the case is going to trial. Another interpretation is that an attorney with training cannot take a TPR case until that attorney has one year TPR experience. This interpretation makes qualifying for a TPR case difficult for attorneys in small counties.

Deborah Neal asked if the Indiana Public Defender Council’s CHINS/TPR training provided in March 2013 for 6 CLE hours qualifies for the requirements of Standard E. Larry Landis stated that it should qualify.

Larry Landis said the amended Standard E qualification for CHINS/TPR cases reads that the 6 hours of training may or may not be certified for CLE credit; that an attorney should be able to watch the 6 hour video and then verify to that effect.

Chairman Rutherford asked for a motion on what training qualifies for CHINS/TPR training. Diane Boswell stated that this training should required CLE credits just like the training for capital cases. Larry Landis said this is a one-time requirement for 6 hours of training. David Hensel moved that the 6 hours of training for CHINS/TPR qualification does not have to require CLE credits and that the training provided by the Indiana Public Defender Council for CHINS/TPR training qualifies for Standard E purposes. Diane Boswell seconded the motion. Chairman Rutherford called for the vote. Landis, Steele, Hansel, Ahler, Diekhoff, and Dvorak voted yes, and Boswell voted no. Motion passed.

On the issue of what qualifies an attorney to handle a TPR case, Larry Landis said the Standard should be interpreted to allow an attorney with the 6 hours of training to accept a TPR case. If the attorney does not have one year experience in TPR cases, or has not litigated at least one TPR to completion, then the attorney must have experienced co-counsel assist in any TPR case proceeding to trial. Landis stated that co-counsel is not required until the TPR case goes to trial; that the attorney with training may handle the case without co-counsel up to that point. Elana Salzman stated it is going to be difficult to determine when the case is going to trial and that it is a disincentive to go to trial if co-counsel must be appointed.

Larry Landis said that the seriousness of TPR cases requires an attorney with experience be co-counsel during trial to maintain the record. Robert Hill, Chief Public Defender in Marion County, agreed that an attorney with training could handle the TPR case until it went to trial and witnesses were going to be called. Mr. Hill stated that an inexperienced lawyer should not be on his/her own at that point – experience co-counsel should be assisting.

Deborah Neal said that co-counsel should be paid by the county at the hourly rate to assist in a TPR trial and that the case is counted as a new case for the lead counsel only.

Chairman Rutherford summarized the intent of the Commission that an attorney with training could handle the TPR case until it went to trial and that the seriousness of TPR cases requires an attorney with experience co-counsel during trial to maintain the record.

Staff Report: Deborah Neal reported that 51 out of 53 counties are in compliance this quarter.

Financial Status of Public Defense Fund: The financial status of the Public Defense Fund is as follows:

FISCAL REPORT 2013-2014				
INDIANA PUBLIC DEFENDER COMMISSION				
9/11/2013				
2013-2014 Appropriated \$22,250,000.00	Appropriations	Expenditures	Encumbered	Balance
Balance				\$512.54
6/30/13 Fund Balance + Encumbered			\$9,683,266.06	\$9,683,778.60
June Claims pd from purchase orders		\$ 4,691,859.75		
Balance + Encumbered				\$4,991,918.85
July Distribution for FY13-14				
Court Fees - \$7.4 million:				
General Fund - \$14.850 million:	\$ 22,250,000.00			
Balance of Appropriation				\$27,241,918.85
2nd Quarter 2013				
Non-Capital Claims - 40%		\$4,345,134.64		
Capital Claims - 50%		\$ 47,436.16		
Payroll for July/August		\$ 35,794.57		
Expenses		\$ 548.90		
Balance		\$4,392,570.80		\$22,849,348.05

Adjournment: The next Commission meeting is scheduled for December 11, 2013. There being no further business to discuss, Ryan Dvorak moved to adjourn the meeting and David Hensel seconded the motion. The motion passed and the meeting adjourned at 4:00 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

December 11, 2013

Chairman Mark Rutherford called the business meeting to order at 2:00 pm. Commission members in attendance were Larry Landis, Dave Hensel, Andrew Roesener, Hon. James Ahler, Hon. Mary Ellen Diekhoff, and Rep. Ryan Dvorak. Hon. Diane Ross Boswell was present by teleconference. Also in attendance were counsels Deborah Neal and Elana Salzman. Absent were Sen. Brent Steele, Sen. Greg Taylor, and Rep. Jud McMillin.

Approval of Minutes from 09/11/13 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. Larry Landis made the motion to approve the minutes as presented and Andrew Roesener seconded the motion. The minutes were approved.

Cass County Comprehensive Plan: Deborah Neal reported that Cass County has requested to be a part of the Public Defense Fund reimbursement program. The newly formed Cass County Public Defender Board submitted a comprehensive plan for Commission approval. Dave Hensel moved to approve the comprehensive plan submitted by Cass County, and Larry Landis seconded the motion. Motion passed unanimously.

Supplemental Public Defender Services Fund: Deborah Neal reported that after establishing a guideline for uses of the supplemental public defender services fund at the September 19, 2013 meeting of the Commission, staff counsel learned that several county auditors are putting the quarterly non-capital reimbursement from the Public Defense Fund into the non-reverting supplemental public defender services fund in their county in addition to the court ordered costs. Ms. Neal stated she advised counties that the guideline for uses of the supplemental fund pertain only to the amount collected from court ordered costs; that the quarterly reimbursement money deposited in that fund could be used for all eligible public defense expenses.

a. Steuben County: Steuben County requests an exception to the guideline for use of supplemental public defender services fund by allowing the payment of raises for public defense attorneys - \$32,874.50 so far in 2013, and \$31,250.44 budgeted for 2014. The information provided by Steuben County indicates that \$10,000 is paid from the supplemental fund to public defense attorneys in addition to the contract amount. This method was implemented to provide raises to the attorneys when the county could not afford to increase their contracts. Steuben County reports that it is unable to increase the 2014 budget to cover the raises now paid from the supplemental fund. Therefore, the county is asking for an exception to the new guidelines implemented by the Commission for uses of a county's supplemental public defender services fund.

Larry Landis said that since the Commission increased the minimum contract amounts for 2014, and Steuben County would need this money to come into compliance with Standard G, then he proposed a one-year extension for restricting the use of the county's supplemental public defender services fund until the county has time to incorporate raises into the public defense budget supported by the county general fund. Mr. Landis then made the motion that any county that needs to use supplemental public defender services fund money to increase compensation for public defenders in order to comply with the Commission's increases in Standard G may do so in 2014. Dave Hensel asked if this change covers only counties that were using their supplement fund for public defender salary increases, or does it apply to all the counties. Deborah Neal stated that the increase in minimum contract amounts for 2014 under Standard G applies to all the counties in the program, so if a county is unable to meet the increases in

2014 they could use their supplement fund until contract increases can be incorporated into the county's 2015 budget.

David Hensel seconded Mr. Landis' motion that any county that needs to use supplemental public defender services fund money to increase compensation for public defenders in order to comply with the Commission's increases in Standard G may do so in 2014. Chairman Rutherford called for questions and upon receiving none asked for a vote on the motion. Motion passed unanimously.

b. Vigo County: Vigo County's first request for an exception to the guideline for use of supplemental public defender services fund is asking if two public defenders for misdemeanor city court may be paid from the supplemental fund. This is past practice that was suggested by Commission staff attorney Tom Carusillo in 2002. The second request for an exception is to contract for personnel to screen defendants for indigency.

David Hensel discussed how Vigo County's practice of paying for public defenders outside of the county budget is violating the statute that governs county supplemental public defender services funds: That the statute says supplemental funds may not be used to replace other funding of court appointed legal services. Diane Boswell asked if staff counsel knew that Vigo County was supporting a public defense program for city court in this manner. Deborah Neal said that because the county did not ask for reimbursement for public defense expenses incurred in city court due to the fact that all the charges are misdemeanors (not reimbursable), she had no idea that the county was supporting this program with supplemental public defender services fund money.

Andrew Roesener said that Landis's motion for Steuben County equally applies here so he moved that we adopt the same motion for Vigo County [any county that needs to use supplemental public defender services fund money to increase compensation for public defenders in order to comply with the Commission's increases in Standard G may do so in 2014]. David Hensel seconded the motion.

Jim Ahler asked for clarification on paying special appointments in misdemeanor cases – is that an expense that can be paid from a county's supplemental fund? The Commission members agreed that special appointments could be paid from a supplemental fund.

Chairman Rutherford called for further discussion or comment. Receiving none, the Chairman called for the vote. Motion passed unanimously.

David Hensel asked if a county requests an exception to uses of the supplement fund in July of 2014, for instance, are they going to be given a year (until July 2015) to comply with the guideline? Larry Landis said that an exception applies only to 2014. Deborah Neal stated that all counties were notified of both the raise in contract amounts and the guideline for uses of the supplemental public defender services funds, and she does not see a need for an exception to the guideline beyond one year. Ms. Neal stated that she would notify all the counties of the Commission's exception as soon as possible. David Hensel said the counties should be notified that there will be consequences if necessary changes are not made for 2015; that the county would be out of compliance with the Commission's Standards.

Kosciusko County Non-Capital Request: Deborah Neal reported that Kosciusko County was warned by letter dated November 19, 2013 that the public defense program was out of compliance due to excessive case assignments to two attorneys. Judge Joe Sutton, Kosciusko County Superior 3, addressed the Commission stating that the new attorney, Mr. Sobek, accepting public defense cases was not informed of the need to track caseloads and there was a failure to monitor him. Judge Sutton said that

the other attorney out of compliance, Mr. Garza, is fluent in Spanish and there is a tendency to overuse Mr. Garza for that reason. The Judge assured the Commission that this non-compliance is being addressed and the county will be back in compliance in the near future. Larry Landis asked what is changed in the caseload monitoring that will assure compliance. Judge Sutton said that the judges were considering a local rule to require frequent reporting on assigned cases by the attorneys, possibly monthly. Deborah Neal recommended that Kosciusko County receive the 3Q13 reimbursement. Mary Ellen Diekhoff moved to reimburse Kosciusko County's third quarter request. Jim Ahler seconded the motion. Motion passed unanimously.

Floyd County Non-Capital Request: Public defense attorney, Richard Kammen received notice from Floyd County Auditor, Scott Clark, that claims previously paid by the County in the *State v. Camm* case from March 1, 2013 to August 5, 2013, totaling \$32,295.29, are now considered disapproved and future claims would be credited that amount. Brandi Janes, paralegal at Kammen & Moudy, presented correspondence between the Auditor and Mr. Kammen for review by the Commission. She reported that all bills submitted in the *Camm* case had been paid by Floyd County up to September 2, 2013.

Larry Landis pointed out that there are claims in that \$32,295.29 which are included in Floyd County's third quarter request submitted for approval at this meeting. If the third quarter request includes expenses which are actually in excess of what was paid, then Floyd County's request for reimbursement should be adjusted accordingly. Deborah Neal noted that any *Camm* expenses from March 1, 2013 to June 30, 2013 have been included in previous requests from Floyd County and 40% of those expenses have been reimbursed by the Public Defense Fund.

David Hensel asked the type of claim that was being disputed. Ms. Janes said claims for paralegals, transcripts, computer technician, meals and lodging for expert witnesses, and office supplies are some of the claims in question.

Deborah Neal asked that the Commission withhold payment of Floyd County's third quarter 2013 request in the amount of \$219,043.95 until she can get an explanation from the Auditor as to what expenses have been paid and what has been credited. Mark Rutherford asked if the Commission had proof that the third quarter request contains unpaid amounts. Deborah Neal noted that Floyd County's third quarter 2013 request claims \$273,730.29 was paid for expert consultants and witnesses. Brandi Janes stated that none of the experts in the *Camm* trial have been paid by Floyd County.

Deborah Neal said she would ask Floyd County Auditor if there is a problem with the claims in the *Camm* case and if previously paid claims are being disputed. Larry Landis said to also ask who approved the claims: if the trial judge or the Chief Public Defender approved the claims as reasonable and necessary why is the council saying otherwise. Judge Boswell asked Brandi Janes if this is how the Auditor usually scrutinized the bills or if this is new. Ms. Janes said this is new. Diane Boswell stated that a trial judge approves the experts; the judge has been asked to approve expert witnesses, special investigators in case and will sign off on the claims; the council cannot say now that the claims will not be paid. Boswell state she does not believe the county has the right to go through the bill line-by-line and disapprove individual items.

Larry Landis said the third quarter 2013 request should be held until the Commission receives an explanation regarding the claims in the *Camm* trial. If the explanation is reasonable, the county could receive approval of the third quarter 2013 request at the March 2014 meeting of the Commission. Mary Ellen Diekhoff stated that the Commission has an obligation to ask questions before reimbursing the

money to determine if the county is asking for reimbursement for claims not paid, or claims that the county does not intend to pay.

Chairman Rutherford asked that a copy of the Floyd County Auditor's letter be included with the minutes. James Ahler said that the Floyd County request for reimbursement should be suspended; that it is easier to correct the matter before the money is paid rather than after.

Chairman Rutherford said the question is whether the Commission is making a decision based on the Floyd County Auditor's actions, that may or may not be legitimate, and is it sufficient to do so. Mary Ellen Diekhoff said it needs to be made clear whether this action of disputing claims is solely that of the Floyd County Auditor, or is the Floyd County Council asking that claims not be paid.

David Hensel moved that the Commission take Floyd County's request for reimbursement out of the non-capital claims submitted for approval pending an investigation by staff counsel. James Ahler seconded the motion. Motion passed unanimously.

Staff Report: Deborah Neal reported that Parke and Vermillion Counties share public defense attorneys, who are qualified to accept major felony appointments. The attorneys are aging and soon will be retiring. There is concern that the counties will be unable to find qualified attorneys to replace them. It has been recommended by small counties who are unable to hire qualified defense counsel for major felony cases that completion of the trial practice seminar sponsored by the Indiana Public Defender Counsel be used as one jury trial for purposes of Standard E qualification. Mark Rutherford said that attorneys practicing public defense in smaller county could set second chair on jury trials in other counties. James Ahler said that attorneys in his county have went to Lake County to co-counsel jury trials and every one of the cases settled before trial began. He recommends an education component to Standard E like the six hours of continuing legal education required to handle appeals. Andrew Roesener says he believes attending a trial practice program with experienced counsel is more beneficial to learning than doing your first jury trial without education or an educated co-counsel. Mary Ellen Diekhoff stated she would be in favor of a trial practice seminar substituting for one jury trial requirement, especially in small counties where jury trials are not available for training. Chairman Rutherford said that creating a substitute for one jury trial would require a rule change and he recommends more investigation.

Deborah Neal reported that Owen and Marshall Counties are interested in receiving reimbursement from the Public Defense Fund.

Compliance Report: Deborah Neal reports 92% of the counties are in compliance with caseload standards. She asked for a meeting in Montgomery County to discuss the non-compliance and was told by the chairman of the county Public Defender Board that Montgomery County is not in financial condition to hire another attorney and is considering withdrawing from the reimbursement program. Larry Landis made the motion to suspend the third quarter reimbursement for Montgomery County; notifying them of the suspension and inviting them to the March meeting to offer solutions to the non-compliance problem. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Financial Status of Public Defense Fund: The financial status of the Public Defense Fund is as follows:

**FISCAL REPORT 2013-2014
INDIANA PUBLIC DEFENDER COMMISSION
12/11/2013**

2013-201 Appropriated	\$22,250,000.00	Appropriations	Expenditures	Encumbered	Balance
					\$512.54
6/30/13 Fund Balance + Encumbered				\$9,683,266.06	\$9,683,778.60
June Claims pd from purchase orders			\$4,691,859.75		\$4,991,918.85
Balance + Encumbered					\$4,991,918.85
July Distribution for FY13-14					
Court Fees - \$7.4 million:					
General Fund - \$14.850 million:		\$22,250,000.00			
Balance of Appropriation + encumbered					\$27,241,918.85
2nd Quarter 2013					
Non-Capital Claims - 40%			\$4,345,134.64		
Capital Claims - 50%			\$47,436.16		
Payroll for July/August			\$35,794.57		
Expenses			\$548.90		
Balance			<u>\$4,392,570.80</u>		\$22,849,348.05
Payroll for September 1 to December 3, 2013			\$44,567.19		
Expenses for October/November			\$2,379.56		
Balance:			<u>\$46,946.75</u>		\$22,802,401.30
3rd Quarter 2013					
Non-Capital Claims - 40%			\$4,441,559.71		
Capital Claims - 50%			\$188,213.02		
Balance:			<u>\$4,629,772.73</u>		\$18,172,628.57

Deborah Neal said that reimbursement requests will be increased when all counties report CHINS/TPR expenses. Ryan Dvorak asked how the Public Defense Fund was managed and Ms. Neal reported that the State invests the money and keeps the interest. Mr. Dvorak suggests an investigation into how the Public Defense Fund could be invested to become self-sustaining.

Request for 50% Reimbursement in Capital Cases: Elana Salzman presented the claims for approval, and discussed reductions in reimbursements to Vanderburgh County for *Weisheit*. She reported that several claims were beyond the 120 day deadline. Three options for payment were presented to the Commission: first, to pay all capital claims submitted, second, to deduct late claims from Vanderburgh County's request in *Weisheit*, and third, to refuse all reimbursement to Vanderburgh County for capital claims this quarter. Steve Owens, Vanderburgh County Chief Public Defender and co-counsel in *Weisheit* was present at the meeting and explained the problem with billing in the case. He has to have claims signed by the Clark County Judge that presided at trial and it often caused a delay in processing. Additionally, Mr. Owens stated that Judge Moore sent some claims directly to the Vanderburgh County Auditor without notifying counsel which caused the request for reimbursement to the Commission to be 120 days past the date of payment. Elana Salzman recommended that Vanderburgh County receive reimbursement on the late claims. Larry Landis moved to approve the capital claims in the amount of \$188,213.02. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
September 11, 2013		
COUNTY	DEFENDANT	TOTAL
Clark	Hooten	\$30,669.99
Floyd	Gibson 919	\$16,667.19
Floyd	Gibson 1145	\$5,708.88
Fulton	Bell	\$4,756.46
Lake	Isom	\$11,304.90
Lake	Isom Appeal	\$31,838.18
Vanderburgh	Weisheit	\$87,267.42
TOTAL		\$188,213.02

Requests for 40% Reimbursement in Non-Capital Cases: David Hensel moved to approve the claims totaling \$4,441,559.71. Ryan Dvorak seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Third Quarter 2013 Requests for Reimbursements in Non-Capital Cases						
12/11/2013						
COUNTY	2013 Period Covered	Total Expenditure	Adjustment For Non-Reimbrsbl	%	Eligible Expenditure	40% Reimbursed
ADAMS	7/1-9/30	\$77,020.07	\$10,739.21	14%	\$66,280.86	\$26,512.34
ALLEN	7/1-9/30	\$813,966.05	\$114,204.43	14%	\$699,761.62	\$279,904.65
BENTON	7/1-9/30	\$17,827.34	\$5,007.96	28%	\$12,819.38	\$5,127.75
BLACKFORD	7/1-9/30	\$49,782.98	\$7,217.14	14%	\$42,565.84	\$17,026.34
BROWN	7/1-9/30	\$25,757.25	\$6,495.13	25%	\$19,262.12	\$7,704.85
CARROLL	7/1-9/30	\$59,315.39	\$22,873.25	39%	\$36,442.14	\$14,576.86
CLARK	7/1-9/30	\$176,589.16	\$10,832.24	6%	\$165,756.92	\$66,302.77
CRAWFORD	7/1-9/30			0%	\$0.00	\$0.00
DECATUR	7/1-9/30	\$53,913.40	\$10,703.40	20%	\$43,210.00	\$17,284.00
DELAWARE	7/1-9/30	\$318,639.13	\$9,504.15	3%	\$309,134.98	\$123,653.99
FAYETTE	7/1-9/30	\$64,648.13	\$7,679.10	12%	\$56,969.03	\$22,787.61
FLOYD	7/1-9/30	\$589,233.55	\$41,623.68	7%	\$547,609.87	\$0.00
FOUNTAIN	7/1-9/30	\$30,872.36	\$8,856.76	29%	\$22,015.60	\$8,806.24
FULTON	7/1-9/30	\$68,051.22	\$18,070.10	27%	\$49,981.12	\$19,992.45
GRANT	7/1-9/30	\$214,049.87	\$3,706.49	2%	\$210,343.38	\$84,137.35
GREENE	7/1-9/30	\$71,209.15	\$12,161.52	17%	\$59,047.63	\$23,619.05
HANCOCK	7/1-9/30	\$94,402.80	\$26,419.90	28%	\$67,982.90	\$27,193.16
HENRY	7/1-9/30			0%	\$0.00	\$0.00
HOWARD	7/1-9/30	\$377,089.34	\$73,562.90	20%	\$303,526.44	\$121,410.58
JASPER	7/1-9/30	\$44,243.90	\$14,309.10	32%	\$29,934.80	\$11,973.92
JAY	7/1-9/30	\$73,773.94	\$16,136.96	22%	\$57,636.98	\$23,054.79
JENNINGS	7/1-9/30	\$52,096.35	\$11,598.81	22%	\$40,497.54	\$16,199.02
KNOX	7/1-9/30	\$199,986.53	\$47,308.64	24%	\$152,677.89	\$61,071.16

KOSCIUSKO	7/1-9/30	\$138,536.78	\$50,576.92	37%	\$87,959.86	\$35,183.94
LAGRANGE	7/1-9/30	\$44,222.27	\$2,851.60	6%	\$41,370.67	\$16,548.27
LAKE	7/1-9/30	\$875,384.69	\$2,291.58	0%	\$873,093.11	\$349,237.24
LAPORTE	7/1-9/30	\$154,296.44	\$21,971.43	14%	\$132,325.01	\$52,930.00
LAWRENCE	7/1-9/30	\$153,794.68	\$15,008.11	10%	\$138,786.57	\$55,514.63
MADISON	7/1-9/30	\$463,575.34	\$48,031.76	10%	\$415,543.58	\$166,217.43
MARION	7/1-9/30	\$4,749,754.23	\$890,332.36	19%	\$3,859,421.87	\$1,543,768.75
MARTIN	7/1-9/30	\$52,801.19	\$22,990.61	44%	\$29,810.58	\$11,924.23
MIAMI	7/1-9/30			0%	\$0.00	\$0.00
MONROE	7/1-9/30	\$412,461.69	\$58,163.41	14%	\$354,298.28	\$141,719.31
MONTGOMERY	7/1-9/30	\$87,834.29	\$22,405.00	26%	\$65,429.29	\$0.00
NEWTON	7/1-9/30			0%	\$0.00	\$0.00
NOBLE	7/1-9/30	\$136,973.31	\$22,895.30	17%	\$114,078.01	\$45,631.20
OHIO	7/1-9/30	\$18,554.61	\$3,905.50	21%	\$14,649.11	\$5,859.64
ORANGE	7/1-9/30	\$32,588.66	\$4,655.52	14%	\$27,933.14	\$11,173.26
PARKE	7/1-9/30	\$30,885.82	\$9,636.38	31%	\$21,249.44	\$8,499.78
PERRY	7/1-9/30	\$52,378.12	\$11,457.71	22%	\$40,920.41	\$16,368.16
PIKE	7/1-9/30	\$74,836.23	\$10,269.68	14%	\$64,566.55	\$25,826.62
PULASKI	7/1-9/30	\$49,128.49	\$15,430.25	31%	\$33,698.24	\$13,479.30
RUSH	7/1-9/30	\$64,357.07	\$11,096.05	17%	\$53,261.02	\$21,304.41
SAINT JOSEPH	7/1-9/30	\$518,967.78	\$77,642.18	15%	\$441,325.60	\$176,530.24
SCOTT	7/1-9/30			0%	\$0.00	\$0.00
SHELBY	7/1-9/30	\$124,755.82	\$9,487.72	8%	\$115,268.10	\$46,107.24
SPENCER	7/1-9/30	\$52,829.90	\$5,482.35	10%	\$47,347.55	\$18,939.02
STEUBEN	7/1-9/30	\$98,743.79	\$29,157.88	30%	\$69,585.91	\$27,834.36
SULLIVAN	7/1-9/30	\$22,426.10	\$4,019.77	18%	\$18,406.33	\$7,362.53
SWITZERLAND	7/1-9/30	\$50,280.18	\$18,524.28	37%	\$31,755.90	\$12,702.36
TIPPECANOE	7/1-9/30	\$549,715.39	\$147,701.31	27%	\$402,014.08	\$160,805.63
UNION	7/1-9/30	\$25,209.07	\$2,192.09	9%	\$23,016.98	\$9,206.79
VANDEBURGH	7/1-9/30	\$705,505.80	\$119,561.20	17%	\$585,944.60	\$234,377.84
VERMILLION	7/1-9/30	\$42,727.00	\$12,591.05	29%	\$30,135.95	\$12,054.38
VIGO	7/1-9/30	\$480,968.87	\$50,129.30	10%	\$430,839.57	\$172,335.83
WABASH	7/1-9/30	\$68,863.79	\$12,566.29	18%	\$56,297.50	\$22,519.00
WARREN	7/1-9/30	\$6,110.50	\$2,125.39	35%	\$3,985.11	\$1,594.04
WASHINGTON	7/1-9/30	\$107,213.12	\$8,049.64	8%	\$99,163.48	\$39,665.39
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
TOTAL		\$13,919,148.93	\$2,202,210.49		\$11,716,938.44	\$4,441,559.71
NOTES:	At the 12/11/13 meeting, the Indiana Public Defender Commission voted to suspend payment to Floyd and Montgomery Counties.					

Other Matters: Chairman Rutherford announced the retirement of staff counsel, Deborah Neal. Larry Landis moved for a Resolution recognizing Deborah for all her contributions to the Commission improving the quality of public defense services in the State of Indiana. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Steve Owens asked if the Commission has set a deadline for counties to comply with caseload standards in CHINS/TPR cases. Mr. Owen stated that the county failed to provide additional funds in 2014 to keep the county in compliance with CHINS/TPR cases. Deborah Neal noted that Vanderburgh County has refused to fund the 2014 budget to pay the Chief Public Defender a salary and benefits equal to the Prosecutor. She recommends that the county be notified that non-compliance could result in suspension of reimbursements if by the June meeting the CHINS/TPR program is not in compliance and the chief public defender is not being paid in accordance with Standard G. Larry Landis said that it will take a lot of money to get into compliance on the CHINS/TPR cases and that the county should be given a year to fund that program. Mr. Landis made the motion that the CHINS/TPR caseload compliance date is 1/1/15. Ryan Dvorak seconded the motion. Motion passed unanimously.

Adjournment: The next Commission meeting is scheduled for March 19, 2014. There being no further business to discuss, Larry Landis moved to adjourn the meeting and David Hensel seconded the motion. The motion passed and the meeting adjourned at 4:00 p.m.

Mark Rutherford, Chairman

Date