

Board Meeting - November 18, 1993

Meeting called to Order by Linda Wagoner. Present were Susan Carpenter, Jodi English, Kevin McGoff, Kitty Liell, Terry Richmond, Terry Harper, Larry Landis and D.J. Williamson.

The following minutes are to be read with the Standards as edited.

First order of business was commission standards. Lefstein and Landis prepared mailing based on discussion; some changes on commission standards.

A. Professional independence. Primary question was about three member p.d. board as a condition for 25% reimbursement. Professional independence could be stumbling block. Legislators and commission thought independence important. Commission was unanimous for independence. Landis recommends not to waffle. So moved by Jodi English. Second by Susan Carpenter and Kevin McGoff. Passed unanimously. Language in Draft Two, alternative A. provision adopted.

C. Eligibility for Appointment of Counsel. Second order of business was indigency standards. Reviewed indigency form in back of packet of materials. Reasons for indigency determination: 1) poor are denied counsel; and 2) quality of information for indigency determination is so bad that resulting decision is bad. Bail or court would determine indigency status. Impact of form would probably be to increase indigency rate. Concerns include privilege.

Language recommended: C(5) Statements made by D in course of completion of indigency determination shall not be used in any manner in any criminal/civil proceeding against him/her.

TR moves; JE seconds

C(4)(c) include language "but not limited to" after "expenses shall include. . ."
C(4)(d) strike "net" from net income
C(4)(e) insert "but are not limited to" after "Liquid assets shall include. . ."

D. Payment by Accused of Defense Costs.

JE recommends change statutory language to show "requiring an indigent person. . . who has been found able to contribute . . ."

JE recommends change in D(a): some or all of the cost of defense services

TR recommends nothing changed in (b)

JE moved; SKC seconds; unanimous

E. Appointment of Trial Counsel.

Discussion points:

SKC points out that the commission didn't get to alternative qualifications

KL: paragraph 5 to be added with alternative qualifications?

ABA: clearly demonstrates proficiency

TR: problematic because judges appoint p.d.

KL: supervision for alternative qualifications concerns included: ex-prosecutors training ground what is active and experienced?

TR moves as written; KMcG seconds; E adopted

F. Appointment of Appellate Counsel.

TR moves; McG seconds as written

G. Compensation of Salaried or Contractual Public Defenders.

Discussion points:

KMcG sees a problem in comparing pay for contractual pds to pds - doesn't take into consideration overhead

LL - compensation includes money and cost of overhead

TR likes G if some net ??? with overhead issue.

TR suggests clause E ends with "including reasonable other overhead expenses."

Alternative suggestion of language "shall include but not limited to reasonable office overhead expenses."

"G. Compensation of Salaried or Contractual Public Defenders.

1. The comprehensive plan shall provide that the salaries and compensation of salaried and contractual public defenders shall be comparable to similar positions in the office of the Prosecuting Attorney.

2. Compensation shall include but not be limited to reasonable office expenses. Counsel shall be reimbursed for reasonable, incidental expenses.

McG moves to adopt as LL wrote; TR 2ds; unanimous.

H. Compensation of Assigned Trial Counsel.

1. insert "minimum" before "hourly rate"

2. as written

3. Add the following language:

"3. periodic payment during course of counsel's representation shall be made monthly upon request of appointed counsel."

TR moves; KMcG seconds; unanimous

I. Support Services

McG moves to adopt as is; TR seconds

I. revisited - ex parte; in camera considerations
Language reflects reconsideration to now read:

"The comprehensive plan shall provide that requests shall be made ex parte and in camera for investigative.
. . . ."

J. Caseload of Counsel.

LL: 2 standards

1. adequate support staff - Table 1 - ABA standards

2. inadequate support staff - B

LW: somewhat higher than Nirvana

KL - need sentence above Table 1.

KMcG: "case" defined, fugitive warrant, incompetency, counts as case for CR 24. classification where all cases are handled by 1 deputy.

KL questions termination of parental rights and involuntary commitments.

Table (p.7) editions:

no child support contempt cases, rather "other"

murder is "non-capital"

miscellaneous cases 300

all felonies 150

all felonies and misdemeanors

also need a sentence: "Table is not cumulative." LL will work on footnote to include that these numbers are optimum - public defenders may appeal to a board or use disjunctive. Murder is not capital.

LL: commission would write commentary.

JE: we should include requests for comment. "case" defined as all counts under 1 cause number. Probation revocation shall be a case.

Table 2, page 8, shall include a category for Non-capital murder and all felonies with figures of 120 for full-time and 60 for part-time. It shall also include the category "other" with 300 for full-time and 150 for part-time. The category "Child Support Contempt shall be removed.

footnote should also include that "other" includes involuntary commitment, child support, termination of parental rights, extradition, etc.

a and b - McG moves, tdh seconds; unanimous.

c. language should be edited to include "county public defender board" after "chief public defender"

TR moves; KMcG seconds; unanimous.

K. Training and Professional Development.

"at county expense" added after in providing defense services.

TR moves; KMcG seconds; unanimous

L. Court Authorized Expenditures for Non-indigents.

language should be added "for trial or appeal" after "who has retained"

language should be added "or appeal" after "adequate defense"

JE moves; KL seconds; unanimous.

Pretrial Intake/Indigency Report with the caveat worded above.

JE moves; tdh seconds; unanimous.

Rules of Professional Conduct

model has f, ours doesn't. Move to adopt all of section f concerning Special Responsibilities of a Prosecutor in regards to not to subpoena a lawyer, etc.

KMcG moves to adopt; seconded; unanimous.

Legislative concerns:

Bias crimes - opposed; prior position stands.

LWOP - 60% getting more than forty years. no position taken.

Extended parole

move to opposed; seconded by McG

Victim constitutional amendment - TR oppose; KL seconded

Drunk Driving - TR oppose; KL seconds; unanimous

Child protection act

registration - oppose

ban on employment in school - oppose

all organizations must check - yes

public access to registry - no

public notice; run ad in newspaper, bumper stickers, etc. - oppose

Meeting adjourned. Next meeting on 1-13, Thursday at Keifer and McGoff at 6:00.