

**STATE OF IOWA
INDIGENT DEFENSE ADVISORY COMMISSION**

**First Report
December 9, 2002**

I. Background

The Indigent Defense Advisory Commission was created in 1999 by Act of the Iowa General Assembly, now codified at Iowa Code section 13B.2A. The Commission's statutory charter is "to advise and make recommendations to the legislature and state public defender regarding the hourly rates paid to court-appointed counsel and per case fee limitations." IOWA CODE § 13B.2A (2001). The Commission's recommendations "shall be consistent with the constitutional requirement to provide effective assistance of counsel to those indigent persons for whom the state is required to provide counsel." *Id.*

The Commission's membership is five voting members, plus the State Public Defender as an *ex officio* non-voting chair. The Governor appoints three of the voting members, among them a person nominated by the Iowa State Bar Association and another nominated by the Iowa Supreme Court. Two voting members are appointed by the General Assembly, one from each chamber and no more than one from the same political party. No more than three of the voting members may be licensed attorneys in Iowa. The voting members' terms are three years, but with initial terms staggered. *Id.*

The Commission must file a report every three years with the Governor and the General Assembly. The Commission's first report is due January 1, 2003. Subsequent reports are due on January 1st every three years thereafter. *Id.*

II. Membership

The voting members of the Commission are, in alphabetical order (with their hometown, appointment authority, and current term expiration date):

Joseph R. Cahill, Nevada
Governor's appointment (Supreme Court nominee)
Term expires June 30, 2003

The Hon. Gene Fraise, Fort Madison
Senate appointment
Term expires June 30, 2003

The Hon. Lance Horbach, Tama
House of Representatives appointment
Term expires June 30, 2003

Maria L. Ruhtenberg, Des Moines
Governor's appointment (Bar Association nominee)
Term expires June 30, 2004

Sherryl L. Williams, Villisca
Governor's appointment
Term expires June 30, 2005

Two of the voting members (Mr. Cahill and Ms. Ruhtenberg) are licensed Iowa attorneys. Ms. Ruhtenberg and Ms. Williams have been reappointed to their second terms, in that their first terms were one year and two years, respectively, because of the required staggering of initial terms. The remaining voting members are in their first terms.

The State Public Defender is Thomas G. Becker. He has acted as non-voting chair and provided administrative support for the Commission.

III. Commission Activities

The Commission first met on July 27, 2001. At this meeting, the Commission agreed on the administrative procedures that would govern its meeting schedule, activities, recommendations, and reports. The Commission decided to have annual meetings, with additional meetings possible at the call of the chair or two voting members. In accordance with Iowa law, all Commission meetings are open to the public with public notice of the meeting and its agenda. *See IOWA CODE ch. 21 (2001).*

At its first meeting, the Commission also reviewed materials on Iowa's indigent defense programs and those of other jurisdictions across the United States, received briefings from the State Public Defender and his staff on the history and current state of Iowa's indigent defense programs, and considered questions. The Commission agreed on a timetable for reaching its first recommendations and submitting its first report to the Governor and General Assembly. The Commission then adjourned to study the information provided, conduct additional research, and await the call of the chair for the second annual meeting.

The Commission next met on July 25, 2002. The Commission received updates from the State Public Defender on the condition of Iowa's indigent defense programs and recent legislation that affected those programs. The voting members considered their recommendations and reached consensus on the recommendations in sections V and VI. The voting members directed the State Public Defender to draft this report and circulate it for review by the voting members. All voting members concur in this report's contents, as indicated by their signatures.

IV. Current Hourly Fee Rates and Per Case Fee Limitations

Hourly rates for fees to court-appointed counsel for indigents in criminal prosecutions, juvenile court cases, and other statutorily designated proceedings are set by Iowa Code section 815.7. These rates are \$60 per hour for alleged Class A felonies, \$55 per hour for alleged Class B felonies, and \$50 per hour for all other cases. The last increase in these rates (five dollars across the board) was effective July 1, 1999.

The State Public Defender has authority to contract with providers at rates different from those stated in Iowa Code section 815.7. *See* IOWA CODE §§13B.4(3), 815.7 (2001). As a matter of policy, the State Public Defender contracts with trial defense providers at the statutory rates, with a few exceptions in special circumstances. The State Public Defender contracts with certain nonprofit and educational entities at a flat monthly rate. The State Public Defender also contracts at a flat monthly rate with individual attorneys who have agreed to provide indigent defense services in specialized drug court programs in some Iowa counties. Otherwise, all trial service indigent defense contracts rates are at the same hourly rates as stated in Iowa Code section 815.7.

Iowa law requires the State Public Defender to establish per case fee limitations for categories of cases. *Id.* § 13B.4(4)(a). This statute also requires the State Public Defender to review fee limitations at least every three years, considering public input and other factors described in the statute. *Id.* The State Public Defender establishes these fee limitations as part of administrative rules published in accordance with Iowa Code chapter 17A (Iowa Administrative Procedure Act). The current per case fee limitations are in the Iowa Administrative Code section 493 – 12.6(13B,815), as follows:

Class A felonies	\$15,000
Class B felonies	\$3,500
Class C felonies	\$1,200
Class D felonies	\$1,000
Aggravated misdemeanors	\$1,000
Serious misdemeanors	\$500
Simple misdemeanors	\$250
Simple misdemeanor appeals to district court	\$250
Contempt/show cause proceedings	\$250
Proceedings under Iowa Code chapter 229A *	\$10,000
Probation/parole violation/extradition	\$250

* The Sexually Violent Predator Act.

Delinquency (through disposition)	\$1,000
Child in need of assistance (CINA) (through disposition)	\$1,000
Termination of parental rights (through disposition)	\$1,500
Juvenile court review hearings (postdispositional hearings)	\$300
Judicial bypass hearings	\$150
Juvenile petition on appeal	\$500
Postconviction relief – the great of \$1,000 or ½ of the fee limitation for the conviction from which relief is sought	

The State Public Defender applies these limitations to each “case,” as that term is defined at Iowa Administrative Code section 493 – 7.1(13B,815), i.e., “all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.” If a case includes multiple charges of differing severity, the State Public Defender uses the fee limitation for the most serious charge. 493 IAC § 12.6(13B,815). If a CINA case evolves into a termination of parental rights, the State Public Defender applies the fee limitations separately for the appropriate portions of the fee claim. *Id.* § 12.6(4)(13B,815).

The State Public Defender contracts with appellate service providers at a flat rate of \$1,500 per appeal, with lower limits for withdrawals from frivolous appeals and certain cases where an attorney for one party joins a brief submitted by another party. *Id.* § 12.5(1), (2)(13B,815). For an unusually complicated appeal, a contract appellate provider may negotiate a higher payment from the State Public Defender. *Id.* § 12.5(4)(13B,815).

For appointed appellate counsel who are not contract providers, the fee limit is \$2,000 per case with lower limits for withdrawals from frivolous appeals and cases where an attorney for one party joins a brief submitted by another. *Id.* § 12.6(1)(13B,815). For a non-contract appellate provider, there is no provision for a negotiated higher fee limit for an unusually complicated case.

The fee limits set by the State Public Defender are not absolute. Except in an appellate contract case, an attorney may apply to the Court for approval to exceed the fee limitation for the case. 2002 Iowa Acts, SF 2301 § 17 (codified at IOWA CODE § 815.10A; prior Code section was 815.10(3)). Ordinarily, the attorney must apply to the Court before actually exceeding the limit; however, for good cause shown, the attorney may receive retroactive approval from the Court. *Id.*; *see also* 493 IAC § 12.6(2), (3)(13B,815).

V. Recommendation: Fee Rates

The Commission recommends that serious consideration be given to increasing the fee rates for court-appointed counsel by five dollars per hour to \$65 for alleged Class A felonies, \$60 for alleged Class B felonies, and \$55 for all other matters. The Commission acknowledges the State of Iowa’s current budget situation may preclude such a fee increase in the immediate future. The Commission believes that, when the State’s budget

situation improves to the point that new money is available, serious consideration should be given to implementing this recommendation.

The success of Iowa's indigent defense programs depends on an effective partnership between public defender offices and the private bar. The State Public Defender field offices may be the cornerstone of indigent defense in Iowa, but they cannot handle every case or even nearly so. There are many Iowa counties where it would not be economically efficient to establish a public defender office because of relatively low criminal and juvenile justice traffic. Yet those counties still produce criminal and juvenile cases involving indigent persons that must be defended by court-appointed counsel. In counties served by public defender offices, those offices still must turn back appointments because of conflicts of interest with preexisting clients and to avoid work overload. *See* IOWA CODE § 13B.9(4) (2001).

For cases not handled by public defenders, the courts must find private attorneys willing to take court appointments, with a preference for those under contract with the State Public Defender to provide indigent defense services. *See* 2002 Iowa Acts, SF 2301 § 16 (codified at IOWA CODE § 815.10; prior Code section was 13B.9(4)). There is no provision in Iowa law or court rules that mandate private attorneys, even contract attorneys, to accept court appointments. Accordingly, unless there are sufficient incentives for private lawyers to accept court appointments voluntarily, the State will not be able to fulfill its constitutional obligation to provide counsel for indigents.

While most attorneys who accept court appointments are at least partly motivated by a desire to perform a service for society, no attorneys are willing to perform this service long if it means operating at a loss. Information provided to the Commission indicates that current fee rates at best approximate some private practitioners' overhead costs, but for many lawyers they do not even do that. Lawyers' overhead expenses – office rent, utilities, staff salaries and benefits, supplies, and miscellaneous other costs – increase each year. Unless indigent defense fees keep pace with overhead, fewer attorneys will be willing to accept indigent defense appointments.

Overall, there are now sufficient numbers of Iowa attorneys willing to take court appointments. However, there is anecdotal evidence that judges have encountered difficulty in finding qualified lawyers willing to accept appointments for some challenging cases. Unless fee rates keep pace with overhead, the Commission believes this problem will increase. Because the State has a constitutional duty to provide for indigent defense, the State cannot wait until unavailability of counsel becomes widespread before it takes action.

Moreover, the State must keep faith with those private attorneys who have dedicated a significant portion of their practice to defending indigent persons. The one way to do this is to keep indigent defense fee rates apace with office overhead.

VI. Recommendation: Per Case Fee Limitations

The Commission does not recommend any changes in the per case fee limitations at the present time. The current limits are generally appropriate in light of the fee rates and the number of hours typically spent on a particular class of case. The statutory requirement for review by the State Public Defender at least every three years, coupled with the opportunity for the public to request administrative rulemaking (*see* IOWA CODE § 17A.7 (2001)), ensure the flexibility necessary to make timely updates to the fee limitations. The State Public Defender's Office has been responsive to changes in the law and legal profession that impact on the limits and has revised them accordingly. The statutory provision permitting judges to approve applications to exceed fee limitations further ensures that the limits do not deny fair compensation to court-appointed counsel.

All members of the Commission concur in the above report and its recommendations.

Respectfully Submitted,

Thomas G. Becker
Non-voting Chair

Joseph R. Cahill
Member

Gene Fraise
Member

Lance Horbach
Member

Maria L. Ruhtenberg
Member

Sherryl L. Williams
Member