

Indiana Public Defender Commission Meeting Minutes

March 21, 2012

Chairman Mark Rutherford called the business meeting to order at 2:02 pm. Commission members in attendance were David Hensel, Hon. James R. Ahler, Sen. Tim Lanane and Larry Landis. Hon. Mary Ellen Diekhoff joined the meeting by telephone conference call. Also in attendance were staff counsels Deborah Neal and Elana Salzman. Guests present were Randall Hammond, Chief Public Defender of Allen County, Robert Hill, Chief Public Defender of Marion County, and Ray Casanova of Marion County Public Defender Agency.

Chairman Rutherford announced the resignation of Commission member Peter Nugent. Mr. Nugent has been appointed to the State's Ethics Commission which prompted his resignation to the Indiana Public Defender Commission. Chairman Rutherford stated that the Commission is thankful for Mr. Nugent's service and that he was a hard-working involved member and would be missed.

Approval of Minutes from 12/14/11 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. There being none, David Hensel made the motion to approve the minutes, and Larry Landis seconded the motion. There was no discussion or opposition. The minutes were approved.

Allen County: Deborah Neal explained to the Commission that Allen County public defense attorney, John G. Clifton, had been disciplined by the Supreme Court for failing to provide competent representation in seven appeals. Mr. Clifton was suspended from the practice of law for 180 days beginning January 20, 2012. On January 24, 2012, Ms. Neal corresponded with the Allen County Public Defender Board regarding Mr. Clifton's suspension and the non-compliance with Standards. She invited a representative of the county to the March 21st meeting of the Indiana Public Defender Commission to explain how Mr. Clifton was appointed to appellate cases without the proper qualification; how the Allen County Public Defender Agency insures adherence to the Commission's Standards on Indigent Defense in Non-Capital Cases; and what quality controls are in place to prevent non-compliance in the future.

Randall Hammond, Chief Public Defender of Allen County, addressed this issue to the Commission stating that when he first learned of this problem, he removed Mr. Clifton from the assignment panel for public defense appeals. Several years ago when John Clifton asked to be put on the list, we were lax in not checking CLE requirements or interviewing attorneys who asked to be put on the assignment panel. From 2006 to 2008, Mr. Clifton did about 18 appeals, 7 of which were Allen County cases; the rest were Huntington County appeals. After Mr. Clifton's suspension by the Supreme Court, I read the appellate opinions and it was clear that Mr. Clifton had failed to do so. The first appeal told Mr. Clifton that he was not following the appellate rules in form and content, and indicated that this needed to be corrected; however, John kept submitting the same form without correcting the problem. Eventually, the Court of Appeals dismissed one of his appeals and referred him to the disciplinary commission.

As a response to the non-compliance of Commission Standards, Mr. Hammond reported that he has asked all Allen County public defenders to report to him what CLE credits they had historically that would comply with the Commission Standards. He stated that he has required every public defender who wants to do public defense appeals to obtain new CLE credits. Last Friday with the assistance of ICLEF, Allen County Public Defender Agency had a video replay of last May's appellate practice seminar. Eight public defense attorneys attended and completed the necessary six hours of continuing legal education. Mr. Hammond stated the Indiana Public Defender Council has an appellate practice

seminar in April and the remaining Allen County public defenders will attend to earn their appellate CLEs. Everyone on staff will participate in an ICLEF two hour web seminar on revised appellate rules that took effect in January. Mr. Hammond stated that each Allen County public defense attorney has to do the six hours of appellate CLEs and the two hour webcast by May 1st to be assigned new cases. Additionally, every public defender that does an appeal will have to submit their brief and opinion to the Chief Public Defender when that process is over so that Mr. Hammond can review them. He said the agency is doing reviews of pending and appellate cases in round table structured discussions to talk about strategy.

Tim Lanane asked Mr. Hammond if there was a solution to the problem of attorneys not reading the actual opinion coming from the Court of Appeals. Mr. Hammond stated that one of the oversight policies implemented was for him to have copies of every brief and opinion for his review.

Larry Landis stated that the Indiana Public Defender Council, and Don Murphy in particular, has been working with the Allen County Public Defender Agency to put together quality assurance programs for appeals and trial practice. Mr. Murphy is working with Randy Hammond to create management review and oversight policies. Larry Landis stated that before counties came into the reimbursement system, public defense attorneys were independent contractors, and a chief public defender was chief in name only – no quality control. Under the old system, judges controlled the public defenders working in their courts. It is apparent that chiefs now need to be that quality control person; if they are not, then there is no quality control. A Chief Public Defender has to be a manager. There are systems and structures for management training so that chiefs understand their role and responsibility in the public defense office.

Deborah Neal stated she was very impressed by the response from Allen County and believes it could be a good map for other chief public defenders to follow. If the Commission decides in the future to put into writing what quality control is expected and what constitutes the duties of a chief public defender, the Commission will be able to use Allen County's plan as an example.

Ms. Neal asked if the Commission would consider a motion accepting Allen County's response as sufficient to address the issue of non-compliance and that the County should not be asked to return any reimbursements received while not in compliance.

Larry Landis made a motion stating that it has been determined that Allen County took corrective action to be in compliance and should continue receiving reimbursements. Tim Lanane seconded the motion. The motion passed unanimously.

David Hensel stated he would like to see the Allen County response become a program for supervision that other chief public defenders should use, and asked staff counsel to draft an amendment to the Standards to assure oversight and supervisory responsibility for chief public defenders. Deborah Neal stated that she will work closely with Don Murphy at Indiana Public Defender Council to draft a proposal for quality control that can be sent to the counties for feedback. Larry Landis suggested that a guideline for quality control be developed as opposed to adding to or amending the Standards.

To track compliance to Standard E's qualification and continuing legal education requirements for each public defender, Elana Salzman created non-capital certification forms patterned after the forms that certify an attorney's compliance with Criminal Rule 24 in capital cases. Deborah Neal explained that once a public defender is qualified to handle murder cases, further certification of his/her qualifications would not be necessary, but CLEs should be tracked yearly. Larry Landis made a motion to authorize

staff counsel to send the forms to each county once a year. Tim Lanane seconded the motion. Motion passed unanimously.

Brown County Comprehensive Plan. Deborah Neal reported that she attended a meeting of the Brown County Public Defender Board where the comprehensive plan was developed and unanimously accepted by the board and given to her to present to the Commission for approval. She stated the plan is in compliance with the Commission's Standards and the controlling statutes. Tim Lanane moved to approve Brown County's Comprehensive Plan and David Hensel seconded the motion. Motion passed unanimously.

Delaware Amended Comprehensive Plan. Ms. Neal reported that Delaware County Public Defender Agency employs five attorneys from the same family, of which one is the Chief Public Defender. Therefore, the Delaware County Board felt it necessary to amend the Comprehensive Plan to reflect that vacancies in the public defense agency shall be handled by the board without recommendation from the chief public defender when an applicant is related by blood or marriage or in private practice with the chief public defender. Another amendment concerns the discipline or termination of an employee that is related by blood or marriage or in private practice with the chief public defender; under those circumstances the board will conduct its own investigation of the facts and make its decision without recommendation from the chief public defender. Tim Lanane moved to approve Delaware County's Amended Comprehensive Plan and David Hensel seconded the motion. Motion passed unanimously.

Proposed Changes to Standard J. Marion County Public Defender Agency ("MCPDA") submitted a proposal to change Standard J, subparagraph 2, and Table 2. This is the portion of Standard J that defines "adequately staffed" by listing the necessary ratio of attorneys to assisting personnel – secretaries, paralegals and investigators. MCPDA proposes five categories of assisting personnel – legal assistants, investigation staff, social work professionals, mental health professionals, and interpreters – to replace the categories listed in Table 2. The proposal redefines "adequately staffed" by listing the number of each assisting category to be employed for every four full-time attorneys.

Robert Hill, Chief Public Defender of MCPDA, explained that changing Standard J as proposed would allow fewer support staff to assist attorneys and be within the "adequately staffed" category. He stated that technology has eliminated the need for a secretary and paralegal for every four full-time public defense attorneys. Mr. Hill believes that the proposed changes recognize the importance of a team approach in providing quality legal representation.

The proposal was distributed to other chief public defenders with a request for comment. Several comments stated that rather than changing Standard J this should be a change specifically for Marion County Public Defender Agency. Some counties were concerned that the changes would not comport with their county's salary ordinance or employee descriptions, and be a cause for increased costs to the county.

Larry Landis stated that the chief public defender organization has formed a committee to study this proposal and will be offering comments in the future.

Mark Rutherford stated the problem is with trying to have one size fit all. What works for MCPDA to be considered adequately staffed, may not work for smaller counties. He noted that a change that would make it simpler for counties to be considered adequately staffed would cause pressure on public defense attorneys to take more cases because "adequately staffed" would increase the maximum caseloads. Mr. Rutherford suggested a change to each county's comprehensive plan may solve the problem of one size

fits all. Chairman Rutherford asked that this matter be ready for finalizing at the June 20, 2012 meeting of the Commission. He suggested that a draft of proposed changes to Standard J be submitted to Commission members by April 16, 2012. Larry Landis did not have a date for the next meeting of chief public defenders, but stated it would be before the June meeting.

County Compliance Status: Deborah Neal reported that Clark County has hired a new attorney that started in November, the middle of the 4th quarter. Compliance for Clark County should show in the 1st quarter of 2012.

Financial Status of Public Defense Fund. Deborah Neal reported that after the 4th quarter claims are paid, there will be a balance of \$7 million, enough to pay the 1st quarter 2012 claims approved at the June meeting. Larry Landis suggested the Commission consider asking the Legislature for funds to reimburse on cases not now covered, such as CHINS/TPR and misdemeanors. He requested that the issue be on the agenda for the next meeting.

FISCAL REPORT 2011-2012				
INDIANA PUBLIC DEFENDER COMMISSION				
3/21/2012				
2011-2012 Budget: \$20,250,000.00	Appropriations		Expenditures	Balance
July Distribution for FY11-12				
Court Fees - \$3.7 million:				
General Fund - \$6.425 million:	\$10,125,000.00			
January Distribution paid in July	\$10,125,000.00			
Encumbered funds:	\$ 3,997,163.00			
Total:				\$ 24,247,163.00
1st Quarter 2011 Claims pd after 7/1/11				
Non-Capital Claims			\$ 4,037,064.75	
Capital Claims			\$ 74,556.61	
July Payroll and Expenses:			\$ 6,639.30	
Total July Payments:			\$ 4,118,260.66	
Balance:				\$ 20,128,902.34
2nd Quarter 2011				
Non-Capital Claims - 40%			\$ 4,181,277.35	
Capital Claims - 50%			\$ 75,962.16	
Payroll for August/September			\$ 20,490.33	
Expenses			\$ 627.68	
Balance:			\$ 4,278,357.52	
				\$ 15,850,544.82
3rd Quarter 2011				
Non-Capital Claims - 40%			\$ 4,284,872.49	
Capital Claims - 50%			\$ 90,849.69	
Payroll October/November/December			\$ 33,921.86	
Expenses [est.]			\$ 3,461.66	
Balance:			\$ 4,413,105.70	\$ 11,437,439.12

4th Quarter 2011				
Non-Capital Claims - 40%			\$ 4,149,370.60	
Capital Claims - 50%			\$ 88,406.33	
Payroll 1/1/12 to 3/14/12			\$ 37,205.69	
Expenses [est.]			\$ 1,295.73	
Balance:			\$ 4,276,278.35	\$7,161,160.77

Requests for 50% Reimbursement in Capital Cases: Elana Salzman reported that Vanderburgh County submitted a request for reimbursement that was not correct. She asked them for an amended request which was not received before this meeting, so no claim for the *Weisheit* case will be presented at this meeting for approval. Ms. Salzman also reported that *Chamorro* case settled with a sentence of LWOP, and the *Isom* case in Lake County has been declared a mistrial.

Chairman Rutherford asked for a motion to approve the capital claims. Tim Lanane moved to approve payment of capital claims in the amount of \$88,406.33 and David Hensel seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
March 21, 2012		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1 thru 20	\$34,311.62
Lake	Isom	\$31,828.01
Marion	Hardy	\$22,266.70
TOTAL		\$88,406.33

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. There being none, he asked for a motion to approve. Tim Lanane moved to approve the claims totaling \$4,149,370.60 and David Hensel seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION						
Fourth Quarter 2011 Requests for Reimbursements in Non-Capital Cases						
3/21/2012						
COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed	
ADAMS	\$82,363.54	\$23,250.37	28%	\$59,113.17	\$23,645.27	
ALLEN	\$879,958.58	\$107,714.16	12%	\$772,244.42	\$308,897.77	
BENTON	\$20,444.34	\$5,100.86	25%	\$15,343.48	\$6,137.39	
BLACKFORD	\$50,207.75	\$18,995.75	38%	\$31,212.00	\$12,484.80	
CARROLL	\$47,848.44	\$13,670.98	29%	\$34,177.46	\$13,670.98	

CLARK		\$168,787.20	\$27,073.38	16%	\$141,713.82	\$56,685.53
DECATUR		\$39,859.13	\$13,185.34	33%	\$26,673.79	\$10,669.52
DELAWARE		\$272,738.62	\$14,354.66	5%	\$258,383.96	\$103,353.58
FAYETTE		\$71,658.17	\$11,509.86	16%	\$60,148.31	\$24,059.32
FLOYD		\$214,660.10	\$29,713.60	14%	\$184,946.50	\$73,978.60
FOUNTAIN		\$35,802.19	\$11,934.06	33%	\$23,868.13	\$9,547.25
FULTON		\$102,581.03	\$17,023.08	17%	\$85,557.95	\$34,223.18
GRANT		\$159,335.00	\$4,201.02	3%	\$155,133.98	\$62,053.59
GREENE		\$98,989.64	\$13,380.64	14%	\$85,609.00	\$34,243.60
HANCOCK		\$129,272.74	\$38,280.50	30%	\$90,992.24	\$36,396.90
HOWARD		\$334,788.46	\$62,804.69	19%	\$271,983.77	\$108,793.51
JASPER		\$88,955.33	\$26,624.83	30%	\$62,330.50	\$24,932.20
JAY		\$85,554.75	\$18,802.50	22%	\$66,752.25	\$26,700.90
JENNINGS		\$72,567.66	\$16,404.18	23%	\$56,163.48	\$22,465.39
KNOX		\$179,766.49	\$51,742.88	29%	\$128,023.61	\$51,209.44
KOSCIUSKO		\$131,720.28	\$41,342.96	31%	\$90,377.32	\$36,150.93
LAGRANGE		\$47,530.47	\$4,965.15	10%	\$42,565.32	\$17,026.13
LAKE		\$732,354.73	\$1,050.72	0%	\$731,304.01	\$292,521.60
LAPORTE		\$143,319.20	\$17,255.82	12%	\$126,063.38	\$50,425.35
LAWRENCE		\$116,708.11	\$22,794.99	20%	\$93,913.12	\$37,565.25
MADISON		\$443,280.24	\$33,069.25	7%	\$410,210.99	\$164,084.40
MARION		\$4,102,829.14	\$696,739.34	17%	\$3,406,089.80	\$1,362,435.92
MARTIN		\$56,821.33	\$20,532.14	36%	\$36,289.19	\$14,515.68
MONROE		\$429,299.24	\$71,919.50	17%	\$357,379.74	\$142,951.90
MONTGOMERY		\$98,960.63	\$44,565.61	45%	\$54,395.02	\$21,758.01
NOBLE		\$116,600.45	\$36,620.04	31%	\$79,980.41	\$31,992.16
OHIO		\$19,114.87	\$3,642.00	19%	\$15,472.87	\$6,189.15
ORANGE		\$66,915.21	\$12,607.21	19%	\$54,308.00	\$21,723.20
PARKE		\$32,348.51	\$9,169.11	28%	\$23,179.40	\$9,271.76
PERRY		\$56,561.69	\$10,356.37	18%	\$46,205.32	\$18,482.13
PIKE		\$54,377.24	\$12,090.54	22%	\$42,286.70	\$16,914.68
PULASKI		\$35,968.21	\$9,146.00	25%	\$26,822.21	\$10,728.88
RUSH		\$54,534.21	\$13,633.55	25%	\$40,900.66	\$16,360.26
SAINT JOSEPH		\$473,858.59	\$65,787.97	14%	\$408,070.62	\$163,228.25
SHELBY		\$109,030.50	\$12,550.37	12%	\$96,480.13	\$38,592.05
SPENCER		\$13,072.45	\$3,624.00	28%	\$9,448.45	\$3,779.38
STEUBEN		\$91,428.90	\$25,183.11	28%	\$66,245.79	\$26,498.32
SULLIVAN		\$47,866.90	\$8,670.45	18%	\$39,196.45	\$15,678.58
SWITZERLAND		\$63,566.27	\$29,206.12	46%	\$34,360.15	\$13,744.06
TIPPECANOE		\$544,098.97	\$138,946.52	26%	\$405,152.45	\$162,060.98
UNION		\$19,758.61	\$1,244.25	6%	\$18,514.36	\$7,405.74
VANDEBURGH		\$619,938.20	\$104,965.53	17%	\$514,972.67	\$205,989.07
VERMILLION		\$41,447.12	\$12,234.59	30%	\$29,212.53	\$11,685.01
VIGO		\$379,265.76	\$43,631.16	12%	\$335,634.60	\$134,253.84
WABASH		\$56,760.07	\$9,800.30	17%	\$46,959.77	\$18,783.91
WARREN		\$11,770.80	\$2,161.98	18%	\$9,608.82	\$3,843.53
WASHINGTON		\$83,348.42	\$11,894.00	14%	\$71,454.42	\$28,581.77
TOTAL		\$12,430,594.48	\$2,057,167.99		\$10,373,426.49	\$4,149,370.60

Election of Chairman. Tim Lanane nominated Mark Rutherford for Chairman of the Indiana Public Defender Commission. David Hensel seconded the nomination. No other nominations were submitted. Larry Landis moved to close the nominations, and James Ahler seconded the motion. A vote on Mark Rutherford serving another two years as chairman of the Commission was unanimous.

Adjournment: The next Commission meeting is scheduled for June 20, 2012. There being no further business to discuss, David Hensel moved to adjourn the meeting and James Ahler seconded the motion. The motion passed and the meeting adjourned at 3:30 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

June 20, 2012

Chairman Mark Rutherford called the business meeting to order at 2:02 pm. Commission members in attendance were Hon. James R. Ahler, Sen. Tim Lanane, Larry Landis, Hon. Mary Ellen Diekhoff and Hon. Diane Ross Boswell. Also in attendance were staff counsels Deborah Neal and Elana Salzman.

Approval of Minutes from 3/21/12 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. There being none, Sen. Tim Lanane made the motion to approve the minutes, and Judge Boswell seconded the motion. There was no discussion or opposition. The minutes were approved.

County Compliance Status: Deborah Neal reported that compliance to indigent defense appointments per attorney was down to 77% by counties participating in the Public Defense Fund reimbursement program.

Staff Reports: Deborah Neal noted six counties which have attorneys who are out of compliance with caseload maximums: Clark, Delaware, Fulton, Monroe, Rush and Steuben. Ms. Neal reported that Fulton and Rush Counties had only one person out of compliance, but that person had been out of compliance for three or more quarters.

Judge Diekhoff addressed the non-compliance in Monroe County where 12 of the 14 public defense attorneys were over the 1,000 maximum in the 1st Quarter of 2012. The Judge stated that Michael Hunt, Chief Public Defender for Monroe County, had already brought this issue to the attention of the judges in Monroe County. Judge Diekhoff reported that Mr. Hunt explained that there have been excessive arrests affecting the caseload count; however, the non-compliance must be reversed. She said the judges were looking at who was receiving a public defense attorney to see if appointments are being made where not appropriate.

Deborah Neal discussed Clark County's effort to achieve compliance. Jeff Stonebraker, Clark County Chief Public Defender, came to a Commission meeting in September of 2011 and promised to hire another attorney to help achieve compliance on caseload standards. They did hire an attorney in November 2011. This first quarter report that includes January, February and March of 2012, indicates that Clark County still has a considerable number of attorneys out of compliance.

Chairman Rutherford stated he was sympathetic to Monroe County because its non-compliance seems to be an anomaly, however, he feels that Clark County's effort is not adequate since the County has been notified of the excessive caseloads.

Judge Boswell said it sounds like staff counsel is in favor of suspending payments and then asking the counties to come to the meeting and explain the non-compliance. Tim Lanane stated that before this new policy is adopted the counties should be notified.

Judge Diekhoff stated that Clark County should have notified the Commission that compliance was not going to be achieved. Deborah Neal read portions of the letter from Jeff Stonebraker that accompanied Clark County's first quarter request for reimbursement. He stated in the letter that hiring another attorney has been a tremendous benefit, but that several attorneys exceeded the caseload guidelines. Again, Mr. Stonebraker indicated that he warned all the judges that they will have to stop accepting assignments if the trend continues.

Tim Lanane asked how a public defense attorney refuses to accept a case appointment. Judge Diekhoff said that in Monroe County, Michael Hunt told the judges that the agency will stop accepting cases, if need be, to cure the non-compliance due to excessive case assignments. She added that county councils do not seem to take seriously the threat that reimbursements will be in jeopardy if the program is not funded properly to maintain compliance.

Judge Ahler stated that his county had received a warning that it was out of compliance with the caseload Standards about four years ago. He and the circuit court judge attended a Commission meeting to explain what actions were being put into place to insure that compliance was achieved. Judge Ahler stated that the county council was made aware of the possible loss of money from the Public Defense Fund, and it really got their attention.

Deborah Neal explained the difference between giving a county a 90-day notice that they will be out of the reimbursement program if compliance is not achieved, as opposed to suspending a quarterly reimbursement until a county is in compliance and then possibly allowing past suspended money to be reimbursed.

Commission members agreed that Clark County was put on notice that the reimbursements are going to be suspended if the non-compliance is not cured. Chairman Rutherford noted that Fulton County has only one person out of compliance, however, it is for multiple quarters

Deborah Neal noted that Delaware County was warned about not complying with Standard G on the salary of the chief public defender and given to 2013 to increase that salary to the proper level. However, when the first quarter report was audited, she notes that certain attorneys are out of compliance on caseload maximums. In the fourth quarter 2011 request for reimbursement from Delaware County, the attorney most out of compliance was going to take only non-reimbursable cases in 2012 so that his non-compliance would not be relevant. Deborah Neal reports that what was promised did not happen, and the same attorney is taking a “mixed caseload” and is still out of compliance, in addition to three more attorneys whose case assignments exceed the maximum allowed under Standard J. Although Delaware County has not been warned about the first quarter 2012 reimbursement being suspended for case assignment non-compliance, Deborah Neal recommends to the Commission that the reimbursement request of \$107,076.40 be suspended and a representative of the county asked to appear at the September 2012 meeting with a solution for the non-compliance.

Larry Landis recalled that Steuben County has practically doubled the amount of attorneys taking public defense cases since getting into this reimbursement program and have consistently provided the money to stay in the program. Mr. Landis stated the challenge is we want to have a consistent policy, but know when to selectively use the “stick” when counties are not operating in good faith – such as paying a chief only half of what the county should be if not operating in good faith.

Chairman Rutherford stated he feels that the Commission is favoring a motion to suspend payments to the counties of Clark and Delaware for their June 2012 request, and giving a stern warning letter, including telling what happened to Delaware and Clark Counties, to the other counties that have a pattern of not being in compliance. He said that with Monroe County we are really in a position of just waiting to see if they come into compliance. Larry Landis asked that the letter use the technical language of the statute. He stated IC 33-40-7-11 obviously gives the authority to send a county the 90-Day letter; the authority to suspend is less clear. If we use IC 33-40-7-11(b) which states:

Upon certification by the Indiana Public Defender Commission that the county's indigent defense services meets the commission's standards, the auditor of the state shall issue a warrant to the state treasurer for disbursement to the county of a sum equal to forty percent (40%) of the county's certified expenditures for indigent defense services provided in noncapital cases except misdemeanors.

The notice should state that the Commission is not approving the request for reimbursement because it cannot certify to the auditor of the state that the county is in compliance.

Chairman Rutherford asked for a motion stating the request for reimbursement for Clark and Delaware Counties not be certified at this time. Tim Lanane so moved and Judge Ahler seconded the motion. Sen. Lanane then asked for clarification that if Clark and Delaware come into compliance at a later date, that the suspended payment may be reimbursed to the counties at that time. The authority to certify counties' compliance to standards is quarterly according to IC 33-40-6-4. Discussion followed and several members agreed that a suspended payment could be paid at a later date; that inability to certify to the State Auditor the compliance of a county to the Standards may be based upon lack of information; and that staying the decision to reimburse is giving a county the opportunity to come into compliance. Chairman Rutherford called for a vote on the motion. Motion passed unanimously.

Chairman Rutherford stated he is pleased that the counties realize the Commission insists that the Standards be taken seriously, and that the counties are asking for changes where the Standards are not working.

Deborah Neal reported on her visit to the Chief Public Defenders meeting, June 8, 2012. She said she provided the members with state-paid-prosecutors' salaries per position for 2012 and 2013, with a calculation of the 90% each chief public defender should be making in 2012, and the higher amount expected in 2013. She announced that these chief public defender salaries will be audited in 2013. Ms. Neal also invited the group to help prepare a guideline to the Standards that outlines the supervision and management expected of chief public defenders to maintain quality control of their county's public defense program.

Staff Counsel, Elana Salzman, reported on the "Qualifications under Standards E and F" certification form that was sent to all counties in the reimbursement program, asking for proof that public defense attorneys taking assignments are qualified for the class of case they are handling. She said she is comparing the certification to the type of cases each attorney has been accepting.

Elana Salzman reported that death penalty claims are significantly higher this quarter due to claims submitted in the Lake County *Isom* case, which went to trial and was declared a mistrial. Two cases, *Hardy* in Marion County and *Chamorro* in Boone County, concluded with plea agreements for a sentence of life without parole. Mrs. Salzman informed the Commission that there has been a new death penalty case filed in Fulton County, but does not know at this time if a capital public defender has been appointed to the case.

Elana Salzman stated she had received an inquiry from Steve Owens, Vanderburgh County Chief Public Defender, regarding the Class D felony only courts. It seems Vanderburgh County is considering setting up one of these courts. He asked for the caseload maximums for adequately staffed – the Class D felony only courts maximum caseloads under Table 4 of Standard J only include those in the category of

inadequately staffed. Mrs. Salzman showed a chart she had created that included caseload maximums for adequately staffed attorneys based on the ratios of adequately/inadequately staffed caseloads in other categories. She stated this should be included in Standard J.

LaPorte County Comprehensive Plan: Deborah Neal reported that LaPorte County amended their comprehensive plan to reflect how public defense services are actually being provided in the county. The original comprehensive plan stated there is a public defender office managed by a chief public defender. After speaking with Craig Braje, Chief Public Defender, Ms. Neal learned there has never been a “public office” and that attorneys provide public defense services under contract. The amended comprehensive plan now states that the primary method for providing public defense services in LaPorte County is by contract counsel and the secondary method is assigned counsel. Chairman Rutherford asked for a motion approving the amended comprehensive plan. Tim Lanane moved to approve the amended comprehensive plan for LaPorte County and Judge Diekhoff seconded the motion. Motion passed unanimously.

Does Compensation under Standard G Include Retirement?: Staff counsel received an inquiry from a chief public defender asking if “substantially comparable” salary and benefits of public defenders to prosecutors included retirement benefits. After a discussion of the difficulty in measuring the value of public defense attorneys’ retirement under PERF and prosecutors’ retirement under a state plan for retired prosecutors, the Commission agreed that retirement is not included in salary and benefits under Standard G.

Financial Status of Public Defense Fund. Deborah Neal reported that the balance in the Public Defense Fund will be encumbered by purchase order and the approved 1st quarter 2012 claims will be paid after July 1, 2012. Below is the fiscal report for 2011-2012:

FISCAL REPORT 2011-2012				
INDIANA PUBLIC DEFENDER COMMISSION				
6/20/2012				
2011-2012 Budget: \$20,250,000.00	Appropriations		Expenditures	Balance
6/15/11 Fund Balance				\$ 4,009,721.47
Balance of payroll/expenses to 6/30/11			\$ 12,558.47	\$ 3,997,163.00
Outstanding unpaid claims \$4,111,621.36				
Encumbered	\$ 3,997,163.00			
Claims paid before 6/30/11			\$ 3,134,090.63	
Balance encumbered				\$ 863,072.37
July Distribution for FY11-12				
Court Fees - \$7.4 million:				
General Fund - \$12.850 million:	\$ 20,250,000.00			
Balance of encumbered funds:	\$ 863,072.37			
Total:				\$ 21,113,072.37

1st Quarter 2011 Claims pd 7/1/11				
Non-Capital Claims			\$ 938,983.12	
Capital Claims			\$ 38,547.60	
July Payroll			\$ 6,358.83	
and Expenses:			\$ 280.48	
Total July Payments:			\$ 984,170.03	
Balance:				\$ 20,128,902.34
2nd Quarter 2011				
Non-Capital Claims - 40%			\$ 4,181,277.35	
Capital Claims - 50%			\$ 75,962.16	
Payroll for August/September			\$ 20,490.33	
Expenses			\$ 627.68	
Balance:			\$ 4,278,357.52	\$ 15,850,544.82
3rd Quarter 2011				
Non-Capital Claims - 40%			\$ 4,284,872.49	
Capital Claims - 50%			\$ 90,849.69	
Payroll				
October/November/December			\$ 33,921.86	
Expenses			\$ 3,461.66	
Balance:			\$ 4,413,105.70	\$ 11,437,439.12
4th Quarter 2011				
Non-Capital Claims - 40%			\$ 4,149,370.60	
Capital Claims - 50%			\$ 88,406.33	
Payroll 1/1/12 to 3/14/12			\$ 44,004.01	
Expenses			\$ 1,295.73	
Balance:			\$ 4,283,076.67	\$ 7,154,362.45
1st Quarter 2012				
Payroll April/May/June			\$ 40,252.51	
Expenses			\$ 1,043.53	
Balance:			\$ 41,296.04	\$ 7,113,066.41
Encumbered by Purchase Order			\$ 7,113,066.41	\$ 0.00
1st Quarter 2012 paid after 7/1/12				
Non-Capital Claims - 40%			\$ 4,069,961.84	
Capital Claims - 50% (est.)			\$ 202,930.93	
Balance:			\$ 4,272,892.75	

Requests for 50% Reimbursement in Capital Cases: Elana Salzman explained that Vanderburgh County has two claims for reimbursement in the *Weisheit* capital case because their claim last quarter had errors that were not cured before the Commission's March meeting. So both Vanderburgh County claims are submitted this quarter. Mrs. Salzman also brought to the Commission's attention that the *Chamorro* capital defense claim included expensive trips to Nicaragua to gather mitigation facts. Chairman Rutherford asked for a motion to approve the capital claims. Larry Landis moved to approve

payment of capital claims in the amount of \$202,930.93 and Mary Ellen Diekhoff seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
June 20, 2012		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1 thru 9	\$39,615.62
Lake	Isom	\$65,608.42
Marion	Hardy	\$30,203.79
Vanderburgh	Weisheit 1 and 2	\$67,503.10
TOTAL		\$202,930.93

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. There being none, he asked for a motion to approve. Tim Lanane moved to approve the claims totaling \$4,069,961.84 which excludes payments for Clark and Delaware Counties. Diane Boswell seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
First Quarter 2012 Requests for Reimbursements in Non-Capital Cases					
6/20/2012					
COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$86,716.99	\$18,124.90	21%	\$68,592.09	\$27,436.84
ALLEN	\$784,678.44	\$96,971.49	12%	\$687,706.95	\$275,082.78
BENTON	\$23,393.50	\$4,824.93	21%	\$18,568.57	\$7,427.43
BLACKFORD	\$37,345.38	\$11,714.62	31%	\$25,630.76	\$10,252.30
BROWN	\$18,568.51	\$4,614.00	25%	\$13,954.51	\$5,581.80
CARROLL	\$53,076.04	\$18,709.50	35%	\$34,366.54	\$13,746.62
CLARK	\$164,866.71	\$27,240.13	17%	\$137,626.58	\$0.00
DECATUR	\$42,571.04	\$11,816.30	28%	\$30,754.74	\$12,301.90
DELAWARE	\$277,672.91	\$9,981.71	4%	\$267,691.20	\$0.00

FAYETTE	\$70,357.05	\$9,861.98	14%	\$60,495.07	\$24,198.03
FLOYD	\$186,417.20	\$26,984.65	14%	\$159,432.55	\$63,773.02
FOUNTAIN	\$17,157.32	\$4,249.98	25%	\$12,907.34	\$5,162.94
FULTON	\$65,332.11	\$16,854.90	26%	\$48,477.21	\$19,390.88
GRANT	\$224,444.00	\$3,506.94	2%	\$220,937.06	\$88,374.82
GREENE	\$70,345.36	\$11,700.00	17%	\$58,645.36	\$23,458.14
HANCOCK	\$124,722.78	\$45,955.44	37%	\$78,767.34	\$31,506.94
HOWARD	\$348,403.38	\$47,712.10	14%	\$300,691.28	\$120,276.51
JASPER	\$47,219.97	\$14,174.44	30%	\$33,045.53	\$13,218.21
JAY	\$78,022.85	\$15,771.60	20%	\$62,251.25	\$24,900.50
JENNINGS	\$40,388.47	\$11,015.04	27%	\$29,373.43	\$11,749.37
KNOX	\$176,114.41	\$51,401.81	29%	\$124,712.60	\$49,885.04
KOSCIUSKO	\$135,636.97	\$46,832.35	35%	\$88,804.62	\$35,521.85
LAGRANGE	\$24,270.07	\$3,774.19	16%	\$20,495.88	\$8,198.35
LAKE	\$841,350.79	\$10,387.05	1%	\$830,963.74	\$332,385.50
LAPORTE	\$148,831.57	\$22,942.64	15%	\$125,888.93	\$50,355.57
LAWRENCE	\$136,886.46	\$21,862.43	16%	\$115,024.03	\$46,009.61
MADISON	\$440,122.88	\$31,276.90	7%	\$408,845.98	\$163,538.39
MARION	\$4,430,662.34	\$798,096.16	18%	\$3,632,566.18	\$1,453,026.47
MARTIN	\$40,601.41	\$10,478.25	26%	\$30,123.16	\$12,049.26
MONROE	\$402,118.36	\$76,405.53	19%	\$325,712.83	\$130,285.13
MONTGOMERY	\$97,258.84	\$47,147.64	48%	\$50,111.20	\$20,044.48
NOBLE	\$124,750.21	\$40,195.75	32%	\$84,554.46	\$33,821.78
OHIO	\$14,184.75	\$1,539.00	11%	\$12,645.75	\$5,058.30
ORANGE	\$55,697.13	\$8,568.79	15%	\$47,128.34	\$18,851.34
PARKE	\$31,766.38	\$6,807.08	21%	\$24,959.30	\$9,983.72
PERRY	\$50,258.76	\$9,677.15	19%	\$40,581.61	\$16,232.64
PIKE	\$65,605.32	\$18,173.68	28%	\$47,431.64	\$18,972.66
PULASKI	\$30,600.99	\$10,500.58	34%	\$20,100.41	\$8,040.16
RUSH	\$63,350.19	\$12,560.00	20%	\$50,790.19	\$20,316.08
SAINT JOSEPH	\$480,187.21	\$70,005.88	15%	\$410,181.33	\$164,072.53
SHELBY	\$115,671.00	\$16,761.07	14%	\$98,909.93	\$39,563.97
SPENCER	\$81,254.81	\$19,318.00	24%	\$61,936.81	\$24,774.72
STEUBEN	\$73,169.89	\$21,424.03	29%	\$51,745.86	\$20,698.34
SULLIVAN	\$41,073.09	\$8,639.30	21%	\$32,433.79	\$12,973.52
SWITZERLAND	\$68,350.65	\$23,843.25	35%	\$44,507.40	\$17,802.96
TIPPECANOE	\$502,252.08	\$162,855.58	32%	\$339,396.50	\$135,758.60
UNION	\$10,721.66	\$946.03	9%	\$9,775.63	\$3,910.25
VANDEBURGH	\$651,804.73	\$98,649.33	15%	\$553,155.40	\$221,262.16

VERMILLION	\$43,287.72	\$15,124.59	35%	\$28,163.13	\$11,265.25
VIGO	\$436,730.66	\$52,647.27	12%	\$384,083.39	\$153,633.36
WABASH	\$64,301.82	\$15,499.32	24%	\$48,802.50	\$19,521.00
WARREN	\$7,214.20	\$3,967.81	55%	\$3,246.39	\$1,298.56
WASHINGTON	\$103,073.94	\$20,545.83	20%	\$82,528.11	\$33,011.24
TOTAL	\$12,750,861.30	\$2,170,638.92		\$10,580,222.38	\$4,069,961.84

Other Matters: Amendments to Standard J. Larry Landis explained that Standard J paragraph 2, Caseloads for Counsel With Adequate Support Staff allows public defense attorneys to have a higher maximum caseload if the county public defense program employed the particular ratio of support staff to full-time or part-time attorneys. The support staff titles and ratios to attorneys are reflected in the present Table 2 of Standard J. Robert Hill, Marion County Chief Public Defender, presented a proposed amendment to Table 2 of Standard J last year that alters the support staff titles. Bob Hill argued that the staff descriptions were outdated in the modern 21st century public defense office; due to technology, most attorneys are not as dependant on a secretary as they were twenty years ago; that the manner for calculating “adequate support staff” should be guided by an amendment that changes the litigation support staff job descriptions, such as in the following table:

TABLE 2

<u>Trial</u>	
Secretary/Paralegal	1 for every 4 full-time attorneys
Paralegal/Investigator	1 for every 4 full-time attorneys
Other Litigation support (social worker, mitigation investigator, etc.)	1 for every 4 full-time attorneys
Total	.75 support staff for each full-time attorney
<u>Appeal</u>	
Support Staff (secretary, paralegal, law clerk)	1 for every 4 full-time attorneys

To explain the amendment to Standard J, Mr. Hill proposed adding the following paragraph to the commentary following Standard J:

Effective July 1, 2012, Table 2 (Support Staff to Attorney Ratio) was amended to reflect the change in support staff job descriptions that has occurred in law offices since this standard was adopted in 1995. Among the changes in the workplace are the significant increase in the use of computer technology that has made lawyers less dependent on secretarial assistance and the increased use of paralegals for witness interviews and document preparation. The result is that some public defender offices have created a position called “legal assistant” which can include secretarial, paralegal, and investigation duties. The revised Table 2 is designed to create more flexibility in job descriptions without changing the ratio of support staff to attorney. Table 2 retains three types of positions as a recommended guideline for staffing a public defender office. The determination of whether a public defender office has

adequate support staff to utilize Table 3 for assessing maximum caseloads will be primarily determined by whether the office has .75 support staff for each full-time equivalent (FTE) attorney.

Larry Landis reported that there was opposition to the proposed change among the chief public defenders because some of their offices are secretarial intensive, some are not, some use legal assistants and do not even have a paralegal or secretary. Mr. Landis stated because of that opposition he tried to create universal categories. For purposes of determining compliance with support staff, the critical thing is to have .75 litigation support staff to an attorney. Larry Landis believes this gives more flexibility to the chief public defenders in determining “adequate support staff.”

Tim Lanane asked how the third category (social worker, mitigation investigator, etc.) works in a smaller office. Larry Landis said smaller offices probably will not have those resources, but as it stands now, the larger office that has all the litigation support staff listed in amended Table 2 are unable to count them towards achieving adequate support staff.

Mary Ellen Diekhoff said she believes this proposed amendment to Standard J is ready for action from the Commission. Chairman Rutherford asked if the Commission wanted to add to a motion the change to Table 4 for Class D felony only courts of full-time and part-time “adequately staff” maximum caseloads as follows:

4. Caseloads for Counsel Assigned to Class-D-Felony-Only Courts With Adequate Support Staff. Salaried, contractual, or assigned counsel that have support staff consistent with Table 2 should generally not be assigned more than the number of cases in Table 5 in a 12-month period.

TABLE 5

Type of Case	Full Time	Part Time (50%)
Class D Felonies only Adequately staffed	270	135

Mary Ellen Diekhoff moved to adopt the proposed revision to Table 2 of Standard J adopting litigation support staff definitions for achieving an adequate staffing designation; and the proposed addition of Table 5 setting maximum caseload standards for adequately staffed attorneys working in Class D felony only courts. Tim Lanane seconded the motion. The motion passed unanimously.

Reimbursing CHINS and TPR Cases: Larry Landis said he had discussed with the Chief Public Defenders the proposal that the Public Defense Fund reimburse eligible counties on Children-In-Need-of-Services (“CHINS”) and Termination-of-Parental-Rights (“TPR”) cases. The Chiefs supported this proposal. Mr. Landis stated he would not recommend the Commission authorize reimbursing CHINS and TPR cases unless the Legislature is willing to increase the appropriation to fund the additional reimbursements. Tim Lanane asked if Mr. Landis knows the fiscal impact of such reimbursements.

Deborah Neal said it was difficult to calculate because not all of the eligible public defense programs report the CHINS and TPR cases, or the expense of those cases. Larry Landis projects that \$2 million to \$3 million additional funds would be needed. Tim Lanane pointed out the Legislature passed the right to counsel in CHINS and TPR cases but did not fund those mandated services. Mr. Landis said the Commission could team with the Association of Counties and say that we need to be reimbursed because this is an unfunded mandate. Diane Boswell asked how that would work for Lake County where the juvenile court judges hire the public defenders. Larry Landis said that the juvenile courts would have to decide to be a part of this reimbursement program, which means they would have to come into compliance with the Commission's Standards, and then could receive reimbursement from the Fund. To begin the process, the request for additional money needs to be in the court's budget submitted to the Legislature by Chief Justice Dickson. Staff counsel needs to make a request through Lilia Judson, Executive Director, State Court Administration, to the Chief Justice.

Tim Lanane asked if the Commission had the authority to reimburse on CHINS and TPR cases. Larry Landis said he believes the Commission has always had the authority under IC 30-40-6-4, which eliminates only misdemeanors from reimbursement. He said it has been a policy decision of the Commission to not reimburse on these particular cases because the Public Defense Fund could not afford the extra expense.

Tim Lanane made a motion that the Commission include in the upcoming budget additional consideration for CHINS and TPR cases and submit with that proposal a cost analysis for reimbursing on these cases. Mary Ellen Diekhoff seconded the motion. The motion passed unanimously.

Adjournment: The next Commission meeting is scheduled September 19, 2012. There being no further business to discuss, Tim Lanane moved to adjourn the meeting and Larry Landis seconded the motion. The motion passed and the meeting adjourned at 3:30 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

September 19, 2012

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were Hon. James R. Ahler, Sen. Tim Lanane, Larry Landis, Hon. Diane Ross Boswell, Dave Hensel, and Andrew Roesener. Present by telephone conference call were Hon. Mary Ellen Diekhoff and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Elana Salzman.

Present were representatives from Rush County – Brian Barrett, Chief Public Defender, Judge Bryan Hill, and John Worth, Chairman Rush County Public Defender Board – and from Delaware County – Jack Quirk, Chief Public Defender, and Krista Powers, Office Manager. Jeff Stonebraker, Clark County Chief Public Defender, was also present.

Approval of Minutes from 6/20/12 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. There being none, Diane Boswell made the motion to approve the minutes, and Tim Lanane seconded the motion. There was no discussion or opposition. The minutes were approved.

Clark County Compliance Status: First quarter reimbursement request from Clark County was denied by the Commission at the June 20, 2012 meeting due to continual non-compliance with caseload maximums. Staff counsel, Deborah Neal, wrote to Clark County regarding the suspended reimbursement and invited any representative of the county to address this problem at the September 19, 2012 Commission meeting. Jeff Stonebraker, Clark County Chief Public Defender, was present and addressed the excessive caseloads of the public defense attorneys by reporting that the Clark County Council approved the hiring of another attorney, who began taking cases in September. Mr. Stonebraker informed the Commission that he gave notice to Clark County Judges that Class D felony appointments would not be handled by his office for September 2012 only to relieve the caseload burden, and that he asked that more attention be given to hearings on determining indigency as opposed to automatically assigning counsel to cases.

Larry Landis spoke to how many cases constituted a percentage over the 1.000 FTE, and noted that the Commission's standards required substantial compliance, not absolute compliance, with the maximum allowable cases.

Given Mr. Stonebraker's efforts to correct the non-compliance, Tim Lanane moved to reimburse Clark County for its first and second quarter requests, and Dave Hensel seconded the motion. Motion passed unanimously. Mr. Stonebraker told the Commission that he appreciated the letters regarding non-compliance because it gave him something in writing to take to his council.

Delaware County Compliance Status: First quarter reimbursement request from Delaware County was also denied by the Commission at the June 20, 2012 meeting due to non-compliance with caseload maximums. Staff counsel, Deborah Neal, wrote to Delaware County regarding the suspended reimbursement and invited any representative of the county to address this problem at the September 19, 2012 Commission meeting. Jack Quirk, Delaware County Chief Public Defender, and Krista Powers, Office Manager of the Delaware County Public Defender Agency, were present and addressed the excessive caseloads of the public defense attorneys by reporting that the Delaware County Council approved two new public defenders for juvenile court; and the juvenile attorney out of compliance was not assigned to new cases in the third quarter 2012. Mr. Quirk reported that there are now three contract attorneys who take cases to relieve excessive caseloads in Delaware County. Krista Powers presented a

New Case Assignment Worksheet prepared for the third quarter (to date) that showed only minimal non-compliance by one attorney, all other attorneys are in compliance.

Mr. Quirk also reported that his salary has been submitted to the Delaware County Council with an increase to the level required by the Commission's Standards.

Given Delaware County Public Defender Agency's efforts to correct the non-compliance, Tim Lanane moved to reimburse Delaware County for its first and second quarter requests contingent upon the Delaware County Council approving the raise in salary for the chief public defender on September 25, 2012; Larry Landis seconded the motion. Motion passed unanimously.

Rush County Compliance Status: Staff counsel, Deborah Neal, wrote to Rush County regarding the continuing non-compliance with caseload maximums and invited any representative of the county to address this problem at the September 19, 2012 Commission meeting. Bryan Barrett, Rush County Chief Public Defender, Judge Brian Hill, Rush County Superior Court and John Worth, Chairman Rush County Public Defender Board, were present. Bryan Barrett addressed the Commission and explained that when he was made a full-time chief public defender in 2008, the county council expected him to handle all the public defense cases; Mr. Barrett has been out of compliance for four quarters. He also reported that the Rushville Police Department has hired several new officers which increased the Class D felony arrests and therefore public defense cases. Mr. Barrett stated that he has contracted with a local attorney who is willing to take the excess criminal defense cases; there is enough money to pay him until the council approves additional funds. He noted that he is going to try to not take new cases until the end of the year. He also plans to hire a new attorney who is sitting for the Bar as soon as he passes. Mr. Barrett stated he consulted with Rush County Judges who indicated they would be more stringent in assigning public defense counsel.

Deborah Neal discussed the salary Mr. Barrett should be making as a chief public defender; and spoke about the 2% raise that prosecutors and judges received in fiscal year 2012-2013. She said a letter would be sent to Rush County regarding this matter.

Diane Boswell moved to pay Rush County the second quarter reimbursement request. Jim Ahler seconded the motion. Motion passed unanimously.

Hourly Rate: Larry Landis presented a chart showing the amount of hourly rate presently being paid by Indiana counties for public defense attorney fees. He stated that the original \$60 per hour instituted by the Commission upon creation of the Standards remains in effect. He recommends a graduated raise over three years to \$90 per hour. He noted that only three counties in the reimbursement program would be directly affected by any hourly increase – Blackford, Martin and Warren. Mr. Landis believes the fiscal impact would be less on a graduated increase; and he noted that the fund returns 40% of that increase.

Deborah Neal pointed out that counties are preparing 2013 budget now and was the Commission considering a raise in hourly rate for January 1, 2013 or 2014?

Andrew Roesener stated that he would abstain from voting on any increase in hourly wage because he has accepted public defense conflict appointments. Diane Boswell also abstained from voting because she has a relative that accepts public defense appointments on an hourly basis.

Mark Rutherford recommended that such increases be handled in the June meeting so that counties have time to put it in their budgets. Larry Landis said that increases could be tied to the percentage the Supreme Court raises the death penalty rate for capital counsel.

Larry Landis moved to increase the minimum hourly rate from \$60 to \$70 beginning January 1, 2013. Dave Hensel seconded the motion. Motion passed.

Compliance Report: Deborah Neal reported that 77% of the counties are in compliance with caseload standards; and the remaining counties are in substantial compliance. She stated that Greene County forewarned her that due to excessive case filings two of the five public defense attorneys would be out of compliance this quarter, and they are working to bring the caseloads into compliance.

Staff Report: Deborah Neal reported that Monroe County had only three attorneys with excessive caseloads this quarter; that is down from twelve attorneys with excessive caseloads last quarter. Judge Diekhoff reported that she attended the Monroe County Council meeting to support the hiring of an additional public defender.

Jim Lisher, Shelby County Chief Public Defender, was warned that two of eleven attorneys are out of compliance on caseloads. Mr. Lisher’s response stated he appreciated the warning and explained the excessive caseloads were due to appeals.

A warning letter was sent to Steuben County on July 26, 2012. This quarter only two attorneys had excessive caseloads; that is down from five attorneys with excessive caseloads last quarter.

The Fulton County public defense program is in compliance this quarter.

Staff Report: Elana Salzman reported on collecting the certification forms for qualifications under Standards E and F from the counties and checking those against the reported caseloads of each attorney.

Meeting Dates for 2013: The following dates were selected for Commission meetings in 2013: March 20, 2013, June 19, 2013, September 18, 2013 and December 11, 2013. Andrew Roesener moved to adopt the meeting dates, and Tim Lanane seconded the motion. Motion passed unanimously.

Financial Status of Public Defense Fund. Below is the fiscal report for 2012-2013:

FISCAL REPORT 2012-2013					
INDIANA PUBLIC DEFENDER COMMISSION					
9/19/2012					
2012-2013 Budget: \$20,250,000.00	Appropriations		Expenditures	Encumbered	Balance
6/30/12 Fund Balance Encumbered				7,127,359.46	7,127,359.46
Outstanding unpaid claims \$4,272,892.75					
June Claims pd from purchase orders			4,216,518.27		
Balance encumbered					2,910,841.19
July Distribution for FY12-13					
Court Fees - \$7.4 million:					
General Fund - \$12.850 million:	20,250,000.00				

Balance of Appropriation + encumbered				23,160,841.19
June Capital/Non-capital paid without PO		56,374.48		
July Expenses		16,909.41		
Balance:		73,283.89		23,087,557.30
2nd Quarter 2012				
Non-Capital Claims - 40%		4,328,206.57		
Capital Claims - 50%		47,392.50		
July Payroll - Expenses		17,808.62		
Payroll Est. for August/September		35,000.00		
Expense Est.		1,500.00		
Balance:		4,429,907.69		18,657,649.61

Requests for 50% Reimbursement in Capital Cases: Elana Salzman explained that the *Weisheit* capital case is still open in Clark County, but no claim was submitted for this quarter. The *Chamorro* capital case is concluded but there may be claims for the sentencing hearing next quarter. Dave Hensel moved to approve payment of capital claims in the amount of \$47,392.50 and James Ahler seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
September 19, 2012		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro 1 thru 4	\$21,124.90
Lake	Isom	\$26,267.60
TOTAL		\$47,392.50

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. There being none, he asked for a motion to approve. Tim Lanane moved to approve the claims totaling \$4,328,206.57 which includes first quarter payments for Clark and Delaware Counties. Jim Ahler seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
Second Quarter 2012 Requests for Reimbursements in Non-Capital Cases					
9/19/2012					
COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$68,864.88	\$18,392.72	27%	\$50,472.16	\$20,188.86
ALLEN	\$836,183.47	\$103,689.00	12%	\$732,494.47	\$292,997.79
BENTON	\$8,074.63	\$2,851.39	35%	\$5,223.24	\$2,089.30
BLACKFORD	\$40,212.55	\$12,996.45	32%	\$27,216.10	\$10,886.44
BROWN	\$36,648.74	\$9,005.77	25%	\$27,642.97	\$11,057.19
CARROLL	\$57,151.79	\$23,773.26	42%	\$33,378.53	\$13,351.41
CLARK	\$179,512.59	\$27,158.89	15%	\$152,353.70	\$60,941.48
CLARK	\$164,866.71	\$27,240.13	17%	\$137,626.58	\$55,050.63
DECATUR	\$45,197.46	\$9,734.84	22%	\$35,462.62	\$14,185.05
DELAWARE	\$289,149.70	\$15,069.69	5%	\$274,080.01	\$109,632.00
DELAWARE	\$277,672.91	\$9,981.71	4%	\$267,691.20	\$107,076.48
FAYETTE	\$70,717.30	\$9,113.57	13%	\$61,603.73	\$24,641.49

FLOYD	\$226,354.43	\$26,520.97	12%	\$199,833.46	\$79,933.38
FOUNTAIN	\$22,939.89	\$4,728.07	21%	\$18,211.82	\$7,284.73
FULTON	\$74,438.50	\$24,812.83	33%	\$49,625.67	\$19,850.27
GRANT	\$161,194.71	\$2,313.80	1%	\$158,880.91	\$63,552.36
GREENE	\$85,685.33	\$13,650.00	16%	\$72,035.33	\$28,814.13
HANCOCK	\$102,630.27	\$27,761.95	27%	\$74,868.32	\$29,947.33
HOWARD	\$362,564.05	\$66,621.38	18%	\$295,942.67	\$118,377.07
JASPER	\$69,310.97	\$12,136.16	18%	\$57,174.81	\$22,869.92
JAY	\$80,261.61	\$21,339.06	27%	\$58,922.55	\$23,569.02
JENNINGS	\$62,178.03	\$11,615.68	19%	\$50,562.35	\$20,224.94
KNOX	\$200,639.73	\$38,664.95	19%	\$161,974.78	\$64,789.91
KOSCIUSKO	\$142,856.48	\$40,252.36	28%	\$102,604.12	\$41,041.65
LAGRANGE	\$36,444.53	\$6,074.09	17%	\$30,370.44	\$12,148.18
LAKE	\$778,808.38	\$997.19	0%	\$777,811.19	\$311,124.48
LAPORTE	\$150,156.96	\$18,648.17	12%	\$131,508.79	\$52,603.52
LAWRENCE	\$120,651.70	\$13,307.80	11%	\$107,343.90	\$42,937.56
MADISON	\$378,422.33	\$31,727.49	8%	\$346,694.84	\$138,677.94
MARION	\$4,208,819.05	\$743,906.21	18%	\$3,464,912.84	\$1,385,965.14
MARTIN	\$58,560.16	\$37,783.04	65%	\$20,777.12	\$8,310.85
MONROE	\$444,184.37	\$79,937.09	18%	\$364,247.28	\$145,698.91
MONTGOMERY	\$99,160.59	\$52,464.47	53%	\$46,696.12	\$18,678.45
NOBLE	\$145,534.02	\$48,275.06	33%	\$97,258.96	\$38,903.58
OHIO	\$21,836.80	\$1,326.00	6%	\$20,510.80	\$8,204.32
ORANGE	\$44,420.55	\$10,693.84	24%	\$33,726.71	\$13,490.68
PARKE	\$27,305.06	\$6,875.37	25%	\$20,429.69	\$8,171.88
PERRY	\$47,117.27	\$13,742.54	29%	\$33,374.73	\$13,349.89
PIKE	\$33,133.16	\$9,711.44	29%	\$23,421.72	\$9,368.69
PULASKI	\$27,670.84	\$7,510.50	27%	\$20,160.34	\$8,064.14
RUSH	\$60,677.73	\$14,299.85	24%	\$46,377.88	\$18,551.15
SAINT JOSEPH	\$525,047.89	\$72,004.67	14%	\$453,043.22	\$181,217.29
SHELBY	\$105,245.82	\$11,216.62	11%	\$94,029.20	\$37,611.68
SPENCER	\$22,108.72	\$3,976.00	18%	\$18,132.72	\$7,253.09
STEUBEN	\$99,952.26	\$34,227.26	34%	\$65,725.00	\$26,290.00
SULLIVAN	\$37,277.60	\$5,026.29	13%	\$32,251.31	\$12,900.52
SWITZERLAND	\$56,119.39	\$21,378.82	38%	\$34,740.57	\$13,896.23
TIPPECANOE	\$523,693.53	\$140,143.34	27%	\$383,550.19	\$153,420.08
UNION	\$23,571.99	\$5,439.69	23%	\$18,132.30	\$7,252.92
VANDERBURGH	\$590,688.02	\$98,892.14	17%	\$491,795.88	\$196,718.35
VERMILLION	\$37,099.12	\$20,026.38	54%	\$17,072.74	\$6,829.10
VIGO	\$410,264.84	\$43,815.14	11%	\$366,449.70	\$146,579.88
WABASH	\$64,301.82	\$15,098.48	23%	\$49,203.34	\$19,681.34
WARREN	\$12,769.00	\$4,119.03	32%	\$8,649.97	\$3,459.99
WASHINGTON	\$107,775.38	\$11,540.54	11%	\$96,234.84	\$38,493.94
TOTAL	\$12,964,125.61	\$2,143,609.18		\$10,820,516.43	\$4,328,206.57

NOTES: Clark and Delaware Co.'s suspended 1Q12 request pd. 2Q12

Other Matters: Mark Rutherford reminded the Commission of the previous discussion concerning reimbursing children-in-need-of-services (“CHINS”) and termination of parental rights (“TPR”) cases. He reported that he and Larry Landis discussed the matter with Chief Justice Dickson who seemed open to the suggestion. Mr. Rutherford also reported that Chief Justice Dickson was pleased with the work of the Commission to enforce the Standards. Larry Landis reported that Chief Justice Dickson’s approach to the budget will be in collaboration with all the Justices.

Adjournment: The next Commission meeting is scheduled December 12, 2012. There being no further business to discuss, Tim Lanane moved to adjourn the meeting and Dave Hensel seconded the motion. The motion passed and the meeting adjourned at 3:05 p.m.

Mark Rutherford, Chairman

Date

Indiana Public Defender Commission Meeting Minutes

December 12, 2012

Chairman Mark Rutherford called the business meeting to order at 2:05 pm. Commission members in attendance were, Hon. Mary Ellen Diekhoff, Larry Landis, Dave Hensel, Rep. Vernon Smith, Sen. Greg Taylor and Andrew Roesener. Present by telephone conference call were Hon. James R. Ahler and Rep. Greg Steuerwald. Also in attendance were staff counsels Deborah Neal and Elana Salzman. Absent were Hon. Diane Ross Boswell and Sen. Brent Steele.

Attending the meeting were representatives from Marion County – Robert Hill, Chief Public Defender, Ann Sutton, Deputy Chief, and Ray Casanova.

In the event a commission member needs to leave the meeting before adjournment, Chairman Rutherford announced that matters needing a quorum vote would be discussed first.

Senator Tim Lanane: Senator Tim Lanane of Anderson resigned from the Commission in December after being elected to serve in the General Assembly as the Democratic Leader by the Senate Democrat Caucus. Senator Lanane served as a dedicated member of the Indiana Public Defender Commission since October 1998. In those 14 years, he participated in the approval of 51 counties joining the reimbursement program and promoted the Public Defense Fund in the General Assembly. When Senator Lanane joined the Commission in 1998, the Public Defense Fund had \$3 million to distribute to eligible counties; today that amount is in excess of \$20 million.

Senator Greg Taylor of Indianapolis was appointed by the Senate President to fill the position vacated by Sen. Lanane.

Approval of Minutes from 9/19/12 Meeting: Chairman Rutherford asked for any changes or additions to the minutes. He asked that the word “counsel” be changed to “council” on page 1, paragraph 6. Mary Ellen Diekhoff made the motion to approve the amended minutes, and Larry Landis seconded the motion. There was no discussion or opposition. The minutes were approved.

Requests for 40% Reimbursement in Non-Capital Cases: Chairman Rutherford called for the question on payment of non-capital claims. Staff Attorney, Deborah Neal, discussed compliance problems in Orange County. She stated that in October 2012, it was discovered that the Orange County Public Defender Board members were all appointments of the Orange County Commissioners; and that for several years prosecutorial claims had been submitted for reimbursement from the Public Defense Fund. Ms. Neal presented to the Commission a Notice of Appointment, Compliance and Condonation signed by the Orange County Judges on October 25, 2012 appointing two members to the Orange County Public Defender Board; and a calculation of improper reimbursement for prosecution expenses to Orange County from 2006 to the second quarter of 2012 totaling \$18,137.01. Upon receipt of \$18,137.01 to the Public Defense Fund from Orange County, the County would be in compliance. Deborah Neal suggested that the \$18,137.01 be subtracted from the 3rd quarter request for reimbursement to Orange County totaling \$32,559.51, and the balance of \$14,422.50 be paid as the 40% reimbursement for the 3rd quarter 2012. David Hensel moved to approve the claims totaling \$4,271,820.39 which includes the deduction for Orange County and Andrew Roesener seconded the motion. The motion passed unanimously. Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION					
Third Quarter 2012 Requests for Reimbursements in Non-Capital Cases					
12/12/2012					
COUNTY	Total Expenditure	Adjustment For Non-Reimbrsbl	% of Adjstmt	Eligible Expenditure	40% Reimbursed
ADAMS	\$74,473.52	\$10,067.24	14%	\$64,406.28	\$25,762.51
ALLEN	\$812,024.85	\$131,237.30	16%	\$680,787.55	\$272,315.02
BENTON	\$18,041.50	\$5,522.91	31%	\$12,518.59	\$5,007.44
BLACKFORD	\$45,576.25	\$13,547.70	30%	\$32,028.55	\$12,811.42
BROWN	\$46,023.90	\$11,145.90	24%	\$34,878.00	\$13,951.20
CARROLL	\$65,080.11	\$21,671.57	33%	\$43,408.54	\$17,363.42
CLARK	\$160,155.27	\$27,981.68	17%	\$132,173.59	\$52,869.44
DECATUR	\$48,242.29	\$10,742.21	22%	\$37,500.08	\$15,000.03
DELAWARE	\$298,052.00	\$5,921.56	2%	\$292,130.44	\$116,852.18
FAYETTE	\$69,241.15	\$14,361.13	21%	\$54,880.02	\$21,952.01
FLOYD	\$209,699.13	\$27,655.13	13%	\$182,044.00	\$72,817.60
FOUNTAIN	\$25,302.30	\$3,829.25	15%	\$21,473.05	\$8,589.22
FULTON	\$64,145.69	\$27,983.02	44%	\$36,162.67	\$14,465.07
GRANT	\$205,957.00	\$5,006.05	2%	\$200,950.95	\$80,380.38
GREENE	\$76,481.68	\$11,700.00	15%	\$64,781.68	\$25,912.67
HANCOCK	\$106,952.29	\$32,420.35	30%	\$74,531.94	\$29,812.78
HOWARD	\$358,242.71	\$61,178.33	17%	\$297,064.38	\$118,825.75
JASPER	\$69,107.90	\$17,615.74	25%	\$51,492.16	\$20,596.86
JAY	\$71,113.25	\$16,345.00	23%	\$54,768.25	\$21,907.30
JENNINGS	\$56,669.37	\$13,739.61	24%	\$42,929.76	\$17,171.90
KNOX	\$203,000.94	\$68,322.35	34%	\$134,678.59	\$53,871.44
KOSCIUSKO	\$114,695.77	\$39,390.47	34%	\$75,305.30	\$30,122.12
LAGRANGE	\$36,930.09	\$10,942.25	30%	\$25,987.84	\$10,395.14
LAKE	\$858,195.44	\$978.56	0%	\$857,216.88	\$342,886.75
LAPORTE	\$149,436.31	\$22,303.27	15%	\$127,133.04	\$50,853.22
LAWRENCE	\$163,329.97	\$20,070.55	12%	\$143,259.42	\$57,303.77
MADISON	\$425,979.92	\$38,318.52	9%	\$387,661.40	\$155,064.56
MARION	\$4,279,853.96	\$692,662.65	16%	\$3,587,191.31	\$1,434,876.52
MARTIN	\$61,510.08	\$30,256.98	49%	\$31,253.10	\$12,501.24
MONROE	\$402,917.98	\$75,684.52	19%	\$327,233.46	\$130,893.38
MONTGOMERY	\$96,831.30	\$44,884.32	46%	\$51,946.98	\$20,778.79
NOBLE	\$119,998.73	\$40,823.35	34%	\$79,175.38	\$31,670.15
OHIO	\$15,523.80	\$728.00	5%	\$14,795.80	\$5,918.32
ORANGE	\$97,821.33	\$16,422.56	17%	\$81,398.77	\$14,422.50
PARKE	\$67,527.26	\$7,327.71	11%	\$60,199.55	\$24,079.82
PERRY	\$41,068.68	\$10,667.19	26%	\$30,401.49	\$12,160.60
PIKE	\$65,416.75	\$13,982.85	21%	\$51,433.90	\$20,573.56
PULASKI	\$44,885.86	\$10,436.85	23%	\$34,449.01	\$13,779.60
RUSH	\$73,264.63	\$16,746.20	23%	\$56,518.43	\$22,607.37
SAINT JOSEPH	\$475,083.51	\$70,005.88	15%	\$405,077.63	\$162,031.05
SHELBY	\$102,149.06	\$13,385.41	13%	\$88,763.65	\$35,505.46
SPENCER	\$24,988.72	\$8,077.00	32%	\$16,911.72	\$6,764.69
STEUBEN	\$85,285.89	\$20,181.98	24%	\$65,103.91	\$26,041.56
SULLIVAN	\$37,325.92	\$7,954.67	21%	\$29,371.25	\$11,748.50
SWITZERLAND	\$56,758.96	\$22,035.83	39%	\$34,723.13	\$13,889.25
TIPPECANOE	\$461,529.61	\$116,199.06	25%	\$345,330.55	\$138,132.22

UNION	\$14,378.99	\$3,125.87	22%	\$11,253.12	\$4,501.25
VANDERBURGH	\$700,813.68	\$111,910.74	16%	\$588,902.94	\$235,561.18
VERMILLION	\$41,103.80	\$19,061.91	46%	\$22,041.89	\$8,816.76
VIGO	\$456,119.07	\$53,843.13	12%	\$402,275.94	\$160,910.38
WABASH	\$79,078.92	\$21,204.13	27%	\$57,874.79	\$23,149.92
WARREN	\$10,024.00	\$1,336.53	13%	\$8,687.47	\$3,474.99
WASHINGTON	\$97,627.93	\$17,202.56	18%	\$80,425.37	\$32,170.15
TOTAL	\$12,841,039.02	\$2,116,145.53		\$10,724,893.49	\$4,271,820.39

Floyd County – Capital Case: Staff Attorney, Elana Salzman, explained that two separate death penalty cases had been filed against a single defendant, William Gibson, in Floyd County in May 2012. At that time, the court appointed John Patrick Biggs, Floyd County Chief Public Defender, as lead counsel in both cases and George Strieb, a contract public defender, as co-counsel in both cases. Based on the caseload limitations in Criminal Rule 24, Mrs. Salzman informed the lead and co-counsel in *State vs. Gibson* that George Strieb could not serve on both death penalty cases and be in compliance with CR24. John Patrick Biggs is a qualified salaried *capital* public defender and George Strieb is a salaried public defender. Under CR24(B)(3)(c)(i), salaried public defenders (Strieb) may be appointed to a capital case but must limit the rest of their caseloads to 20 open felony cases. Under CR 24(B)(3)(d), salaried *capital* public defenders (Biggs) must count their capital cases as equivalent to 40 felonies under Standard J, however, Mrs. Salzman noted, it appears that Section 3(c)(i) does not apply to salaried *capital* public defenders.

Elana Salzman reported that once she informed John Patrick Biggs of the non-compliance with CR24, the court appointed a substitute co-counsel, Andrew Adams, replacing George Strieb for one of William Gibson’s cases. The Floyd County Public Defender Agency has also been working to reduce both Mr. Strieb’s and Mr. Biggs’ caseloads to acceptable levels. Mrs. Salzman reported she received the first request for reimbursement for the *Gibson* cases which includes expenses for services performed by Co-counsel George Strieb before he was replaced in one of the *Gibson* cases.

Elana Salzman presented two issues for direction from the Commission: (1) Determine if John Patrick Biggs may serve as lead counsel on both cases; and (2) determine if the public defense expenses incurred while George Strieb served as co-counsel on both *State v. Gibson* death penalty cases are reimbursable. Mrs. Salzman asked if while John Patrick Biggs, Floyd County Chief Public Defender, serves as lead counsel on both *Gibson* death penalty cases and manages a public defense office at the same time, does his workload interfere with the rendering of quality representation or lead to the breach of professional obligations.

Sen. Greg Taylor stated his concerns that any decision made for the *Gibson* cases would be setting precedent for future reimbursements in capital cases. Larry Landis agreed and added that it was important to obtain a determination of how much time a chief public defender, who is a salaried capital defender, spends on administrative duties managing the public defense office.

Bob Hill, Marion County Chief Public Defender, and capital qualified attorney, stated that a vast majority of work in a capital case is investigating the defendant’s life story for mitigation purposes; that information could be used for both *Gibson* capital cases. He added that when he was chief trial deputy in the Marion County Public Defender Agency and had two open death penalty cases, it was almost impossible to keep up with administrative duties.

Larry Landis stated that John Patrick Biggs should certify how much of his time is spent on administrative duties to determine if he is in compliance with Criminal Rule 24.

Sen. Taylor stated this case is not typical where there is one defendant and two death penalty cases. He said he was leaning toward allowing the dual representation because of efficiencies of using the mitigating circumstances in both cases. However, if precedence is to be set by the *Gibson* cases, Mr. Taylor said the Commission should make sure to distinguish this case of one defendant with two cases from cases with two defendants.

Larry Landis cautioned that this is a Rules of Criminal Procedure issue, not the Commission's Standards issue, and that CR24 must be followed to the letter. The Commission would have more leeway in interpreting its own Standards.

Mark Rutherford stated one problem is with CR24 not speaking to "administrative duties" of salaried capital public defenders, or even for salaried public defenders who take capital cases. He notes that CR24(B)(3)(a) directs that the workload of the capital counsel shall not, by reason of its excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations. Rutherford said the Commission should ask J. Pat Biggs to explain how the two death penalty cases, other newly assigned cases, and his administrative duties are in compliance with this portion of CR24.

Andrew Roesener asked what the result would be if we ask Mr. Biggs for his explanation of compliance to CR24; then we meet in March 2013 and determine Biggs is not in compliance with the rule. Is the county penalized on the reimbursement of public defense expenses in these two death penalty cases?

Elana Salzman stated the question of reimbursement is the second matter before the Commission in the two *Gibson* cases. The request for reimbursement presented at this meeting is the first request from Floyd County. Is the Commission willing to reimburse for expenses incurred during the time that George Strieb was co-counsel on both cases, from May to November when he was replaced with Andrew Adams, because Strieb did not meet CR24(3)(c)(i) workload limits? Elana Salzman explained that under CR24 counsel in a capital case may not have more than 20 open felony cases; that CR24(3)(d) states that a capital case shall be equivalent to 40 felonies. If the rule allows for only 20 open felony cases and the second capital case is equivalent to 40 felonies, George Strieb would be prohibited from handling two open capital cases.

Mary Ellen Diekhoff said if you read CR24(3)(d) where it says that the head of the public defender agency shall not make an appointment of a full-time capital public defender in a capital case without assessing the impact of the appointment on the attorney's workload, it does not contemplate a chief public defender appointing himself to a capital case and hence no mention of administrative duties when considering workload compliance.

Deborah Neal noted that in the past, Clark County Chief Public Defender, Jeff Stonebraker, appointed himself to a capital case; and presently Vanderburgh County Chief Public Defender, Steve Owens is co-counsel in an open capital case.

Larry Landis stated that precedent is a problem when considering whether to reimburse Pat Biggs in the *Gibson* cases; that maybe a line should be drawn in the sand by the Commission wherein Biggs is reimbursed on these cases but send a message to all the counties that chief public defenders are not to appoint themselves as capital counsel in the future.

Mark Rutherford asked if the Commission is favoring a decision that J. Pat Biggs may serve on both *Gibson* cases only because of past practice of chief public defenders taking capital cases; and should we instruct staff counsel to raise the issue with the Indiana Supreme Court as to whether chief public defenders should take capital cases?

Larry Landis suggested telling the Indiana Supreme Court that we are proposing to adopt a guideline forbidding chief public defenders assigning themselves as lead or co-counsel in capital cases and see if the Supreme Court has a problem with such a guideline.

David Hensel asked if the Commission would consider allowing reimbursement to Floyd County in the *Gibson* capital case for work performed; barring future chief public defenders from serving as capital counsel; and grandfathering in the *Gibson* case and allowing Biggs to continue as lead counsel in both cases. Larry Landis pointed out again that Biggs may not be in compliance with CR24 due to workload, which includes the administrative duties of managing the Floyd County Public Defense Agency. Mr. Landis asked if the two capital cases are 53% of Biggs' workload (80 felony cases out of 150 maximum), are the additional new case assignments and administrative duties handled by Biggs interfering with his ability to provide quality representation as required by CR24? Bob Hill stated that typically to be effective in taking a capital case to trial, counsel will invest 2,000 to 2,500 hours.

Elana Salzman stated the Commission may want to consider telling John Patrick Biggs that he may not take any new case assignments while serving as lead counsel in both *Gibson* cases – that a workload of two capital cases and his administrative duties of managing the public defense office would be appropriate under CR24(3)(a).

Larry Landis moved that we approve that Biggs is in compliance with CR24 only because of precedent of chief public defenders appointing themselves as counsel in capital cases, but that an assessment needs to be made about what percentage of time he is a litigator and whether in that percentage of time what is the maximum caseload he can handle, whether he has time to handle ten cases - that's like 90% of a full-time caseload – there is no way his administrative duties are only 10% of his time, to me that is excessive. Mark Rutherford restated the motion - the Commission moves to approve J. Patrick Biggs' compliance with CR24 in appointing himself to the two cases while chief public defender, but that the Commission requests more information about the time spent on administrative tasks. Larry Landis added he thinks this rule assumes it is a full-time litigator because that is what the rule was created for – somebody that is a full-time salaried attorney in an office with a support staff who is doing litigation primarily of death penalty cases and a few other major felonies: It certainly was not contemplated to be a part-time position. Landis stated it has to be interpreted to say what percentage of Biggs' time was litigation and determine his caseload compliance based on the caseload standards. No second on the motion was received; motion dies.

Dave Hensel suggested that it be approved that Biggs could be lead counsel in the two capital cases, but must drop all other cases and not take any new cases until the capital cases are resolved.

Greg Taylor wants the Commission to make an exception in the *Gibson* cases because of the economy of work involved due to the fact that there is only one defendant and mitigating information can be used in both cases.

After further discussion, Judge Mary Ellen Diekhoff made the motion that Chief Public Defender John Patrick Biggs' appointment of himself to serve as lead counsel on the two *Gibson* capital cases does not violate CR24. Sen. Greg Taylor seconded the motion. Motion passed unanimously.

Judge Mary Ellen Diekhoff then made the motion to reimburse 50% on both *Gibson* cases from the beginning in May 2012 to date, including public defense expenses incurred by George Strieb serving as co-counsel on both cases. Andrew Roesener seconded the motion. Motion passed unanimously.

Judge Diekhoff made a third motion to require John Patrick Biggs to certify in writing, consistent with Supreme Court form 44249, that he is in compliance with Criminal Rule 24. Dave Hensel seconded the motion. Motion passed unanimously.

David Hensel then moved that staff counsel develop a guideline to Criminal Rule 24 which prohibits chief public defenders from appointing themselves as counsel in capital cases and ask the Supreme Court for comment on this proposed guideline. Larry Landis seconded the motion. Motion passed unanimously.

Elana Salzman asked the Commission for clarification on her interpretation of CR24 regarding co-counsel George Strieb in *Gibson*, that it is a violation of the caseload limits in CR24 for him to serve as counsel on both cases. She wrote in her letter to Floyd County October 15, 2012 that as a contractual public defender, Mr. Strieb comes under Criminal Rule 24 (B)(3)(c), which states as follows: "Salaried or contractual public defenders may be appointed as trial counsel in a capital case, if (i) the public defender's caseload will not exceed twenty (20) open felony cases while the capital case is pending in the trial court." The fact that a capital case is counted elsewhere in CR24 as 40 felony cases would suggest that contractual public defenders should not handle more than one capital case, and so it would appear that another co-counsel needs to be appointed for the second case. It was the consensus of the Commission that Mrs. Salzman's interpretation of CR24(B)(3)(c), as stated above, is correct.

Request for 50% Reimbursement in Capital Cases: Elana Salzman informed the Commission that certain claims from Floyd County in the *Gibson* capital case and Vanderburgh County in the *Weisheit* capital case were submitted for reimbursement beyond the 120 day deadline. Dave Hensel moved to approve the capital claims in the amount of \$66,595.19, which includes the late claims for Floyd and Vanderburgh Counties. Judge Diekhoff seconded the motion. Motion passed unanimously.

Claims submitted for reimbursement are as follows:

INDIANA PUBLIC DEFENDER COMMISSION		
Reimbursement Requests in Capital Cases		
December 12, 2012		
COUNTY	DEFENDANT	TOTAL
Boone	Chamorro	\$666.74
Floyd	Gibson A	\$2,031.83
Floyd	Gibson B	\$2,058.33
Fulton	Bell 1 thru 15	\$35,898.10
Vanderburgh	Weisheit	\$25,940.19
TOTAL		\$66,595.19

Staff Report/Elana Salzman/Approval of Death Penalty Seminars: Elana Salzman reported that in the Fulton County capital case of *State vs. Bell*, co-counsel Eric Koselke is asking the Commission to approve a course in death penalty practice presented by the Federal Death Penalty Resource Counsel titled “Federal Death Penalty Strategy Session” for purposes of CR24 compliance. Dave Hensel moved to approve the Federal Death Penalty Strategy Session presented by the Federal Death Penalty Resource Counsel for purposes of CR24 compliance. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Elana Salzman also presented for the Commission’s approval courses in death penalty practice for purposes of CR24 compliance: Oregon Criminal Defense Lawyers’ Association, “Death Penalty Defense Seminar—Moving the Goalposts: Maximizing the ABA Guidelines,” (requested by Attorney Joe Lewis, Grant County); Ohio Association of Criminal Defense Lawyers Annual Death Penalty Seminar, (requested by attorneys Jerry Droom, and Joe Lewis, Grant County); “Death Penalty Seminar,” Sponsored by Trial Lawyers College (requested by Stanley Faith, Floyd County). Andrew Roesener moved to approve the seminars listed above for purposes of CR24 compliance. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Other Matters (Six Credit Hours in Appellate Practice): For compliance with Standard F’s requirement that appellate counsel obtain six credit hours in appellate practice, Deborah Neal presented for approval the Indianapolis Bar Association’s Primer on Indiana State Criminal Appeals, presented December 3, 2012. Andrew Roesener moved to approve the seminar listed above for purposes of Standard F compliance. Mary Ellen Diekhoff seconded the motion. Motion passed unanimously.

Guideline for Appeals of Probation Violations: Deborah Neal asked the Commission to approve a guideline which states that appeals of probation violation cases should be counted on the New Case Assignment Worksheet under the category for guilty plea appeals. Vernon Smith moved to approve the guideline. David Hensel seconded the motion. Motion passed unanimously.

Compensation for Contractual and Salaried Counsel: Larry Landis explained that Standard G deals with the compensation of salaried or contractual public defenders. Standard G presently states that public defenders’ pay “shall be substantially comparable to the salaries and compensation provided to deputy prosecutors in similar positions in the office of the Prosecuting Attorney.” Mr. Landis points out that this would be easy to calculate in counties that have county-paid deputy prosecuting attorneys; the problem is that several small counties only have state-compensated prosecutors. He provided a proposal approved by the Indiana Public Defender Council’s Board of Directors which asks that Standard G be amended to state that salaries and compensation for public defenders be equivalent to deputy prosecuting attorneys; the proposed amendment reads as follows:

The comprehensive plan shall provide that the salaries and compensation of salaried and contractual public defenders shall be the same as the salaries and compensation provided to deputy prosecutors in similar positions in the office of the Prosecuting Attorney. Compensation shall include, but is not limited to, employee benefits, reimbursement for reasonable office expenses and other reasonable, incidental expenses, e.g., photocopying, long-distance telephone calls, postage, and travel. The salary and compensation provided to the chief public defenders and deputy chief public

defenders shall be the same as provided to elected prosecutors and chief deputy prosecutors in comparable positions under IC 33-39-6-5.

Mr. Landis stated that defining public defenders salary and compensation as 90% of a prosecutor's, implied that public defenders are of less value; they should be defined as having equal value. If Standard G is amended to state equal salary and compensation between public defenders and prosecutors, then every time that judges and prosecutors receive a pay raise based upon a cost-of-living increase from the state, public defenders would receive the same from the counties and the counties could budget for these cost-of-living increases. The proposed changes would take effect January 1, 2014, allowing counties in the summer of 2013 to adjust the budgets to reflect this change for 2014.

The second proposal Larry Landis presented is a guideline to Standard G that requires a report in the first quarterly request for reimbursement each year with the salaries and compensation for public defense attorneys and deputy prosecutors, including the person or position in the office of the prosecuting attorney that will be used for comparison. The proposed guideline is as follows:

The first quarterly request for reimbursement each year shall include a report comparing the salaries and compensation of positions in the Office of the Prosecuting Attorney with the salaries and compensation of salaried or contractual public defenders. The report shall include for each salaried or contractual public defender the person or position in the office of the Prosecuting Attorney that will be used to compare salaries and compensation for the purpose of determining compliance with Standard G.

Larry Landis also proposed a new guideline defining compensation as follows:

Compensation shall include, but is not limited to, employee fringe benefits, i.e., health care insurance, etc. In counties that do not provide public defenders with an office or support staff, an adjustment shall be made to reflect the value of the office and/or support staff provided to prosecutors by either adding the value to the prosecutors' compensation or subtracting a reasonable amount incurred by the public defenders in providing an office and support staff for their public defender work.

In the event counties do not provide equivalent salary and compensation to public defenders, Larry Landis presented a proposed guideline to Standard J – Caseloads of Counsel – which provides a maximum caseload for public defense attorneys who are paid only a percentage of the salary and compensation provided to deputy prosecutors. The proposed guideline reads as follows:

A part-time public defender is presumed to be at 50% and may be assigned a maximum of 50% of a full-time caseload as provided in Table 1 and 3. If the salary and compensation provided to a part-time public defender is less than the salary and compensation provided to a part-time deputy prosecutor in a similar position or less than 50% of the salary and compensation provided to a full-time deputy prosecutor in a similar position, the number of cases that may be assigned to the public defender shall be reduced so as not to exceed the percentage of the public defenders' salary and compensation compared to the salary and compensation of the deputy prosecutor in a similar position. For example, if a part-time public defender is paid 40% of the salary

and compensation paid to a full-time deputy prosecuting attorney handling the same type of cases, the public defenders' maximum caseload shall be only 40% of the maximum caseload in Standard J.

If the salary and compensation provided to a part-time public defender is more than the salary and compensation provided to a part-time deputy prosecutor in a similar position or more than 50% of a full-time deputy prosecutor in a similar position, the public defender may be assigned the percentage of the maximum number of cases that is the same as the percentage of their salary and compensation compared to the salary and compensation of a deputy prosecutor in a similar position. For example, if a part-time public defender is paid 75% of the salary and compensation paid to a full-time deputy prosecuting attorney handling the same type of cases, the public defender's maximum caseload would be 75% of the maximum caseload of a full-time public defender.

In discussing the counties' 2013 salary ordinances for deputy prosecutors, it was pointed out by Larry Landis that some counties do not have county-paid prosecutors – only state paid prosecutors – and what salary would be used for comparison to determine the salary of a public defender is an issue that will have to be discussed in the future. The guidelines presently being followed stated that where there is no comparable position in the prosecutor's office minimum salaries are set for part-time and full-time public defenders. Larry Landis directed the Commission's attention to the Guideline for Standard G, which presently states:

For counties where there is no position in the prosecutor's office corresponding with a position in the public defenders' office a full-time public defender must be paid not less than \$40,100 and a part-time public defender, not less than \$20,050. (1998)

Mr. Landis stated that the Commission, through the proposed changes, gives counties the opportunity to identify what prosecution positions are to be used for comparison in setting the salaries and compensation of public defenders; then adjust by guidelines where necessary. The Commission may consider giving counties grace periods to come into compliance where there is a vast differential between prosecutor/public defender salary and compensation.

Mark Rutherford recommends that the proposed changes be presented to the counties for comment before the March meeting of the Commission. Andrew Roesener moved that the proposed changes be presented to the counties for comment, and that this issue be on the March meeting agenda. David Hensel seconded the motion. Motion passed unanimously.

Creating a Legislative Bill for Chief Public Defenders to be State Paid: Deborah Neal asked if the Commission is in support of a legislative bill that would make chief public defenders and deputy public defenders state-paid the same as prosecutors and judges? Larry Landis advised that in the coming budget talks, the Supreme Court's budget bill is asking for probation officers and deputy probation officers to be paid by the state; this may be a good time to make the same request for chief and deputy public defenders. This could be amended into the Supreme Court's budget bill. Mr. Landis noted that if the state paid for chief and deputy public defenders, it would make more money available in the Public Defense Fund to return to the counties. Mary Ellen Diekhoff made a motion that the Indiana Public Defender Commission supports a legislative bill that would make chief public defenders and deputy

public defenders state-paid the same as prosecutors and judges. Andrew Roesener seconded the motion. Motion passed unanimously.

Compliance Report: Deborah Neal reported that 81% of the counties are in compliance with caseload standards; and the remaining counties are in substantial compliance.

Staff Report: Elana Salzman reported on her letters warning counties that attorneys accepting public defense assignments must complete a certification of qualifications under Standards E and F. She stated that most counties are in compliance or are making changes where needed.

Financial Status of Public Defense Fund: Deborah Neal reported that once the claims approved in this meeting are paid, the Fund will have a balance of \$14 million which will be needed to pay claims in March and June of 2013.

FISCAL REPORT 2012-2013				
INDIANA PUBLIC DEFENDER COMMISSION				
12/12/2012				
2012-2013 Budget: \$20,250,000.00	Appropriations	Expenditures	Encumbered	Balance
6/30/12 Fund Balance Encumbered			\$7,127,359.46	\$ 7,127,359.46
Outstanding unpaid claims	\$4,272,892.75			
June Claims pd from purchase orders		\$4,216,518.27		
Balance encumbered				\$ 2,910,841.19
July Distribution for FY12-13				
Court Fees - \$7.4 million:				
General Fund - \$12.850 million:	\$ 20,250,000.00			
Balance of Appropriation + encumbered amt.				\$23,160,841.19
June Capital/Non-capital paid without PO		\$ 56,374.48		
Balance:		\$ 56,374.48		\$23,104,466.71
2nd Quarter 2012				
Non-Capital Claims - 40%		\$4,328,206.57		
Capital Claims - 50%		\$ 47,392.50		
Payroll for July/August/September		\$ 55,273.55		
Expenses		\$ 620.77		
Balance:		\$4,431,493.39		\$18,672,973.32
Payroll for October/November		\$ 18,065.43		
Expenses for October/November		\$ 1,306.32		
Balance:		\$ 19,371.75		\$18,653,601.57
3rd Quarter 2012				
Non-Capital Claims - 40%		\$4,271,820.39		
Capital Claims - 50%		\$ 66,595.19		
Balance:		\$4,338,415.58		\$14,315,185.99

Other Matters: Bob Hill asked the Commission if any action was taken to have Children-in-need-of-Services and Termination of Parental Rights cases made reimbursable by the Public Defense Fund. Deborah Neal stated that an additional \$2.8 million is in the Supreme Court’s budget in anticipation of reimbursing on the CHINS/TPR cases. Larry Landis said the Commission could adopt a guideline for the purpose of reimbursing these cases depending on the outcome of the request for \$2.8 million.

Adjournment: The next Commission meeting is scheduled March 20, 2013. There being no further business to discuss, Larry Landis moved to adjourn the meeting and Vernon Smith seconded the motion. The motion passed and the meeting adjourned at 4:05 p.m.

Mark Rutherford, Chairman

Date