

# INDIANA PUBLIC DEFENDER COUNCIL

Board Meeting  
September 20, 2008  
Potawatomi Inn  
Angola, Indiana

## MINUTES

### I. CALL TO ORDER

The meeting of the Board of Directors of the Indiana Public Defender Council (IPDC) was called to order by Chair David Hennessy at 9:00 AM in the Director's Room of the Potawatomi Inn. Board members present were Zaki Ali, David Cook, David Hennessy, Michelle Kraus, Jeff Lockwood, Mike McDaniel, Sonya Scott and Neil Weisman. Staff present were Larry Landis, Paula Sites, Don Murphy, Jodie English and Loretta Jackson. Noble County Chief Public Defender James Abbs was also in attendance.

### II. APPROVAL OF MINUTES

The Minutes of the January 18, 2008 meeting were unanimously approved.

### III. EXECUTIVE DIRECTOR'S REPORT

#### A. GOALS

##### 1. Legislation

Larry reviewed the Council's legislative goals for the upcoming session.

- Legislation to prohibit the execution of the mentally ill has been promised a hearing.
- Requiring counsel for juveniles prior to waiver to adult court has a sponsor.
- Mandatory taping of custodial interrogations has a sponsor.
- He is working with a coalition of interested groups to increasing funding for forensic diversion by increasing the alcohol tax.
- Expanding the right to expungement of arrest and reversed or vacated convictions has some support in the Sentencing Policy Study Committee.

Other legislation of interest:

- David Hennessy noted that a GBMI verdict requires that the defendant be immediately incarcerated, while a plain guilty verdict allows the defendant to remain out on bail until sentencing. He would like to see that portion of the statute repealed.
- Larry reported that the Sentencing Policy Study Committee has acknowledged that the 1000 feet of school enhancement for drug dealing offenses has a racial disparity impact. The Indiana State Bar Association also has a study showing the same thing.
- Neil Weisman stated that in St. Joseph County prosecutors are applying the "child care facility" enhancement to include in-home baby sitters.

## **2. Improving effectiveness of our members**

- Larry requested suggestion for improving participation in our on-line seminars.
- The Council will continue to provide Lexis access to our members through subscriptions.
- Larry is working with Lexis to create a searchable database that would include the casebank and manuals which would include hypertext links from a case name to the full case in Lexis.

## **B. PUBLIC DEFENDER LEGISLATION**

James Abbs, Chief Public Defender of Noble County, reported on the Chief Public Defenders Association's proposal regarding state funding of indigent defense services. The chief public defenders believe that the current system of local and state funding is working and it would be best to modify this system than create a new system with 100% state funding. He made the following recommendations on behalf of the chief public defenders:

1. The current system gives the counties:
  - a. independence from the judges and the state;
  - b. leverage with their county councils;
  - c. flexibility to create a program that fits the count's needs; and
  - d. insulation from state budget cuts that happens in states with 100% state funding
2. The Indiana Public Defender Commission should appoint one county public defender board member in place of one of the judicial appointments.
3. Reimbursement in non-capital cases should be increased to 50%.
4. Reimbursement in non-capital cases should provided in all cases, including misdemeanors.
5. 100% state funding might result in an increase in death penalty filings.
6. They do not oppose the creation of a statewide appellate office, but counties should have an option to retain control over the appointment if they have a county office with an appellate division. Funding for county appellate divisions was not discussed by the Chiefs.

The Board discussed the chiefs recommendations. Among the issues discussed were quality control, accountability, judicial control over the public defender boards and appointment of counsel, and the salary of the Chief Public Defender. In some counties, the chief public defender is the highest county paid person and this creates resistance to opt into the reimbursement system. The Board reaffirmed their support of the chiefs recommendation that the State should pay the salary of the Chief Public Defender, just as they do for the Prosecuting Attorney.

There was no resolution of the problems caused by the lack of measurements, results or outcomes by which the quality of representation could be objectively measured. There was a consensus that more work was need to devise a system to define and measure the quality of service. Don Murphy volunteered to contact managing partners of several large law firms to find out how they measure quality of representation.

Larry reported that there is no legislation currently pending or drafted to create a state-wide

system. However, he recommended that it was important that we have positions ready in the event there is movement on creating a state funded indigent defense system.

#### **IV. TRAINING**

Jodie English presented a training report. Since last year's retreat, the Council has had 8 interactive on-line training sessions. By the end of this calendar year, we will have 26 hours of videotaped training available. To publicize the availability of this training, it was suggested that we show an example at the Annual Update seminar.

David Hennessy stated that the mentoring program is missed and asked what happened to the plan to have local mentors. Don Murphy reported that in Vigo County the mentoring program consisted of having all the attorneys in the office brainstorm a particular case, with the mentor acting as facilitator. Larry said we could train facilitators or mentors to provide this service in counties but we do not have the funding to pay for the mentoring.

#### **V. PUBLICATIONS**

Paula Sites reported on the two new manuals published this year: Appellate Advocacy and Representing Clients with Mental Illness. She also reported that the Council contracted with Amy Karozos to write a Termination of Parental Rights manual which will be ready for sale at the TPR seminar in August 2009.

#### **VI. RESEARCH**

Larry proposed allowing the Council attorneys (Jack and Stacy) to act as co-counsel to public defenders in high impact cases. Participation would be limited to cases outside the appointed counsel's normal practice, such as interlocutory appeals and writs of mandamus. The procedure for approval of participation would include approval by Paula Sites

Jeff Lockwood noted that local attorneys may not recognize a "high impact" case and asked that the Council identify issues for public defenders.

#### **VII. CRIMINAL JUSTICE AND POLICY**

##### **A. Retention Schedule for Case Files**

Larry presented a proposal for the retention schedule of criminal case files under consideration by the Indiana Supreme Court Rules Committee. It includes a 55 year retention for felony case files. It was agreed that this could cause a financial hardship for attorneys to store files for that long. Dave Cook said there needs to be an electronic storage alternative. The board requested that Larry send out more detailed information on this proposal to the board.

##### **B. Expedited Appeal**

Under HEA 1001, the Department of Child Services (DCS) of FSSA may initiate an expedited appeal in a delinquency or CHINS case in which the court does not follow DCS's recommendation regarding placement or services and the judge makes a finding that the placement and/or services are necessary. One of the unknowns is whether a plea agreement is binding if the court accepts the plea and the DCS refuses to pay for the placement or services ordered. The Council approved Larry's recommendations that the proposed rule include a provision that if the DCS does not

approve payment of the placement or services either party may vacate the plea agreement, and a process for an expedited appeal by the child to any order for a out-of-home placement.

### VIII. BUDGET

The Council grant included funds for a case management system. Because JTAC has agreed to create a public defender application for their Odyssey case management system, some grant funds will probably be used to pay JTAC for the development of this application.

### IX. NEW BUSINESS

None

### X. ELECTION OF OFFICERS:

The following officers was nominated and unanimously approved for FY 2008-09:

Chair: Mike McDaniel  
Vice-Chair: Dave Cook  
Secretary: Micki Kraus

### XI. COMMITTEE ASSIGNMENTS:

**Training:** Mike McDaniel, Chair; Dave Cook, Bob Hill, Sonya Scott, Zaki Ali, Andy Maternowski, Pat Arata

**Publications:** Micki Kraus, Chair; Dave Cook, Neil Weisman

**Technology:** Lorinda Youngcourt, Chair; Zaki Ali, Jeff Lockwood, Andy Maternowski

**Policy and Liaison:** David Hennessy, Chair; Neil Weisman, Susan Carpenter, Bob Hill

**Indigent Defense Delivery Systems:** Dave Cook, Chair; Mike McDaniel, Neil Weisman; David Hennessy, Lorinda Youngcourt, Jeff Lockwood, Susan Carpenter, James Abbs

### XI. UPCOMING BOARD MEETINGS

The Indigent Defense Delivery System subcommittee will meet on Thursday, December 11, to discuss public defender legislation. The full Board will meet in January 2009 to discuss the upcoming legislative session.

The meeting was adjourned at 3:05 PM.

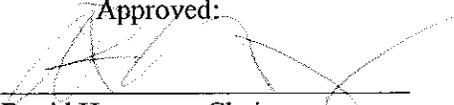
Prepared by Loretta Jackson, Executive Assistant

Respectfully submitted:

\_\_\_\_\_  
Sonya Scott, Secretary

Date: \_\_\_\_\_

Approved:

  
\_\_\_\_\_  
David Hennessy, Chair

Date: \_\_\_\_\_