

Indiana Public Defender Council
Meeting of the Board of Directors - August 10-11, 1984

MINUTES

1. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council was called to order by Terry Richmond, Chairman, at 5 p.m. on August 10, 1984, at the Abe Martin Lodge, Brown County State Park in Nashville, Indiana. Directors present: Terry Richmond, George Barnett, Gene Hollander, Sandy Bryant, Susan Carpenter, Larry Combs, David Hennessy, Mark McNeely and Dan Weber. Also present: IPDC staff Larry Landis, Mary Sinnock, Kit Keller, Monica Foster, and Lisa Snyder; IPDA Board members - Jim Johnson, Mike Dvorak, Jim Fleming, George Gesenhues, Bill Smock and Linda Wagoner.

2. MINUTES OF PRECEDING MEETING

Minutes from the IPDC Board of Directors meeting held June 22, 1984 in Indianapolis, Indiana were submitted and approved.

3. COMMITTEE REPORTS

- a. Programs Committee. The following programs for 1984-85 were recommended by the Programs Committee, as reported by Larry Combs, Chairman:

November - Forensics

March 1985 - Attorney-Client Relations; Client Interviewing, Burnout,
Ethical Considerations When Dealing With Difficult Clients, Competency Standards

Summer 1985 - Criminal Law Update (review of recent cases and legislation)

Fall 1985 - Cross-examination workshop

The Committee also reaffirmed the desire to conduct an intensive trial skills program in 1985. Larry Landis reported that without additional staff and money, an intensive trial skills program as was conducted in 1981 and 1982 would not be feasible.

- b. Standards Committee. The Standards Committee report was previously sent to Board members.
- c. Contracts Committee. The Contracts Committee Chairman, Larry Combs, reviewed the model contract previously sent to Board members.
- d. Defender Services Committee. Larry Landis reported that the Committee Chairman, John Surbeck was unable to attend due to a recent back injury, and that the committee report would be given during the Executive Director's report.

4. EXECUTIVE DIRECTOR'S REPORT

The written Executive Director's report, previously distributed by mail, was discussed and reviewed by Larry Landis. Larry reported that the staff was operating at maximum capacity and that no additional services could be offered in the future without additional staff and funding. Following the priorities set at previous Board meetings, Larry reported that the staff had set the following production schedule for manuals:

Instructions Manual - 1984

Appellate Manual - 1985

Trial Manual - 1986

The Defender Services Committee report was reviewed and discussed. Larry summarized the Committee's report which was a proposal for a statewide public defender system entitled "The Public Defender Act of Indiana", which was sent to Board members prior to the meeting.

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5. RECESS

The meeting was recessed at approximately 6:40 p.m., August 10, 1984.

6. CALL TO ORDER

The meeting was continued at 9:15 a.m. on August 11, 1984.

7. NEW BUSINESS

a. Programs. The report of the Programs Committee was received and approved as made.

b. 1985-87 Budget. Mary Sinnock reviewed the current budget. The current budget will be considered as the base budget for submitting the biennial budget for 1985-87. After discussing the needs of public defenders, the Board unanimously voted to request the following additional funding:

- 1) New staff attorney position, \$22,500 salary, \$4,500 fringe benefits: \$27,000 total.
- 2) New clerical position - \$14,000 salary, \$2,800 fringe: \$16,800 total.
- 3) Weekly summary of Case Clips - \$10,000
(contract with Indiana Judicial Center for distribution of Case Clips to IPDC members).
- 4) Westlaw/Lexis subscription and user fees - \$5,000
- 5) Trial Skills Workshop - \$8,000
- 6) Continuation of Sentencing Alternatives Project - \$60,000
(200 cases at \$300 per case)

Total additional funding requested: \$126,800.

After discussing the need for continuing and expanding the Sentencing Alternatives Project which was previously funded by a \$29,000 grant from NLADA and the McConnell-Clark Foundation, the Board decided that rather than provide money through the Council for public defenders to contract with case planners in all counties, the project should target 10-15 counties to expand the project. Under the NLADA grant, only Lake, Porter and St. Joseph counties were involved in the Sentencing Alternatives/Client Specific Planning Project.

c. Model Contract. After discussing the model contract, the following suggested changes were made:

- 1) Delete paragraph 6 regarding interviewing schedule (Sandy Bryant and Linda Wagoner)
- 2) Add to paragraph 10 a clause providing for reimbursement or compensation for expenses and costs not listed in the contract (George Barnett)
- 3) Add a clause providing that the contract attorney is a county employee and therefore eligible for fringe benefits and county-paid malpractice insurance. (Jim Fleming)

As an alternative it was suggested that if contract attorneys were not eligible for fringe benefits as county employees, then the compensation under the contract should be increased accordingly.

The Board voted to request the contracts committee to put these suggestions in writing for consideration at the next Board meeting.

d. Standards. The Proposed Standards for Appointment of Counsel recommended by the Standards Committee were approved upon motion by Larry Combs and a second by George Barnett. Mark McNeely moved that the standards be referred to the Criminal Justice Section of the Indiana State Bar Association for their endorsement. The motion was seconded by Linda Wagoner and unanimously approved.



- e. Services Committee. After a lengthy discussion of the provisions of the state-wide public defender legislation reported by the Services Committee, the Board voted to accept and approve the concept of the proposed legislation. The discussion then centered on whether judges should retain any authority to appoint public defenders. George Barnett suggested that judges should be allowed to recommend to the county public defender board attorneys for appointment as public defenders. Dan Weber recommended that judges have no authority for appointment of public defenders. George Barnett moved that the committee report be amended to allow judges to make recommendations for public defender appointments to the county public defender board. The motion was seconded by Mark McNeely and after additional discussion, the motion failed.

The Board then agreed that additional discussion of the state-wide public defender bill would be held at the Board meeting September 6, 1984.

8. NEXT MEETING

The Board set the next meeting for September 6, 1984, the evening before the Council's Search & Seizure seminar.

9. BOARD RETREAT - 1985

Mary Sinnock requested that the Board decide whether, when and where they wanted to have a Board retreat in 1985. No decision was reached and it was agreed that the issue would be discussed at the Board meeting on September 6, 1984.

10. ADJOURNMENT

The meeting was adjourned at approximately 12:40 p.m., August 11, 1984.

Submitted by:

Eugene C. Hollander, Secretary
Indiana Public Defender Council

Date: _____

TERRANCE W. RICHMOND, CHAIRMAN



PROPOSED STANDARDS FOR APPOINTMENT OF COUNSEL
IPDC Standards Committee
October 27, 1983

**I. QUALIFICATIONS FOR APPOINTMENT OF COUNSEL IN
CASES IN WHICH THE DEATH PENALTY MAY BE IMPOSED**

- A. In cases where the death penalty is charged, no less than two attorneys should represent a single defendant. Sections B and C below set forth experience qualifications which constitute a prima facie basis for the approval of the appointed attorney or attorneys to represent an indigent person in a case where the death penalty is charged.
- B. In cases where the death penalty is charged, the attorneys appointed to represent an indigent person should have attended a death penalty seminar within two years prior to their appointment or agree to attend a death penalty seminar prior to trial.

C. Appointment as Lead Counsel

Admission to Bar of Indiana or another state in the United States; and 3 years litigation experience, and meets at least one of the three qualifications numbered 1, 2 or 3 below:

1. Prior experience as lead counsel in the trial of at least one (1) case where the death penalty is charged, or;
2. Prior experience as co-counsel in the trial of a case where the death penalty was a possible punishment and either:
 - a. Has prior experience as lead counsel in the jury trial of at least one (1) murder case, or;
 - b. Has prior experience as lead counsel in five (5) or more felony jury trials or the equivalent experience. (2 civil jury trials = 1 criminal jury trial).
3. Prior experience as lead counsel in the trial of either:
 - a. At least three (3) murder trials, or;
 - b. At least one (1) murder jury trial and at least three (3) Class A, B or C felony jury trials, or;
 - c. At least three (3) Class A, B or C felony jury trials within the past three (3) years.

D. Appointment as Co-Counsel

Admission to Bar of Indiana or another state in the United States and meets at least one of the qualifications numbered 1, 2, 3, or 4 below:

1. Qualifies as lead counsel under section C above, or;
2. Prior experience as co-counsel in a trial where the death penalty was charged, or;

APPENDIX B

3. Prior experience as co-counsel in at least one (1) murder trial, or;
 4. Prior experience as lead counsel in at least two (2) Class A, B or C felony jury trials, or the equivalent experience. (2 civil jury trials = 1 criminal jury trial).
- E. Trial courts shall be free to adopt local rules requiring qualifications in addition to the minimum standards established herein.

II. QUALIFICATIONS FOR APPOINTMENT OF COUNSEL (NON-CAPITAL CASES)

- A. Any attorney who fails to meet the following minimum qualification shall not be assigned to represent an indigent person in a criminal case.
1. Where the defendant is charged with murder:
 - a. Trial counsel in one (1) prior murder trial; or
 - b. Co-counsel in one (1) prior murder trial and one (1) prior Class A, B or C felony trial; or
 - c. Trial counsel in two (2) class a felony trials; or
 - d. Trial counsel in six (6) or more jury trials.
 2. Where the defendant is charged with a Class A, B or C felony.
 - a. Trial counsel in two (2) or more Class A, B, C or D felony trials at least one (1) of which was a jury trial; or
 - b. Trial counsel in any four (4) jury trials at least one (1) of which was a criminal jury trial in a Class A, B, C or D felony trial; or
 - c. Trial counsel in any two (2) criminal trials, and
 - (1) co-counsel in at least one (1) criminal jury trial; or
 - (2) trial counsel or co-counsel in two (2) jury trials.
 3. Where defendant is charged with a Class D felony.
 - a. Trial counsel or co-counsel in at least one (1) criminal jury trial; or
 4. All other cases for which appointed counsel is required by current constitutional interpretations.
 - a. Trial counsel or co-counsel in one (1) trial tried to verdict; or
- B. Trial courts shall be free to adopt local rules requiring qualifications in addition to the minimum standards established herein.

**MODEL CONTRACT FOR COUNSEL SERVICES
FOR INDIGENT DEFENDANTS IN INDIANA**

This contract is made between the following attorney(s):

hereinafter referred to as ATTORNEY; and the judge of the _____
Court of the _____ Judicial District, hereinafter referred to as COURT.

1. AUTHORITY FOR CONTRACT:

This contract is made pursuant to the authority granted to the COURT in IC 33-9-10-1 and under the inherent power of the COURT to provide adequate representation to indigent defendants.

2. SERVICES COVERED:

The ATTORNEY shall provide legal services for indigent defendants in the following categories of cases;

a. Criminal cases:

1. Misdemeanor cases;
2. Felony cases, except murder;
3. Bail revocation;
4. Probation revocation;
5. Modification of sentence (shock probation);
6. Habeas corpus hearings;
7. Interlocutory appeals.

b. Juvenile court proceedings:

1. Delinquency proceedings;
2. Children in need of services (CHINS);
3. Paternity determinations.

c. Mental health proceedings pursuant to IC 16-14-9.1;

d. Extradition proceedings pursuant to IC 35-33-10.

APPENDIX C

3. SERVICES EXCLUDED:

The following services are excluded from this contract:

- a. Any case in which the murder is charged;
- b. Appeals to the Indiana Supreme Court or Court of Appeals;
- c. Appeals to the United States Supreme Court; and
- d. Habeas corpus proceedings in United States District Courts and Court of Appeals.

(RECOMMENDATION: (1) if appeals are included in contract, separate payment provisions per appeal should be specified; (2) if murder cases are included, provisions should be made for extraordinary payment if the death penalty is requested).

4. REPRESENTATION:

Representation will be made at all stages of the proceeding until completed. The ATTORNEY shall include necessary representation of each indigent defendant in matters of investigation, trial preparation, preparation and filing of motions, arguments of motions, trial, personal counseling when appropriate, referral to appropriate agencies, sentencing, and post-trial motions. This includes preparation of all pleadings, documents, letters, research and any and all things regarded as adequate representation of the indigent party.

5. INDIGENT PERSONS:

An indigent person includes any person, who during an appearance before a judge in the COURT, in a case listed in Section 2 above, is found by the judge or referee to be unable to employ an attorney without substantial hardship to himself or his family.

In determining the indigency, the judge shall determine whether the assets of the person exceed the amount needed for the payment of reasonable and necessary expenses incurred, or which must be incurred to support the person and the person's immediate family. Assets to be considered in making the determination shall include disposable

income, cash in hand, stocks and bonds, bank accounts and other property which can be converted to cash within a reasonable period of time and which is not needed to hold a job, or to shelter, clothe, and care for the person and the person's immediate family. Assets which cannot be converted to cash within a reasonable period of time shall be considered as assets equivalent in dollars to the amount of a loan which could reasonably be obtained by using these assets as collateral. If the person's assets, less reasonable and necessary living expenses, are insufficient to cover the anticipated cost of effective representation when the length and complexity of the anticipated proceedings are taken fully into account, the person is eligible for representation by the ATTORNEY.

6. INTERVIEW SCHEDULE:

For client defendants who are in custody, the ATTORNEY shall provide initial interviews with clients within 24 hours of the time when appointments are made on normal working days (Monday through Friday), or by the next working day if the appointment is made on a weekend or holiday.

For client defendants who are not in custody, the ATTORNEY shall provide initial interviews with clients within 72 hours of the time when appointments are made.

An initial contact should be made whenever possible, prior to release of defendant from custody.

7. CONFLICT OF INTEREST:

If at any time after an appointment has been made, the ATTORNEY discovers a conflict of interest pursuant to the Indiana Code of Professional Responsibility, the ATTORNEY shall promptly notify either the judge who made the appointment or the judge of the COURT in which the matter is pending. If the judge agrees that there is a conflict of interest, the judge shall revoke the appointment and appoint other counsel for the indigent person.

8. CONTRACT PERIOD:

The duration of this contract shall be from _____, 19__ through _____, 19___. (RECOMMENDATION: minimum of two years; contract should expire one (1) year before local elections).

The ATTORNEY shall assume the responsibility of representing clients on all cases docketed after the contract date. The ATTORNEY shall continue to represent indigent clients after the termination of the contract date at an hourly rate of _____ (\$ _____), to be approved by the COURT.

9. PAYMENT FOR SERVICES:

The ATTORNEY shall be paid the total sum of _____ dollars. The COURT agrees to pay the ATTORNEY this total sum at the rate of _____ dollars per month. All payments shall be made on the first working day of each month, beginning _____, 19__, for services provided for the preceding month.

The ATTORNEY shall not receive compensation in any form from or on behalf of persons represented pursuant to this contract.

10. COSTS AND EXPENSES:

The County Council shall appropriate pursuant to IC 33-9-10-4 a sum of _____ dollars to be used by the ATTORNEY for the following expenses incurred in providing the contract services:

- a. Witness fees and expenses, including expert witnesses;
- b. Investigation;
- c. Depositions;
- d. Transcripts;
- e. Service of process fees;

f. Necessary travel and lodging expenses incurred while investigating or trying cases or proceedings, including cases removed from the county covered in this contract and tried in any other county. Mileage and per diem expenses shall be paid at the same rate as allowed for county employees.

If the sum specified in the preceding paragraph is exhausted prior to the termination of this contract, the COURT shall pay for all necessary costs and expenses incurred in providing the contract services upon a showing by the ATTORNEY that such expenditures are necessary to provide adequate legal representation.

11. CASELOADS:

The COURT shall not appoint the ATTORNEY to represent an indigent client under this contract after the following maximum caseloads have been reached:

(RECOMMENDATION: (1) caseload limits should be set for maximum at any one time and per year; (2) in predicting caseload of court consider past filings and dispositions in Annual Reports of the State Court Administrator, number of bench and jury trials, class of offenses, amount of time required to be in court; (3) NLADA Standards recommends that the maximum allowable caseloads for each full-time attorney should not exceed the following:

- a. 150 felonies per attorney per year;
- b. 300 misdemeanors per attorney per year;
- c. 200 juvenile cases per attorney per year;
- d. 200 mental commitment cases per attorney per year; or
- e. 25 appeals to an appellate court per attorney per year.

12. MALPRACTICE INSURANCE:

The ATTORNEY shall carry malpractice insurance, paid by the COURT, during the entire contract period, in the amount of at least five hundred thousand dollars (\$500,000). The malpractice insurance policy shall also cover expenses incurred in defending against claims initiated under 42 U.S.C. §1983 et seq. and complaints filed with the Indiana Supreme Court Disciplinary Commission.

13. PRIVILEGED INFORMATION:

The ATTORNEY shall retain all client files in a manner that affords protection of the client's confidentiality interests.

The ATTORNEY shall not release any confidential or attorney-client information, or work product related to any case, except under order of the COURT to do so, unless the ATTORNEY receives a signed waiver from the client.

Any information or statements of the defendants obtained by the ATTORNEY in the process of determining indigency shall be considered privileged under the attorney-client relationship.

14. RECORD KEEPING AND REPORTING:

The ATTORNEY shall maintain individual case records showing services provided and hours served on each appointment which shall be available for inspection by the presiding judge of the COURT upon request.

The ATTORNEY shall maintain a case reporting and management information system, data from which shall be available to and provided to the COURT upon request. This system shall provide the following information: type of cases; number of charges; cases; individuals; jury trials; court trials; method of disposition; and number of appeals.

15. PROFESSIONAL QUALIFICATIONS:

The ATTORNEY herein states that he/she meets the qualifications attached as Addendum A, which are necessary for providing representation under this contract.

16. CONTINUING LEGAL EDUCATION:

The ATTORNEY shall attend _____ hours of continuing legal education during each calendar year of the contract. The COURT shall provide _____ dollars for the ATTORNEY to attend training programs and obtain professional publications.

17. NOTICE TO THE ATTORNEY:

All notices to the ATTORNEY regarding this contract shall be made by contract with (name) _____, (address) _____.

18. CONTRACT MODIFICATIONS:

Any modifications of this contract shall be in writing and approved by all parties. There are no parole agreements accompanying this contract.

19. TERMINATION OF CONTRACT:

Any party may terminate this contract for cause by 30 days written notice. Any party may terminate the contract without cause by _____ days written notice.

All cases assigned prior to termination for cause, and all cases assigned within _____ days after notice of termination without cause, shall be completed pursuant to the contract without compensation other than that provided for in this contract.

(RECOMMENDATION: specific provisions for compensation at a fixed hourly rate should be provided).

The parties agree that "good cause" such as is required for termination of this contract is limited to failure to comply with the terms of the contract such that the delivery

of services to the indigent client under this contract is substantially impaired or rendered impossible, or to a disregard of the rights and best interest of clients under this contract such as leaves them substantially impaired.

20. SUMMARY OF FUNDING:

The total fees, costs and expenses which shall be appropriated each year by the County Council pursuant to IC 33-9-10-4 are as follows:

Fees	_____
Costs and Expenses	_____
Education/Training	_____
Insurance	_____
Appeals	_____
Death Penalty/Murder Cases	_____
TOTAL	_____

ATTORNEY

COURT

Name: _____

Name: _____

Signature: _____

Signature: _____

Date: _____

Date: _____

PREPARED
8/1/84 DMS.

INDIANA PUBLIC DEFENDER COUNCIL
PROJECTED BUDGET FOR FY 84-85

<u>.1 SALARIES</u>					
EXEC. DIRECTOR - LARRY	38058 -				
PUBLICATIONS DIR. - KIT	23795 -				
ADMIN. ASSISTANT. - MARY	21060 -				
RESEARCH ATTY. - MONICA	18200 -				
PUBLICATIONS CLERK - LISA	15249 -				
TOTAL			116362 -		
FRINGE BENEFITS - 20%			23272 -		
CONTRACT RESEARCH			300 -		
<u>BOARD MEETINGS</u>					
AUG. 84 - RETREAT	1050 -				
NOV. 84	250 -				
SPRING 85	250 -				
TOTAL			1550 -		
<u>SEMINARS - SPEAKERS</u>					
1) SEPT. 84					
SEARCH + SEIZURE	1500 -				
(1500 FR. CONF. ACCT.)					
2) NOVEMBER 84	2000 -				
3) SPRING 85	2000 -				
TOTAL			5500 -		
TOTAL .1 EXPENSES:				146984 -	
TOTAL APPROPRIATION FOR .1				126032 -	
DEFICIT				- 20952 -	
<u>PERCENTAGE BREAKDOWN:</u>		\$195,648			
SALARIES + F.B.	72%				
SEMINAR SPEAKERS	3%				
RENT	9%				
OTHER OPERATING	14%				
STAFF + BOARD TRAVEL	2%				

APPENDIX D

OPERATING EXPENSES - FY 84-85

	1	2	3	4
.2	POSTAGE	1638-		
	MAILING SERVICE	640-		
	LIBRARY	4300-		
	TELEPHONE	3920-	.2 TOTAL	10298-
.3	PRINTING			
	INDIANA DEFENDER	660-		
	JURY INSTRUCTIONS MANUAL	2100-		
	SEMINARS	620-		
	MISC.	742-		
	RENT	17784-		
	EQUIPMENT MAINTENANCE	1562-		
	TYPESETTING, TRAINING, MISC	1005-		
	COPIER RENTAL	2415-	.3 TOTAL	26838-
.4	SUPPLIES			
	OFFICE SUPPLIES	2400-		
	BINDERS + TAPES	1200-		
			.4 TOTAL	3600-
.5	EQUIPMENT + FURNITURE	956-	.5 TOTAL	956-
.8	IN-STATE TRAVEL	872-	.8 TOTAL	872-
.9	OUT-OF-STATE TRAVEL	2003-	.9 TOTAL	2003-
	EXTRA APPROPRIATION FOR TRIAL SKILLS (.3)			4097-
			TOTAL OPERATING	48,664-
			.1 PERSONAL SERVICES	126,032-
			TOTAL APPROPRIATION	174,696-

IPDC/IPDA BOARD MEETING

August 10-11, 1984

Abe Martin Lodge - Brown County State Park

AGENDA

Friday - August 10th

- 3:00 - 3:30 ORGANIZATION MEETING (Joint Boards, Family, Friends, Staff)
Introductions, Review objectives of meeting, Agenda
- 3:30 - 4:30 COMMITTEE MEETINGS
- 1) Legislation Committee - Dan Weber, Chairman
Sandy Bryant, Dave Hennessy, George Gesenhues, Susan Carpenter
 - 2) Programs, Publications & Services - Larry Combs, Chairman
Jim Fleming, Mike Dvorak, Mark McNeely, Terry Richmond,
Bill Smock
 - 3) Amicus Briefs Committee - Mike Hunt, Chairman
Jim Johnson, George Barnett, Gene Hollander, Linda Wagoner
- 4:45 - 5:45 JOINT BOARD MEETING - COMMITTEE REPORTS
- Programs, Publications & Services
 - Standards
 - Contracts
 - Defender Services
 - Amicus Brief
 - Legislation
- 5:45 - 6:30 EXECUTIVE DIRECTOR'S REPORT
- 8:00 - 8:30 Association Meeting
- 8:30 Hospitality Campfire (meet on Lodge front porch)

Saturday - August 11th

- 9:00 - 10:00 JOINT BOARD MEETING - Action on Committee Proposals
- Amicus Briefs
 - Legislation
 - IPDC Budget Priorities
 - IPDC Programs, Publications & Services
- 10:15 - 12:00 JOINT BOARD MEETING - Continued
- Model Contract
 - Standards
 - Defender Delivery System - State Legislation
- 12:00 - 12:30 NEW BUSINESS

(Saturday afternoon & evening activities include volleyball & hayride)