

Board Training Spotlight: Attorney Compensation

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Indiana law gives Indiana counties the power to create and customize their own public defense system that satisfies each county's unique public defense needs. As part of that process, counties with more than 12,000 citizens must form a public defender board to oversee their county's system and ensure it complies with the Commission's standards and guidelines. Attorney compensation is among the elements the public defender board must monitor to ensure compliance.

A county can choose to employ its public defenders in one, or a combination, of the following ways: (1) by contract, (2) as salaried county employees, or (3) on an hourly basis as assigned counsel. Each of those arrangements requires public defenders to be compensated in a different way. Contractual and salaried public defender compensation is governed by Commission Standard G (Standard L also speaks to contractual employment, but only Standard G addresses compensation).

For pay parity purposes, Standard G requires comparison between either salaried or contractual public defenders and deputy prosecutors in the county. The question is: Are there deputy public defenders in the county who have similar experience and are in similar positions to their salaried or contractual deputy prosecutorial counterparts? If yes, salaried public defenders must receive the same compensation as their deputy prosecutorial counterparts. If yes regarding contract public defenders, Standard G requires contract public defenders to receive compensation that is "substantially comparable" to their deputy prosecutorial counterparts.

When there are no comparable deputy prosecutors in the county having similar experience and in a similar position to a salaried or contractual public defender, Standard G requires full-time contract public defenders to be compensated at \$60,350 and part-time contract public defenders to be compensated at \$30,175 as clarified in the Standard G Guideline dated September 11, 2013. Neither Standard G nor Standard L provides a mechanism that gives counties authority to provide compensation by a flat fee arrangement. For further discussion on this issue, please see the article in this newsletter by Commission staff Director and Chief Counsel, Derrick Mason, titled: "Issues with Flat Fees."

Standard H addresses compensation for assigned counsel. Assigned counsel are attorneys assigned to provide public defense services on a case-by-case basis and paid an hourly rate. The Commission's current hourly rate for public defenders is \$90 per hour. Standard H does not require a minimum amount for which public defenders must be compensated or a maximum amount that caps public defender compensation. Rather, attorneys are compensated for the number of hours for which they invoice the compensating body—either the county or their public defender board, depending on the county. Perhaps most importantly, Standard H protects assigned counsel from providing

uncompensated public defense services. By operation, it requires counties to compensate those attorneys monthly, throughout the course of representation, if assigned counsel so request. In other words, this provision precludes counties from withholding compensation until a case reaches its completion.

As public defender board members, the responsibility ultimately falls to you to monitor your county's compensation methods and ensure it complies with the Commission's standards discussed above. If you have questions about your county's compensation structure or questions about specific instances relating to attorney compensation, please reach out to Commission staff at information@pdc.com.in.gov. We are happy to discuss your questions and provide assistance.