

IPDC BOARD OF DIRECTORS' MEETING MINUTES

Thursday, March 14, 1996

6:00 P.M.

Location: University Place Board Room

Persons Attending:

Jodie English, Susan Carpenter, Quinton Ellis, David Hennessy, David Keckley, Eric Kosalke, Don Pagos, Terry Richmond and Teresa Campbell, Executive Assistant.

Items to be Discussed:

1. Performance Guidelines Summaries
2. New business
3. T-Shirt entries
4. Gideon Award entries
5. Training
6. Manual Sales
7. Access Indiana (internet)
8. Lexis-Nexis training
9. Executive Director's Legislative Summary

1. Minutes of the January 19, 1996, were submitted by Secretary Jeff Lantz; however, they were not copied for all the Board Members in time for our meeting, and, consequently, approval of the January 19, 1996, Minutes was deferred until our next meeting. A copy of the January, 1996, Minutes is attached to these Minutes.

2. Performance Guidelines: Prior to our meeting the following Board Members submitted guideline critiques:

[Signature] 6-14-96

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Sections 1 and 2 - Kitty Liell

Section 3 - Don Pagos

Section 5 - Jodie English

Section 6 - Quinton Ellis

Section 8 - David Shircliff

Section 9 - Dan Toomey and Dave Keckley

Overview - Susan Carpenter

The following guideline section assignments remain uncompleted:

Section 4 - Terry Richmond

Section 6 - Comments by Jeff Lantz

Section 7 - Eric Koselke and David Hennessy

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The Board agreed that the guidelines were being promulgated so as to define uniform standards for effective assistance of counsel in non-capital cases. The guidelines will have utility in training defenders, in convincing local boards and courts to allocate meaningful resources for quality indigent defense, and to provide professional norms to be used in litigating post-conviction matters. The guidelines are meant to define standards for state practitioners. However, citations in commentary and footnotes to relevant federal authority was felt to be useful in defining the scope of a given Performance Guideline.

Generally, the Board agreed that it would be most efficient for the Board to articulate the general black letter law for the guidelines, but leave to IPDC staff attorneys the tailoring of the footnotes and commentary to Indiana precedent and also the exact wording of the guidelines themselves.

As the ensuing discussion of guideline 1 took one hour and fifteen minutes, the Board agreed that, as to guidelines 2 through 9, the Board Member(s) responsible for drafting an initial critique be charged with the job of finding two other Board Members with whom to fully discuss his or her assigned guideline section and to report the product of that discussion back to the full Board at our next meeting. Board members are reminded to integrate Susan Carpenter's concerns into their reports on the individual guideline sections at the next Board Meeting. Landis is asked to designate an IPDC staff attorney(s) to be responsible for drafting footnotes

and commentary to each of the guidelines for Board review.

Guideline 1.1(a): on motion by Susan Carpenter, seconded by Terry Richmond, was approved by all present as follows: approve the first sentence of the guideline but delete the second sentence.

Commentary and footnotes relevant to ethical norms must, of course, be deleted.

Guideline 1.2(a): on motion by Susan Carpenter, seconded by Quinton Ellis, all approved the first and second sentences: no changes; the third sentence to read as follows: "Counsel shall become informed of the practices of the Specific Judge before whom a case is pending."

Guideline 1.2(b): on motion by Susan Carpenter, seconded by Quinton Ellis, approved as written.

Guideline 1.3(a): on motion by Susan Carpenter, seconded by Eric Kosalke, all approved the following language:

"Before agreeing to act as counsel or accepting appointment by a court, or assignment of a case by the head of a defender organization, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge and experience to offer quality representation to a defendant in a particular matter. If, after exhausting every effort to obtain additional time, resources or otherwise remedy the deficiency, counsel is unable to offer quality representation in the case, counsel should move to withdraw. In moving to withdraw, the record shall, by documents and/or testimony, establish any and all deficiencies in time, resources, or knowledge and all efforts made to remedy said deficiencies."

Commentary:

Where the individual defender is a member of a defender office, the individual defender lacking sufficient time, resources or knowledge to adequately defend the case shall notify the head defender of said deficiency who, in turn, has an affirmative obligation to notify the court in which the case is pending. Head defenders have a special obligation to press the county judiciary to mandate sufficient resources so as to insure that individual defenders and the defender office as a whole are able to render

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effective assistance of counsel.

It was further agreed that the commentary to 1.3(a) should also reference public defender commission caseload standards.

Guideline 1.3(b), on motion of Susan Carpenter, seconded by Quinton Ellis, the first sentence was amended to read: "Counsel must be alert to and take appropriate action regarding all potential and actual conflicts of interest that would impair counsel's ability to represent a client." The second sentence was deleted.

Commentary:

Reference should be made to the fact that county plans are required to have a conflicts policy in order to qualify for 25% reimbursement from the Public Defender Commission. Some reference in the commentary should be made to seeking an advisory opinion regarding any potential conflicts from not only the State Bar Disciplinary Commission, but also the head defender of the individual's defender organization, or a staff attorney at IPDC or the Indiana Public Defender State Office. The commentary should further speak to the attorney's obligation to not jeopardize the client's case in pursuing a Motion to Withdraw.

Guideline 1.3(c), on motion of Susan Carpenter, seconded by Eric Koselke, the following language was approved:

"Counsel has the obligation to maintain communication with the client and to keep the client informed as to the substance of counsel's efforts in defense of the case."

Commentary:

The commentary should state that there is no fixed or minimum number of meetings with a client that are required, but counsel does have the obligation to insure that the client is kept abreast of critical developments in the case. Counsel should be careful in sharing information with the client that privacy of communications is insured. Counsel should determine whether providing the incarcerated client with copies of pleadings and discovery runs the risk of such material falling into the hands of inmates who might be motivated to serve as informants against the accused. As Indiana Courts experiment with video teleconferencing, counsel should be sure that attorney/client privilege is fully honored.

3. New business: T-shirt entries were reviewed and additional submissions were encouraged.

4. Gideon Award Entries: Two names have been placed in nomination: Paula Sites and Robert Hammerle.

5. Training: Board Members agreed that Terri Harper, Paula Sites and Teresa Campbell's efforts in training seminars have been exemplary. Board Members expressed interest in whether there has been any follow-up on discussions a year ago to explore interactive training. The Board further agreed to ask the IPDC training staff to explore conducting a one-half to one-day regional training program on a trial basis to determine whether regional training was of interest to members and would be cost effective. The infrequency and cap on enrollment of trial practice training was a concern of the Board. Eric Kosek indicated that the seminar scheduled for March 15, 1996, conflicted with a Marion County Defender training, the latter scheduled once each month on a Friday. IPDC staff attorneys were encouraged to contact the Marion County organization so as to insure that our seminars do not conflict with their in-house programs.

6. Manual Sales: The Board agreed that the IPDC staff should explore and pursue creative ways to better advertise the utility, low cost and ready availability of manuals. It was noted that the excellent 1995 Pretrial Manual has only sold less than one-half of the copies sold of the Evidence Manual. The Board asked that IPDC staff consider doing a two-minute live advertisement for a manual at each of the seminars and, perhaps, make a more visible display of the manuals at the registration desk.

7. Access Indiana Internet: Teresa Campbell reported on this new development.

8. Lexis-Nexis Training: Teresa Campbell reported on successful efforts in this area.

9. The Executive Director's Legislative Summary was distributed for review.

10. Next Meeting: As insufficient Board Members were available for the tentatively-scheduled date of April 12, 1996, it was agreed that the next meeting of the Board is set for Thursday, May 16, 1996, at 6:15 P.M. at the St. Vincent Marten Hotel and Conference Center on West 86th Street, Indianapolis. It was also noted that IACDL has scheduled a full-day conference on Friday, May 17, 1996, at the same hotel devoted to the topic of Federal Criminal Defense. The IACDL conference will be advertised in The Defender.

11. Adjournment: The meeting was adjourned at 7:35 P.M.

Jodie English:lm