

PUBLIC DEFENDER COMMISSION NEWS

May 2010

Volume 3, Number 1

NEW STAFF COUNSEL

Michele Lofthouse became staff counsel to the Public Defender Commission in January this year, replacing Jeff Wiese who took a position with Trial Court Management. Ms. Lofthouse graduated from the Indiana University Maurer School of Law in 2003. While in law school she worked as a certified legal intern with the Monroe County Public Defender's Office. Prior to joining the Commission in January, Michele's practice focused on civil litigation. She has practiced in the areas of employment law, family law, personal injury and insurance defense. She has also served as an adjunct instructor for IUPUI's paralegal program.

2010 COMMISSION MEETING DATES.

June 23, 2010 2:00 p.m. 8 th Floor, Room 804 30 South Meridian St. Indianapolis, Indiana	September 22, 2010 2:00 p.m. 5 TH Floor, Room 500 30 South Meridian St. Indianapolis, Indiana
December 15, 2010 2:00 p.m. 8 th Floor, Room 804 30 South Meridian St. Indianapolis, Indiana	

IN THIS ISSUE:

- NEW STAFF COUNSEL
- QUARTERLY MEETING HIGHLIGHTS
- FUNDING AND REIMBURSEMENT HISTORY
- WHICH STATUTES DIRECT PAYMENT TO THE SUPPLEMENTAL PUBLIC DEFENSE SERVICES FUND?

QUARTERLY MEETING HIGHLIGHTS

At the December 16, 2009, and March 24, 2010, meetings of the Indiana Public Defender Commission, the members approved reimbursement claims for death penalty defense costs of \$52,773.60 and \$189,543.86, and reimbursement claims for non-capital indigent defense costs of \$3,896,890.40 and \$3,916,356.01, respectively. The Public Defense Fund was able to return a full 40% reimbursement

Commission Members:

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

Susan Carpenter,
Indianapolis, serving
since October 1989

Bettye Lou Jerrel,
Evansville, serving since
November 1993

Sen. Timothy Lanane,
Anderson, serving since
October 1998

David J. Hensel,
Indianapolis, serving
since May 2007

Peter D. Nugent,
Indianapolis, serving
since May 2007

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

Rep. Vernon Smith,
Gary, serving since
November 2008

Rep. Greg Steuerwald,
Danville, serving since
November 2008

Sen. Brent Steele,
Bedford, serving since
March 2009

to the counties for all four quarters of 2009. This is the first time in eight years that the Public Defense Fund was not required to pro-rate non-capital requests for reimbursement. The Commission is very grateful to the General Assembly for the increased appropriation to the Public Defense Fund. Below is a financial history of the Fund. From 1989 to 1995, only capital cases were reimbursed for defense costs.

INDIANA PUBLIC DEFENDER COMMISSION							
Funding and Reimbursement History							
FY	# Elgble County	Annual Appro.	Reimbrs Capital Cases	Reimbrs Non-Cap Cases	Total Paid	Loss Due to Prorating	% Rec'd
1989-90		\$650,000					
1990-91		\$650,000	\$40,795		\$27,277		
1991-92		\$650,000	\$320,697		\$320,697		
1992-93		\$650,000	\$480,716		\$480,716		
1993-94		\$650,000	\$333,020		\$333,020		
1994-95		\$650,000	\$288,450		\$288,450		
1995-96	5	\$650,000	\$529,472	\$668,747	\$1,198,219		
1996-97	7	\$650,000	\$370,959	\$628,841	\$999,800		
1997-98	9	\$3,000,000	\$799,449	\$1,031,467	\$1,830,916		
1998-99	17	\$3,000,000	\$526,525	\$2,188,699	\$2,715,224		
1999-00	30	\$2,400,000	\$378,209	\$3,302,471	\$3,680,680		
2000-01	38	\$2,400,000	\$712,054	\$3,669,318	\$4,381,372		
2001-02	50	\$6,000,000	\$473,317	\$4,869,314	\$5,342,631	\$2,036,380	28.2%
2002-03	50	\$7,000,000	\$413,805	\$5,371,364	\$5,785,169	\$1,619,285	30.7%
2003-04	52	\$7,000,000	\$478,222	\$6,030,992	\$6,509,214	\$1,403,053	25.1%
2004-05	53	\$8,000,000	\$672,381	\$8,524,652	\$9,197,033	\$771,538	36.9%
2005-06	53	\$9,000,000	\$386,288	\$7,305,318	\$7,691,606	\$895,476	35.6%
2006-07	54	\$10,000,000	\$844,769	\$10,175,448	\$11,020,217	\$2,674,834	30.9%
2007-08	53	\$14,500,000	\$753,772	\$13,586,669	\$14,340,441	\$825,367	38.4%
2008-09	50	\$15,250,000	\$742,251	\$14,411,615	\$15,153,866	\$1,262,700	37.0%
2009-10	50	\$18,250,000	\$461,098	\$15,377,455	\$15,838,553	\$0	40.0%
Total			\$10,006,249	\$97,142,370	\$107,135,101	\$11,488,633	

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WHICH STATUTES DIRECT PAYMENT TO THE SUPPLEMENTAL PUBLIC DEFENDER SERVICES FUND?

A supplemental public defender services fund is established in each county under I.C. 33-40-3-1. Any money remaining in the fund at the end of the calendar year does not revert to any other fund (such as general fund). How does money get into this fund? Following are four statutes that direct payment to the supplemental public defender services fund.

Initial Hearing

With a determination of indigency at an initial hearing, the judicial officer assigns counsel to the person. If the court finds that person is able to pay part of the cost of representation, the court shall order a fee of \$100 for a felony action and \$50 for a misdemeanor action under **I.C. 35-33-7-6**. **The clerk of the court shall deposit fees collected under this subsection in the county's supplemental public defender services fund established under I.C. 33-40-3-1.**

Any Time During Prosecution

If at any stage of a prosecution for a felony or misdemeanor the court makes a finding of ability to pay the costs of representation under the standard of "substantial hardship," the court shall assess reasonable attorney's fees or the amount of defense costs incurred by the county under **I.C. 33-40-3-6**. Section (b) states, **"The clerk of the court shall deposit costs collected under this section into the supplemental public defender services fund established under section 1 of this chapter."**

Conviction

After a guilty verdict or plea agreement in a criminal matter, the court could impose fines, costs and fees. If the convicted person was represented by a public defender, the county's cost of defense could be charged to the defendant. **I.C. 33-37-2-3(e)** If, after a hearing under subsection (a) or (b), the court determines that a convicted person is able to pay part of the costs of representation, the court shall order the person to pay an amount of not more than the cost of the defense services rendered on behalf of the person. **The clerk shall deposit the amount paid by a convicted person under this subsection in the county's supplemental public defender services fund established under I.C. 33-40-3-1.**

After Conviction, Distribution of Cash Bond and Cash Equal to 10% Bail

If a court sets defendant's bail as a cash amount or cash and another form of security, it may require the defendant and each person who makes the deposit on behalf of the defendant to execute an agreement that allows the court to retain all or part of the cash bail to pay publicly paid costs of representation and fines, costs, fees and restitution upon conviction. **I.C. 35-33-8-3.2**. The individual posting bail for the defendant or the defendant admitted to bail must be notified by the sheriff, court, or clerk that the defendant's deposit may be forfeited. Section (b) states, **"Within thirty (30) days after disposition of the charges against the defendant, the court that admitted the defendant to bail shall order the clerk to remit the amount of**

- 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](#)

the deposit remaining under subsection (a)(2) to the defendant. The portion of the deposit that is not remitted to the defendant shall be deposited by the clerk in the supplemental public defender services fund established under I.C.33-40-3.” In addition to fines, costs, fees and restitution, the clerk shall retain from the deposit publicly paid costs of representation ordered by the court, and shall deposit this amount in the supplemental public defense services fund, as directed by subsection (b) stated above.

IMPORTANT DEADLINES.

To be timely filed, non-capital requests for reimbursement are due in the office of staff counsel on the following dates:

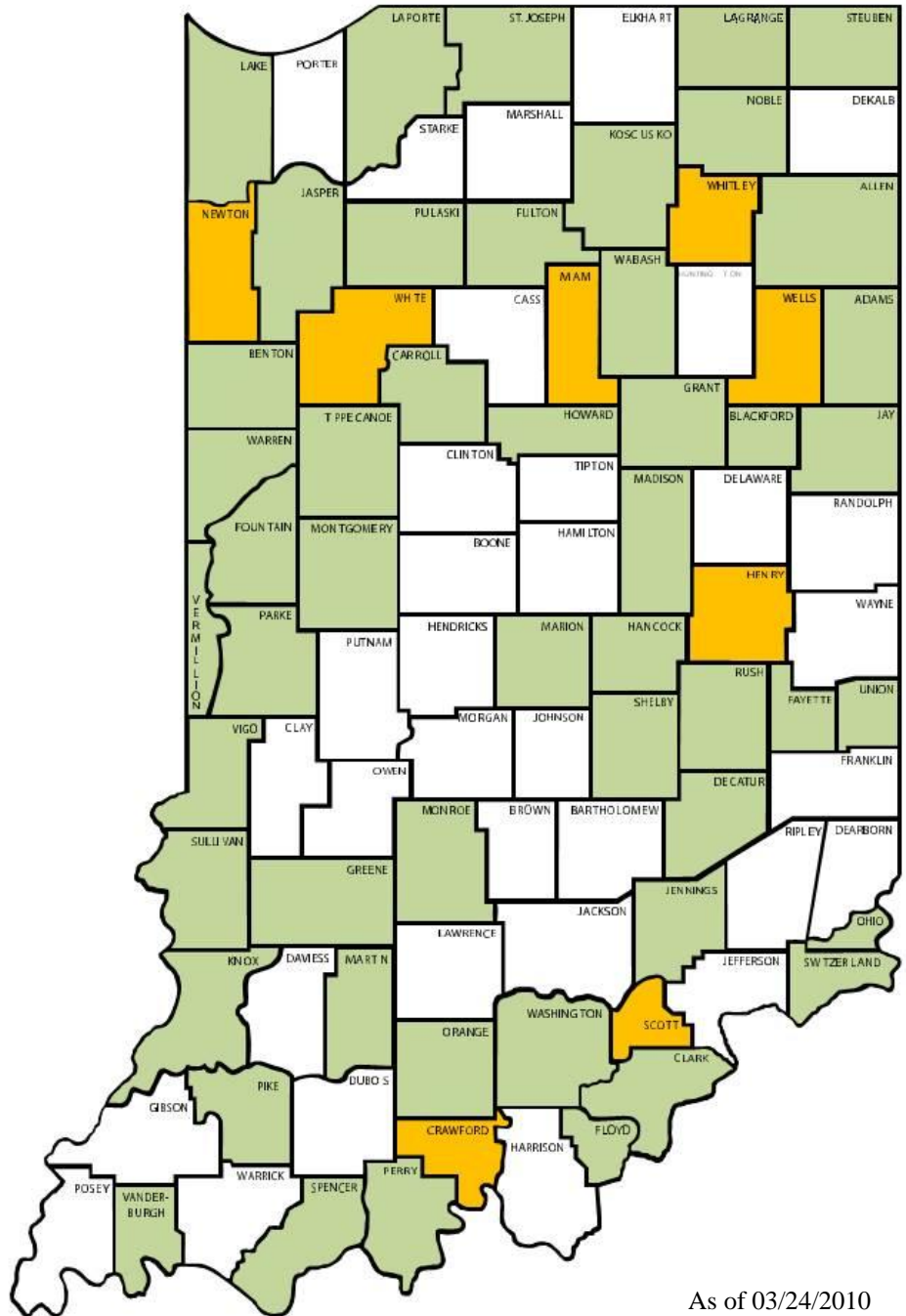
1 st Quarter 2010 Due May 17, 2010	2 nd Quarter 2010 Due August 16, 2010
3 rd Quarter 2010 Due November 15, 2010	4 th Quarter 2010 Due February 14, 2011

The filing deadline for reimbursement requests in capital cases is 120 days from the date the county auditor pays the underlying expense.

COUNTIES RECEIVING
REIMBURSEMENTS

Adams	Monroe
Allen	Montgomery
Benton	Noble
Carroll	Ohio
Clark	Orange
Decatur	Parke
Fayette	Perry
Floyd	Pike
Fountain	Pulaski
Fulton	Rush
Grant	Saint Joseph
Greene	Shelby
Hancock	Spencer
Howard	Steuben
Jasper	Sullivan
Jay	Switzerland
Jennings	Tippecanoe
Knox	Union
Kosciusko	Vanderburgh
LaGrange	Vermillion
Lake	Vigo
LaPorte	Wabash
Marion	Warren
Martin	Washington

IS YOUR COUNTY IN THE PUBLIC DEFENDER COMMISSION PROGRAM?



As of 03/24/2010

**A MESSAGE FROM THE
STAFF:**

We hope that you find this edition of our newsletter informative. If you do not wish to receive the newsletter, please send an email to staff counsel Deborah Neal at dneal@courts.state.in.us



Counties in Public Defender Program



Counties in Pubic Defender Program not currently receiving reimbursements



Counties not in Public Defender Program