

Indiana Public Defender Commission Meeting Minutes

March 23, 2016

Chairman Mark Rutherford called the meeting to order at approximately 2:05 p.m. Commission members in attendance were: Representative Fine, of House District 12; Larry Landis of the Public Defender Council; David Hensel, Indianapolis; Hon. Mary Ellen Diekhoff; Chairman Rutherford, Indianapolis. The Hon. Diane Boswell was present telephonically. In the audience were Professor Emeritus Normal Lefstein and Steven Hanlin of the American Bar Association; Neil Weismann, St. Joseph County; James Abbs, Chief Public Defender of Noble County; Steve Owens, Chief Public Defender of Vandebugh County; Robert Hill, Chief Public Defender of Marion County; Ray Casanova, Marion County; Michael Sutherlin, Public Defender Board Member of Brown County. A quorum was found at 2:09 p.m.

1. Requests for 50% Reimbursement in Capital Cases

The requests for capital case reimbursement were as listed in the chart below. Mr. Landis moved to approve the requests, and the Hon. Diekoff seconded. Motion passed unanimously.

2. Requests for 40% Reimbursement in Non-Capital Cases

Mr. Mason noted this was a record level of reimbursement for the quarter, which reflected the increase level of expenses related to TPR/CHINS filings. He noted issues with Lagrange and Jackson County. He reported that Tippecanoe County was reporting CHINS numbers inaccurately. Staff attorneys had already met with Lagrange and Tippecanoe this quarter to resolve the issues.

The amounts requested are reflected in the chart below. Mr. Hensel moved to approve the requests, and Rep. Fine seconded the motion. The motion passed unanimously.

3. Election of Chairperson

Chairman Rutherford stated he would be willing to serve as Chairperson as another 2 years. Mr. Landis moved that Mr. Rutherford be appointed for another two years as Chairperson. Mr. Hensel seconded the motion, which passed unanimously.

4. Tippecanoe County Request for Reimbursement on Older Expenses

Mr. Mason reported that Tippecanoe County had submitted a request for older expenses related to the purchase of a building in which the public defender would occupy one-quarter. The bought the building and spent money retro-fitting it as far back as 4Q of 2015. The public defender office only represents 25% of the building. They are requesting only 20% of those expenses since only 20% of those expenses are going to be dedicated to that floor. Mr. Mason recommended reimbursement of \$57,000, which would be the reimbursement amount to them had they submitted them on a timely fashion.

Mr. Landis said the first time that we have reimbursed for capital expenses rather than just operating expenses. He said it is a fundamental policy issue because the Commission has never expressed it before. Representative Fine had the same concerns. Chairman Rutherford questioned whether the standards need to be clearer. Mr. Hensel asked whether the statute does allow such reimbursement. Mr. Mason noted that there was a reduction already which is factoring in the non-reimbursable expenses that would otherwise not be reimbursed by the county. Mr. Mason believed it will be the most equitable approach--and if they stop using the space the reimbursement will end.

County representatives also spoke at the meeting. Mr. Winger of Tippecanoe County stated that they had limited options on what could be considered. Prosecutor was moving in as well. It is unlikely to go anywhere else. He said that the delay was due to making sure the right people were moving into the new building.

Landis: let's just figure out the dollar amount as appropriate to PDC building - make sure that the Commission thinks through the policy. Rutherford clarifies Rutherford's motion - we are amenable to paying rent with certain costs amortized. Treat them like something you're not, something we know how to deal with. Fine seconded the motion, which passed unanimously.

5. Approval of Minutes from December 9, 2015 Meetings

The Hon. Diekhoff moved to approve the minutes, which Mr. Landis seconded. The motion passed unanimously.

6. Resignation of Andrew Roesener

Mr. Roesener was recently appointed as a magistrate. Due to his new responsibilities, he could no longer serve on the Commission. The Chairman expressed appreciation for his service.

7. Staff Report

The Commission voted at last meeting to authorize the hiring of staff attorneys as employees of the Commission. This was the original intent when the legislation was drafted as Mr. Landis reported at last meeting.

Mr. Mason reported that the Sixth Amendment Center would be published the middle of April.

8. Approval of Amended Comprehensive Plan: Madison County

There was previous concern from Mr. Landis about language in the plan that allowed judge to hire an attorney directly. They have removed that language. Mr. Landis says at some point it is necessary to engage with the fact they have a managing public defender because they don't want to pay him the salary of a chief then they need to have a chief and pay the chief what he deserves to be paid. He says at some point we need to more clearly define what a chief is.

Mr. Hensel moved to approve the plan, which Landis seconded. Motion passes unanimously.

9. Authorization to Implement Caseload Study

Staff attorneys previously applied for a grant but were denied. However, there is a statutory mandate to keep standards updated. Mr. Mason referenced a handout from the attorneys that listed all the expenses listed in the handouts. He noted there would be some expense related to modifying the Public Defender Information System to create data gathering capability.

Mr. Mason spoke; he would welcome the opportunity to do a caseload study in Indiana. Have also done caseload study in Missouri. Mr. Steven Hanlin is a former member of the ABA standing committee. Norm is also an expert on something.

As a result of that, the budget is at least one we want to be able to think about more closely.

-We would like to suggest that give 30 days to submit a slight amendment to that budget.

-It will not be an exorbitant additional sum but have not had the chance to consider the inclusion of these kinds of cases and he would like to use that opportunity to ask questions about us.

-Steve was for many years the Pro Bono partner at Holland and Knight headquartered at Washinton DC and did a variety of indigent defense and other kinds of litigation around the country. Extremely well-versed in prison rights. Since leaving HOLLand and Knight he has really turned his attention to public defense matters which is what brought us together because that is how he spends most of his time. And Steve has a new title, he is the general counsel for the national association of public defense which is a new organization but is growing rapidly and as a result of that position he lives both in Washington DC and also has a residence at St. Louis University and affiliation with St. Louis University law school.

-Landis: when can you start?

-Lanlin - very much preoccupied with questions right now. These things usually tend to time around legislative sessions because we like, unless the system is falling off the edge like in Louisiana, we would like to give the legislature the first shot at it.

-Discussion: this summer the budget requests by State Agencies but it is not hard and fast

-Norm: we can't possibly have a study done by then. Any time in the fall having good numbers would be great.

-need 6 months of continuous, full time

-Hanlin- this is a very hard cultural change.

-The key driver is that 6 months of permanent timekeeping time.

-Developed by the RAND corporation. Has been peer-reviewed and validated.

-Wants the state's most respected accounting firm.

-test: reasonably assistance of counsel pursuant to norms. Just using the Strickland standard. pursuant to prevailing professional norms.

-when you can get prosecutors, defenders, academics. The courts are going to respect that. The key standard is criminal justice 4-61B

1:11 - Halin talking about PD Commisison

-Hanlin explains the process

-Goal is by next July or August to go into Legislature and advocate

-He is confident that we can deliver a product that is really good between July and August of next year

-Reached out to ICJI and continued to look for applications (Mr. Mason did)

-Larry - he thinks he can get money to add CHINS and Juvenile Delinquency components which would help

-Lafstein: there really isn't any justification. There never was, we knew that at the time and they were borrowed from the 1972 report of the national advisory commission on Criminal Justice standards and goals. They based them on a report of the Defender Committee of NLADA. It may have been a discussion and plucked some numbers out of the air and they have endured somehow as the only standards worthy of citation--but they never worthy of citation. They were a huge guess, but they were way off.

-Mr. Mason noted also the classification system changed from letters to levels.

-Discussion for money between Landis and Rutherford

-Motion: Landis moves for motion as described

-Hensel seconds. Motion passes unanimously.

Lefstein wants to be clear re: coverage of CHINS and TPR - we need to do some work on this area, he said. Need to be different categories of tasks and separate tasks. They need to asses what implications they have for possible additional costs.

-Chairman Rutherford - we will make adjustments. Landis says within one month he will know whether there is additional money from the ICJI. If not it will need to be included in the final additional budget.

10. Approval of Specific Case Trial Practice Courses: Standard E

-Whether or not Trail Practice Institute should qualify

-His recommendation that would Commission would approve the first 3. If Commission would consider the trial practice institute, the 4th one. The one the Council offers.

-Landis: if we could defer this, would like to take a whole of experience standards. Noted deleted experience requirements for level 6 requirements. He doesn't know how that fell away. Thought that there were 3 jury trials, but he didn't know if it was jury trial experience. Would like to take a look at a whole package.

-Conversation tabled.

-Chariman noted problems with rural counties getting people approved.

Derrick will provide a history of standards.

Diekhoff notes that while personal experience counts for something, learning from a bad person is not good. Better to take a training where you will learn the right way to do things.

*Motion to approve 1st three - Landis so moves; Diekhoff seconds. Motion passes unanimously.

11. Case Counting/Reporting Rules When a Vacancy Occurs

- No Commission guideline to standard J - so no guideline. Essentially, we have had multiple attorneys call complaining on both sides of the fence.
- To address all of the questions
- Look at PowerPoint to understand this part
- Derrick gives some examples
- Landis has a concern - what about a Richmond Hill-type case
- Mr. Mason agrees - having the majority of cases now counted.
- Neil Weismann - would like to see it put out to the Chiefs for comment.
- Jim Abbs - concern - think you have to transfer, should be allowed to put through entire year.
- wants to bring it up at the next meeting
- this would institutionalize double-counting, according to Bob Hill
- his concern is that there is double-counting. "For my office there is a double counting situation. And in addition to that, it discounts and discredits all the work that Ray done on that case prior to being promoted in on his replacement. It then creates a disincentive to promoting younger lawyers into a more advanced position."
- He disagrees with the right path.
- Every case is counted.

- Counted as a newer case
- Chiefs argue that it is a double-counting
- Landis: it is a problem that needs to be addressed
- Landis: requires more time
- Will hear back in June from the Chiefs. Pass it out to chief public defenders, will e-mail it out to the listserv.
- Also talk to contract attorneys. Post on website if allowed by State Court Administration.

12. Other Matters

- next meeting requested the hourly rate for assigned counsel and whether that needs to be adjusted.

Motion to adjourn - 4:11 p.m.