



PUBLIC DEFENDER COMMISSION NEWS

August 2008

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QUARTERLY MEETING HIGHLIGHTS

Thanks to the Indiana Legislature, the Public Defense Fund had \$14,500,000.00 to distribute to the qualifying counties in FY07-08. However, due to high crime rates and an economic downturn that allowed more defendants to qualify as indigent, requests for reimbursements from the Fund for this period totaled \$18,479,833.16. The claims approved at the June 25, 2008 meeting will be paid from the first distribution of FY08-09 appropriation which was received on July 1, 2008. The Fund is appropriated \$15,250,000.00 for FY08-09.

The Commission approved \$3,871,209.79 in claims for reimbursement for non-capital public defense expenses and \$117,725.50 for payment of capital (death penalty) public defense expenses for the first quarter 2008. Details of each program county's total defense expenditures for the first quarter can be accessed on our website under "Finances." The website address is www.in.gov/judiciary/pdc.

The next quarterly meeting of the Public Defense Commission will be held on Wednesday, September 24, 2008 at 2:00 p.m., at 30 S. Meridian Street, Room 804, Indianapolis, Indiana. As always, the public is welcome!

LAKE COUNTY JUDGE JOINS COMMISSION

On April 23, 2008, Chief Justice Randall Shepard appointed Diane Ross Boswell, Lake County Superior Court Judge, to the Indiana Public Defender Commission. The Commission welcomed Judge Boswell at the June 25, 2008 meeting.

2008-2009 COMMISSION MEETING DATES.

09/24/08 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804
12/10/08 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804
03/25/09 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804

- LINKS TO FORMS AND GUIDELINES:

Locate Reimbursement Forms [here](#)

Locate Guidelines For Capital Case Reimbursements [here](#)

Locate Guidelines and Standards for Non-capital Case Reimbursements [here](#) and [here](#)

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06/24/09 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804

09/23/09 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804

12/16/09 2:00 p.m. 30 S. Meridian St. Indianapolis, Room 804

IMPORTANT DEADLINES

The deadlines for filing Reimbursement Requests for **Non-capital Expenditures** for 2008-2009 are:

Second Quarter:	August 14, 2008	Fourth Quarter:	February 14, 2009
Third Quarter:	November 14, 2008	2009 1Q Quarter:	May 14, 2009

The filing deadline for Reimbursement Requests in **Capital Cases** is 120 days from the date the County Auditor pays the underlying expense.

UNION COUNTY BENEFITS FROM JUDGE'S EFFORTS

Union County taxpayers will be pleased to learn reimbursement money from the Public Defense Fund is going to their county for the first time since 2002.

In April 2008, Union Circuit Court Judge Matthew Cox was informed that the county is eligible for reimbursement of up to 40% of its public defense costs in felony and juvenile cases. Judge Cox immediately prepared a request for reimbursement and submitted it by the May deadline. At the Public Defender Commission quarterly meeting, Union County's request for \$7,021.51 was approved.

Union County has been eligible to receive reimbursement money from the Public Defense Fund every year since 1999. However requests for reimbursement were only submitted from 1999-2002. During that time, Union County received nearly \$13,000.

HOW ARE PROBATION VIOLATION CASES REPORTED?

The Commission's guideline for reporting probation violation cases is:

Any probation violation charge, under a cause number that was previously defended by a court-appointed public defender, shall not be counted as a new case. Any probation violation, under a cause number that was previously defended by private counsel, and a public defender is appointed by the court to defend the probation violation said case shall be counted as a new case.

Commission Members:

Mark W. Rutherford,
Chairman, Indianapolis,
serving since May 2007

Susan Carpenter,
Indianapolis, serving
since October 1989

Betty Lou Jerrel,
Evansville, serving since
November 1993

Sen. Timothy Lanane,
Anderson, serving since
October 1998

Sen. Joseph C. Zakas,
Granger, serving since
September 2004

Rep. Amos Thomas,
Brazil, serving since April
2007

David J. Hensel,
Indianapolis, serving
since May 2007

Peter D. Nugent,
Indianapolis, serving
since May 2007

Rep. Phil Hoy, Evansville,
serving since June 2007

Hon. Judge Diane Ross
Boswell, Crown Point,
serving since April 2008

A MESSAGE FROM THE STAFF:

We hope that you find the second edition of our newsletter informative. If you do not wish to receive the newsletter, please send an email to staff counsel Jeff Wiese at jwiese@courts.state.in.us

In other words, if the trial was handled by a public defender, any probation violation related to that trial is not considered a new case and should not be reported on the New Case Assignment Worksheet. However, if the trial was handled by private counsel, but a public defender is appointed to defend the probation violation, the probation violation is to be counted as a new case.

Why is this guideline so important? To be eligible for reimbursement from the Fund, a county promises in their Comprehensive Plan to abide by the Commission's Standards on caseload maximums for public defense counsel. When public defenders' caseloads exceed these maximums, the county's eligibility for reimbursement is jeopardized. It is therefore important that a county keep accurate records. Counties must submit a caseload report with the request for reimbursement. If a county is counting too many probation violation cases that do not qualify as new cases, it could cause a county to be out of compliance with caseload standards. Please check your caseload worksheets for proper reporting of probation violation cases.

DID YOU KNOW.....?

- That all conflict counsel must be reported in the Request for Reimbursement, both on the attorney qualification form and the caseload worksheet.
- Counties may request reimbursement for expenses paid from their Supplemental Public Defender Services Fund or a county court's own budget, as long as the expense is related to public defense.
- That public defense cases and expenses must be reported on the quarterly request for all courts of a program county that provide indigent defendants with attorneys, including city and town courts, regardless of the budget or fund that finances said courts. The exception is Lake County, which by statute may designate only one court system in their county to participate in the public defense program.
- That a determination of indigency is based on the "substantial hardship" standard for providing public defense services, which is incorporated in your county's Comprehensive Plan. The "substantial hardship" test for determining indigency was adopted by the Indiana Supreme Court in Moore v. State (1980), Ind., 401 N.E.2d 676, and has been cited with approval in numerous subsequent appellate opinions:

The determination as to the defendant's indigency is not to be made on a superficial examination of income and ownership of property but must be based on as thorough an examination of the defendant's total financial picture

as is practical. The record must show that the determination of ability to pay includes a balancing of assets against liabilities and a consideration of the amount of defendant's disposable income or other resources reasonably available to him after payment of fixed obligations.


IS YOUR COUNTY IN THE PUBLIC DEFENDER COMMISSION PROGRAM?

Program counties are highlighted in green.



LET US KNOW!

What can be done to ensure that limited public defense monies are



allocated to those who need it most? What procedures should judges use to ensure that individuals requesting a public defense attorney are truly indigent? What can be done to ensure that truly indigent individuals are not denied a public defense attorney? Let us know what is happening in your county and suggestions for improvement. Just e-mail your response to staff counsel at dneal@courts.state.in.us.