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Sen. Richard Bray, Chair  
Sen. David Ford  
Sen. William Alexa  
Sen. Timothy Lanane  
Rep. Jesse Villalpando, Vice Chair  
Rep. Kathy Richardson  
Rep. Ralph Ayres  
Rep. Dale Sturtz



Lay Members:

Hon. Randall Shepard  
Hon. Ernest Yelton  
Mary Lou Schnell  
William Overdeer  
Sarah Taylor

## COMMISSION ON COURTS

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### MEETING MINUTES

Authority: IC 33-1-15

Meeting Date: September 10, 1998  
Meeting Time: 10:00 A.M.  
Meeting Place: State House, 200 W. Washington St., Rm 404  
Meeting City: Indianapolis, Indiana  
Meeting Number: 4

Members Present: Sen. Richard Bray, Chair; Sen. William Alexa; Rep. Jesse Villalpando, Vice Chairperson; Rep. Dale Sturtz; Honorable Randall Shepard; William Overdeer; Sarah Taylor.

Members Absent: Sen. David Ford; Sen. Timothy Lanane; Rep. Ralph Ayres; Rep. Kathy Richardson; Honorable Ernest Yelton; Mary Lou Schnell.

### CALL TO ORDER AND OPENING REMARKS

Senator Bray called the meeting to order at 10:25 a.m. The Commission then approved the minutes of the meeting of August 20, 1998.

### UNIFIED FAMILY COURTS PRESENTATION

Justice Frank Sullivan, Jr., Indiana Supreme Court, distributed a copy of his remarks regarding the ABA Summit on Unified Family Courts and the applicability of the unified family courts concept in Indiana.<sup>1</sup> Justice Sullivan stated that because different courts have jurisdiction over different matters, one family can have several cases before several judges. This results in conflicting orders regarding custody, visitation, and other important family matters. He testified that unified family courts are better for families and taxpayers, because unified family courts are more cost effective and can better serve the needs of families than multiple courts. Justice Sullivan reported that Rhode Island, Hawaii, Louisville, Kentucky, Maryland and New Jersey have unified family courts. He explained that unified family courts would most likely have jurisdiction over divorce, custody and visitation, alimony and child support, juvenile delinquency, child abuse, and child neglect issues. Justice Sullivan stated that the concept is more than a matter of consolidating cases and includes the following features:

- Many family courts operate on a one-judge, one-family concept in order to avoid conflicting court orders and to achieve cost effectiveness by reducing the number of hearings and paperwork;
- Many family courts go beyond an adjudicative role and provide families with referrals to needed

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<sup>1</sup>A copy of Justice Sullivan's remarks is on file in the Legislative Information Center, Room 230 of the State House, Indianapolis, Indiana. The telephone number of the Legislative Information Center is (317) 232-9856, and the mailing address is 200 West Washington Street, Suite 301, Indianapolis, Indiana 46204-2789.

- social services;
- Many family courts contract for mediation services;
- Family courts are usually housed in specialized physical facilities which may have child-sized furnishings, smaller, less intimidating courtrooms, and clean, comfortable and private settings where families can negotiate;
- Family courts often provide some kind of legal assistance to families who cannot afford legal representation;
- Many family courts conduct training for judges and staff and use technology to implement case management systems and evaluate the court's performance.

Justice Sullivan commented that a successful unified family court requires an approach that is in part structurally based (more family-friendly facilities, for example) and has a commitment to make the most of judicial resources in an attempt to better serve families. He observed that while in some small counties there are family courts in structural ways, the commitment required does not exist, and in large counties, the commitment is there, but not the structure. Justice Sullivan cited Judge Robyn Moberly's court in Marion County as a good example of a family court. In closing, he recommended that the General Assembly authorize and fund a unified family court project in large and small counties. He also recommended the establishment of a task force to explore subsidiary issues and to analyze the outcomes.

## **CONSIDERATION OF REQUESTS FOR JUDICIAL OFFICERS**

**Magistrate T. Edward Page, Lake Superior Court, Criminal Division**, informed the Commission that the Lake Superior Court, Criminal Division is adequately staffed at the current time and will not be requesting any additional judicial officers.

**Representative Dale Sturtz, District 52**, introduced **Judge Michael Kramer, Noble County Court**, who presented a request to convert the Noble County Court to a superior court. Judge Kramer cited his inability to provide plaintiffs with injunctive relief as an important reason for such a conversion. He reported that the current circuit court judge will not be running for reelection and the current prosecutor is running unopposed. Judge Kramer said that since the current superior court judge used to work for the incoming circuit court judge, conflicts of interest that arise will necessitate the use of special judges. If the county court were converted to a superior court, special judges would not be necessary and the expansion of his jurisdiction would enable him to provide plaintiffs with remedies he cannot give as a county court judge. In response to questions from the Commission, Judge Kramer stated that the conversion would result in no additional state or local costs, and that he would retain his small claims jurisdiction.

**Judge Terry Crone, St. Joseph Circuit Court, and Judge Peter Nemeth, St. Joseph Probate Court**, were unable to attend the Commission meeting but submitted letters to the members requesting one circuit court magistrate and two probate court magistrates.

## **DISCUSSION OF BAIL BOND SYSTEM**

**Judge Paul Mathias, President, Indiana Judges' Association**, testified that each county should be allowed to decide what bail system to use. Judge Mathias then introduced **Judge John Surbeck, Jr., Allen Superior Court**, who distributed handouts and testified before the Commission regarding the benefits of the public Pre-Trial Services agency (PTS) used in Allen County, which administers the 10% cash bond option and monitors defendants released on their own recognizance.<sup>2</sup> PTS is comprised of five staff members who interview those arrested on felony charges and make bond recommendations to judges. Judge Surbeck explained that murder is not a bondable offense and that a double bond can be required if the individual has a prior felony offense. Judge Surbeck stressed that bonds are set to guarantee the defendant's appearance in court and to assure the safety of the community and individuals. He reminded the Commission that until a defendant is tried and convicted, there is a

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<sup>2</sup>Copies of the handouts are on file at the Legislative Information Center. (See footnote 1).

presumption of innocence which should not be forgotten when setting a bond, and that the goal is to set the lowest possible bond with the fewest conditions that will guarantee the defendant's appearance and the safety of others.

Judge Surbeck testified that the public bond system is efficient and saves taxpayer's money. In his handouts, Judge Surbeck included a survey of 96 cases which illustrate that the failure to appear (FTA) rate and the rearrest rate is lower with public bonds than with commercial bonds. He commented that all of the fugitives in Allen County were commercial surety cases.

Judge Surbeck reported that the \$240,000 annual budget for PTS is justified with the release of just 36 people a year because it costs the county \$35 per day to incarcerate one individual. He reminded the Commission that as a result of the federal lawsuit pending against Allen County because of jail overcrowding in the system, he has recommended that PTS be part of the solution.

Judge Surbeck made the following additional points:

- Most FTAs forget to appear, so the weekly reminders provided by PTS are crucial;
- Commercial bondsmen are in business - it is not their job to monitor their cases or conditions.
- There are hidden costs associated with commercial sureties because in order for them to be held liable, clerks must send out many notices, and warrants have to be issued and served by the sheriff.
- The abolishment of PTS would impact every part of the criminal justice system. Without it, judges would be more likely to set higher bonds, which many defendants wouldn't be able to pay, and so the jail population would increase. The court would have to depend on the public defender's advocacy at the bond hearing, which would have to be held if PTS was abolished. Caseloads are already too high and without PTS, more additional judicial officers would be needed.
- PTS is supported by the Allen County prosecutor, the American Bar Association, and the Department of Justice.
- In 1990, the Corrections Advisory Commission advised Governor Bayh to increase the use of public bonds and to decrease reliance on surety bonds. The Commission also inquired into Kentucky's system, which eliminated surety bonds completely.

In response to questions from the Commission, Judge Surbeck stated that it is the defendant who chooses which system to use, and that the number of surety bonds forfeited because of FTA is low because the forfeiture law allows private bail bondsmen to get out of the obligation to pay. He reported he does not know the number of outstanding warrants in Allen County, but estimates there are thousands. In closing, Judge Surbeck cautioned the Commission members not to be swayed by emotionalism generated by the private bail bondsmen.

**Les Sebring, President, United Surety Agents, Inc.**, distributed copies of his remarks and testified that he is a lobbyist for the Indiana Surety Association and that he manages 75 bail agents in Indiana.<sup>3</sup> Mr. Sebring stated that other states and courts are moving back to commercial sureties and that Indiana is behind. Mr. Sebring commented that criminals consider the 10% cash deposit a cost of doing business. He stressed that surety agents are licensed and regulated and must deposit funds with the Department of Insurance. Mr. Sebring stated that for 10% of the bail amount, surety agents assume the full responsibility of bringing the defendant to court, and apprehending them if they flee. He reported that in 1997, out of a total of 12,600 bonds, 220 were FTAs, 212 of the 220 were recovered and \$27,152 in claim costs were incurred. Mr. Sebring explained that profit is related to risk. He stated that his position is not a self serving one because he believes that a first time misdemeanor or minor felon who is a permanent resident should be released. He said that all others should be required to use a surety agent.

In response to questions from the Commission, Mr. Sebring explained that the passage of SB 264-1998

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<sup>3</sup>A copy of the handout is on file at the Legislative Information Center. (See footnote 1).

would make cash deposits cost effective and would restrict the use of cash bonds.

**Lee Sexton, a bail agent with Midwest Bonding**, distributed copies of his analysis of the study conducted by Judge Surbeck and testified that his statistics indicate that the commercial surety FTA rate is 17.3% in Allen County, which is lower than the figure Judge Surbeck quoted.<sup>4</sup>

**Magistrate T. Edward Page, Lake Superior Court and Lake County Bar Association**, distributed copies of the bail statutes and several bail-related newspaper articles, and reported that the cash bail system has unanimous support in Lake County.<sup>5</sup> He testified that the long-term FTA rate in Lake County is 7%. Magistrate Page stated that cash bail is often the only source from which to pay court costs, restitution to the victim, and attorney's fees. He stated that the cash bail system increases a defendant's chances for private representation and reduces reliance on public defenders. Magistrate Page explained that any FTA results in the issuance of a warrant, and if a further FTA occurs, a judgment is entered, and the cash is held for one year and then deposited into the School Fund.

Magistrate Page testified that most surety bonds do not get forfeited and that the statute allows courts to forgive payment if a bondsmen shows due diligence. He stated that in his experience as a magistrate in the criminal division, it took longer for him to deal with four surety bonds with FTA status than the time spent with all cash bond cases, because special orders were required, and contempt orders were issued for failure to pay. He reported that the FTA rate is higher with misdemeanor cases than with felonies. In closing, Magistrate Page told the Commission that he is being sued by bondsmen for following the bail statute.

## **DISCUSSION OF JUDGES' STATEMENT OF ECONOMIC INTEREST**

**Judge Mary Lee Comer, Indiana Judges' Association**, introduced **Meg Babcock, Counsel, Commission on Judicial Qualifications**, who testified that unlike the General Assembly, judges have to list the names of family members who have given them gifts. Ms. Babcock recognized that the purpose of the requirement is to reveal issues that may reflect on a judge's impartiality. She stated that the proposal is identical to the one which the Commission approved last year, and provides for an exemption for close family members and defines "close family member".

## **CONVERSION OF JUVENILE MAGISTRATES SALARIES FROM 43% TO 100% STATE PAID**

**Magistrate Thomas Felts, Allen Circuit Court**, testified in favor of the proposed conversion, and reminded the Commission that it gave its approval to the conversion last year and recommended it to the General Assembly last session.

## **MECHANIC'S LIENS**

**Robert Palmer, Associated General Contractors of Indiana, Inc.**, testified that the construction industry attempted to make dramatic changes to the mechanic's lien law through HB 1303-1998 but encountered strong opposition. He stated that the current goal is to reach consensus among the construction and banking industries and propose a compromise bill. He reported that he hoped to have a draft for the representatives of the banking industry to review next week. Mr. Palmer commented that the construction industry seeks to have no lien contracts enforceable under the law and the banking industry's concern is the priority of liens. He explained that the homebuilding industry would still be exempted from any new proposal. Mr. Palmer closed his comments by assuring the Commission that he will not take any more of their time should he be unable to come up with an acceptable compromise.

## **ADJOURNMENT**

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<sup>4</sup>A copy of the handout is on file at the Legislative Information Center. (See footnote 1).

<sup>5</sup>Copies of the bail statutes and articles are on file at the Legislative Information Center. (See footnote 1).

With no further business before the Commission, Sen. Bray set the next meeting for September 24, 1998 at 10:00 a.m. in Room 404 and adjourned the meeting.