

Board Member Training Spotlight

Can we pay for that with our supplemental fund?

One issue that frequently raises questions for counties, regardless of whether it is new or well-established to the Commission's reimbursement program, relates to the Public Defense Supplemental Fund. Supplemental funds are governed under I. C. §§ 33-40-3-1 through 33-40-3-10. They are comprised of money the court orders defendants to pay from any of the following 1) the \$50/\$100 flat fee for public defense representation (I.C. § 35-33-7-6), 2) for specific costs of public defense representation after a determination of ability to pay (I.C. § 33-37-2-3 and I.C. § 33-40-3-6), and I. C. § 35-33-8-3.3 (fees for pretrial services). The supplemental fund's statutory scheme makes clear that the county fiscal body is responsible for appropriating money from the supplemental fund to pay for public defense services. Thus, accessing the fund usually involves a two-step process: (1) the chief public defender or public defender board poses a request to the county council to use funds for a particular purpose; and (2) the county council votes to approve the request.

Counties often ask for clarification regarding the types of expenses that can be paid with the supplemental fund. Perhaps the best way to think of this fund is that is the county's "public defense rainy day fund" can help ensure public defense continues when unpredictable, temporary circumstances arise (i.e., a drug ring is busted resulting in 20+ arrests or many cases are COVID-delayed and filed in the same quarter). This fund hopefully allows counties to meet their constitutional obligation to provide effective assistance of counsel, despite the county's current financial situation.

Essentially, the supplemental fund can be used to pay expenses that are generally one-time, unforeseen, or temporary in nature. They generally cannot be used to pay ongoing expenses, such as salaries or wages of attorneys that will be taking cases on an ongoing basis; after all, the fund is a "supplemental fund" and can only supplement a county's public defense funding and cannot "supplant" routine, regular, or other required county public defense funding. A county cannot use its supplemental fund to supplant or circumvent other funding that should be built into its general public defense budget. In other words, if a public defense expense can be characterized as ongoing the supplemental fund is off limits to pay for it. For more specifics on what are allowable and prohibited expenses you can find the Commission's Guidelines and examples here:

<https://www.in.gov/publicdefender/files/pdc-standards-non-cap-updated-9-25-19.pdf>.

Additionally, you may contact Commission staff to discuss any questions concerning your county's supplemental fund.