**Confidential Memo**

**Amicus Request**

To: IPDC Board of Directors

From: Joel C. Wieneke

Re: Amicus Request: Work Product Privilege and Police Reports

*Minges v. State*, Case No. 21A-CR-216

Mike Cunningham has recently received permission to file a Notice of Appeal in his interlocutory appeal from the trial court’s denial of a motion to compel discovery. In his motion to the Court of Appeals, he explains the State would allow defense counsel to view police reports at the prosecutor’s office, or the defense counsel could receive a copy if they signed and stipulated to the prosecutor’s “protective order, the terms and conditions of which were not negotiable.” The motion does not explain what those terms and conditions are, but it is assumed that they contain prohibitions denying the defendant an opportunity to view the police reports, and against using the police reports as evidence or for impeachment during cross-examination.

The stated purpose of the motion requesting permission to immediately appeal the trial court’s order is to seek a change in the law announced in *State, ex rel. Keaton v. Circuit Court of Rush County*, 475 N.E.2d 1146 (Ind. 1985). *Keaton* held broadly that police reports were protected by the work product privilege. The facts were slightly different, in that the defense attorneys in *Keaton* were provided an opportunity to view the police reports, but there was no offer by the State to provide the police reports if the defense attorneys entered into a stipulation.

**IPDC’s Role as Amicus**: Mr. Cunningham was asked what role he thought IPDC might be able to contribute as Amicus, and the substantive suggestion was for IPDC to brief how other states address the work product privilege in the context of police reports. He also reiterated the goal of getting this case to the Indiana Supreme Court.

**Recommendation:** *Provide research assistance and monitor the appeal for potential participation as Amicus before the Indiana Supreme Court.*

This is a single-issue appeal, and the appellant has a large word limit at the Court of Appeals (14,000), so a discussion of how other states address work product in context of police reports can fit in the Appellant’s Brief. Moreover, the ultimate goal of the appeal is to reverse Supreme Court precedent. In light of that stated goal, the purpose of the Court of Appeals level is to develop and frame the issue in a way that will help lead to Transfer. IPDC can adequately provide assistance with this goal through research and suggestion, and monitor the appeal for participation at the next stage.

Finally, the Notice of Appeal is due March 13th, and the Transcript may be filed quickly, potentially making the initial briefs due as early as the end of April or early May. That could coincide with the end of the legislative session, a time when IPDC legal staff will be particularly stretched thin.